CHAPTER - IV
JUDICIAL ATTITUDE IN CIVIL SERVICES UNDER
THE INDIAN CONSTITUTION

A. Civil services under Part- III of the Indian Constitution
(Article 14,16,21)

Article 14 of the Indian Constitution embodies the general principles of equality. Article 15, 16 are the
instances there of in favour of the citizens. Article 14 guarantees equality. Article, 15 prohibits discrimination
and Article 16 guarantees equality of the opportunity in public employment to the citizens of India. All
appointments, removal or dismissal of civil servant must confirm the provisions of Article 14, 16 and 311 of the
constitution

Article 14 provides:

The state shall not deny to any person equality before the law or the equal protection of the laws within the
territory of India.

We observe that Article 14 provides two principles – (1) Equality before the law and (2) Equal protection
of law

The principle of equality before the law is found in all most all the written constitution1 which guarantees
the fundamental right of the citizens. Both principles have been incorporated in the universal declaration of
human rights.2 The first principle equally before the law is an English origin and the second concept equal
protection of law has been taken from the American constitution. Both the expression convey the idea of
equal status and equal justice3 as we find in the preamble of our constitution.

(1) EQUALITY BEFORE LAW : Meaning

"Equality before the law means that among equal the law should be equal and should be equally
administered that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for
the same kind of action should be sure for all citizens of full age and understanding without distinction of
race religious, wealth, social states or political influence.4"

(1) U.S.A, Section I of the 14th amendment says no state shall deny to any person within its jurisdiction, the
equal protection of laws. Burma – Section 13 “All citizens irrespective of birth, religious. sex or race are equal
before law. That is to say there shall not be any arbitrary discrimination
(2) Article – 7 of the universal declaration of human rights says – "All are equal before the law and are entitled
without any discrimination to equal protection of the law. between one citizen or class of citizens and another
Chile – Article 10 – All inhabitants of the republic are a social equation before law.
Thus the concept of equality does not mean absolute equality among human beings which is practically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual and also the equal subject of all individual and classes to the ordinary law of the land. What it forbids is discrimination between persons who are substantially in similar circumstances or conditions. Unequal treatment does not arise as between persons governed by different conditions and different sets of circumstances. The rule is that like should be treated alike and not that unlike should be treated alike.

**Rule of Law : Meaning :**

The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England. It means that no man is above the law and that every person whatever be his rank or conditions is subject to the jurisdiction of ordinary courts. Dicey wrote that every official from the prime minister down to constable or a collector of taxes is under the same responsibilities for every act done without any legal justification as any other citizen. Rule of law required that no person shall be subjected to harsh, uncivilised or discriminatory treatment even when the object is the securing of paramount exigencies of law of order.

To Dicey there are three meanings of the Rule of law, thus

(i) **Absence of Arbitrary power of Supramacy of law :**

It means that absolute supremacy of law as opposed to the arbitrary power of the Government.

(ii) **Equality before the law :** It means subjection of all classes to the ordinary law of the land administered by ordinary law courts. This means that no one is above the law with the sole exception of Monarch who can do no wrong.

(iii) **The constitution is the result of the ordinary law of the land :**

It means that the source of the right of individuals is not the written constitution but the ruler as defined and enforced by the courts.

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(1) Dicey - Law of Constitution : PP 202-3 (10th Edn.)
(2) Dicey - Law of Constitution : P 49 IIIrd Edn.)
(3) Rubinder Singh Vs Union of India A.I.R. 1983 S.C. 65
The third aspect of the Dicey's rule of law does not apply to Indian system as
the source of rights of individuals is the constitution of India. The constitution is the supreme
law of the land All laws passed by the legislature must be consistent with the provisions of
the constitution.

Exception:

The law of equality stated as above is not absolute. There are number of
exceptions to it. Firstly foreign Diplomats are immune from the jurisdiction of courts. Article
361 of the Indian constitution affords an immunity to the president of India and the state
Governors. It provides that the president or the Governor of state shall not be answerable to
any court for the exercise and performance of the powers and duties of the office or for any
act done or purporting to be done by him in the exercise and performance of those powers
and duties etc. Secondly today ministers and other executive bodies are given very wide
discretionary power by statute. A minister may be allowed by law to act as he thinks fit or
if he is satisfied. Thirdly a large number of legislation is passed in the form of delegated
legislation i.e. rules orders or statutory instruments are made by ministers and other bodies
and not directly by parliament. Fourthly certain members of society are governed by special
rules in their profession, i.e. lawyers, doctors, nurses, members of armed forces and police.
Such classes of people are treated differently from ordinary citizens.


Equal Protection of laws is similar to the same concept embodies in the 14th
Amendment to the American Constituion. 1 It has been interpreted to mean subjections to
equal law, applying to all in the same circumstances 2 It only means that all persons in
similarly circumstances shall be treated alike both in the privileges conferred and the liabilities
imposed by the laws. Equal law should be applied to all in the same situation and there
should be no discrimination between one person and another. As regards the subject matter
of the legislation, their position is the same. 3 Thus the rule is that the like should be treated
alike and not that unlike should be treated alike 4 The rule of law imposes a duty upon the

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(1) The 14th Amendment
(2) Lindsley Vs Natural Carbonic Gas Co. (1910) 220 US 61
(3) State of West Bengal Vs Anwar Ali Sarkar AIR 1952 SC 75
(4) Dr. V.N. Shukla: Constitution of India P. 27 (5th ed.)
The rule of law embodied in article 14 is the basic features of the Indian constitution and hence it can not be destroyed even by an amendment under article 368 of the constitution.

Limitation

The doctrine of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of person often require separate treatment. Therefore the principle does not take away from the state the power of classifying persons for legitimate purpose. Every classification is in same degree likely to produce some inequality and mere production of inequality is not enough. Differential treatment does not 'per sex' constitute violation of Article 14. It denies equal protection only when there is no reasonable basis for the differentiation. If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the legislature to determine, what categories, it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by legislation are left out would not render the legislation which has been enacted in any manner discriminatory and violative of article 14. No service rule can satisfy each employee. Its reasonableness should be considered from the stand point of justice to the majorities of employees. Article 14 does not prevent the legislature from introducing a reform gradually that is to say at first applying the legislation to some of the institutions or objects having common features or to particular areas only according

(1) Raghubir Singh Vs State of Haryana AIR 1980 SC 1087
(2) Indira Neharu Gandhi Vs Raj Narain AIR 1975 SC 2299
(3) state of Bombay vs Balsara (1951) SC-R 662 706-09 Babu Ial vs collector of customs AIR 1957 SC 677 Gopichand vs Delhi Administration AIR 1959-Sc 609
(4) State of Bombay vs Balsara (1951) SCR 682 708-609
(5) Ameeronissa vs mehboob (1953)SCR 464 (414)
(6) State of Bombay vs Balsara (1951) SCR 682 708-09
(7) Sakhawant vs state of Orisa (1955) 1 SCR 1004
(8) Sakhawant R.B.I. vs sahasranam AIR 1966 SC 1830 (Para. 58)
(9) Laxmindra Vs Commission AIR 1952 57 Mad 813
(10) Bishwambhar vs state of orissa (1954) SCR 842 (845) Amarsingh vs state of Rajasthan (1955) SCR 303 (366)
(11) Laxmindra Vs comm. AIR 1952 Mad (613) L.N.M. Institute Vs state of Bihar AIR 1988 SC 1136
(12) Ramchandra Vs state of orissa (1956) SCR 26
to the exigencies of the situation.

(3) **Restriction Against Article 14:**

Article 31-A and 31-B of the constitution have considerably restricted the scope of Article 14

(4) **Classification by the Constitution:**

As observed, Article 14 is a general provision and required to be read subject to the other provisions included within the part on Fundamental rights. Hence any law making special provision for women (or children) under Article 15 (3) can not be challenged on the ground of contravention of Article 14.

Similarly section 54 (4) of Representation of people Act, 1991 which confers a double advantages upon members of the scheduled costs or tribes to be returned to the

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(1) 31A(1) - Notwithstanding anything contained in Article 13, no law providing for-

(a) the acquisition by the state of any estate or of any rights there in or extinguishments or modification of any such right, or

(b) the taking over of the management of any property by the state for a limited period either in the public interest or in order to secure the proper management of the property, or on the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishments or modification of any right of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders there of, or

(e) the extinguishments or modification of any rights occurring by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil or the premature termination or cancellation of any such agreement, lease or licence shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14.

Article 19.

(2) 31C(2) - Notwithstanding anything contained in Article 13, no law giving effect to the policy of the state towards recurring all or any of the principles laid down in part IV shall be deemed to be void on the ground that it is inconsistent with or taken away or abridge any of the rights conferred by article 14 or Article 19 and no law conferring a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy.

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Yusuf Vs state of Bombay (1954) SCR 930
general seats even though seats have been reserved for them under the constitution, being sanctioned by Article 15(4) cannot be held to be void for contravention of Article 14.

When the constitution itself makes a classification, the charge of discrimination cannot be leveled against such separate treatment. Thus the special treatment of Government Servant in the matter of their tenure [Article 310 (1)] or an order made by the president under Article 311 (2), proviso, or the taxation by a state of road transport (Entry 56, List II) can not be challenged as violative of Article 14. But the special treatment authorised by these other provisions must be kept within reasonable limits and should not be made so excessive as to render nugatory the general equality professed to the members of all communities by Article 14. Hence the special provision for the advancement of the backward classes or scheduled castes and tribes under Article 15 (4) or the reservation of posts for the backward classes under Article 16(4) will be unconstitutional because of contravention of Article 14, if it is carried to an unreasonable extent.

(5) Reasonable Classification: Principle:

As observed from the study, what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well defined class it is not open to charge of denial of equal protection on the ground that the law does not apply to other persons.

For the purpose of permissible classification two conditions must be fulfilled.

(i) That the classification must be founded on an intelligible differentia which distinguishes persons or things, that are grouped together from others left out of the group.

(ii) That the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis: Such as geographical or according to objects or occupation or the like. What is necessary is that there must be a...
nexus between the basis of classification and the object of the Act under consideration.  

(6) New Concept of Equality: (Protection against arbitrariness)

In E.P. Rovappa Vs State of Tamil Nadu our Hon'ble Supreme Court of India challenged the traditional concept of equality, which was based on reasonable classification and has laid down a new concept of equality.

Bhagwati J. delivering the judgment on behalf of him self, chandrachud and Krishna lyer JJ propounded the new concept of equality that Equality is a dynamic Concept with many aspects and dimensions and it can not be cribbed cabined and confined within traditional and doctrinaire limit. From a positivistic point of view equality is antithetic to arbitraryness.

It fact equality and arbitraryness are sworn enemies: One belong to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that is unequal both according to political logic and constitutional law and therefore violative of Article 14.

Similarly in Maneka Gandhi Vs Union of India Bhagwati J. Again quoted the new approach. He said that equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 Striker at arbitraryness in state action and ensure fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitraryness, pervade Article 14 like a brooding omnipresence.

In international Airport Authority case Bhagwati J. reiterated the same principle that it must therefore now be taken to be well settled that what Article 14 Strikes at is arbitrariness because our action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification, which is involved by the Court is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be reached.

2. 1 AIR. 1974 SC 555
3. AIR.1978 SC 597
4. R.D. Shetty Vs Airport Authority AIR 1979 SC 1628
(8) Criticism By H.M. Seervai:

A famous jurist H.M. Seervai has criticised this new concept of equality propounded by the Supreme Court.

According to Seervai the old doctrine is only doctrine which brings out full scope of "the equal protection of the laws," guaranteed to every person by Article 14, and secondly the new doctrine is untenable for the following reasons:

(a) The new doctrine hangs in the air because it is propounded without reference to the terms in which the granted right to "the equal protection of the laws" is conferred.
(b) The new doctrine involves the logical fallacy of the undistributed middle or the fallacy of simple conversion on explained.
(c) The new doctrine fails to distinguish between the violation of equality by a low, and its violation by executive action.
(d) The new doctrine fails to analyse certain concept like "arbitrary" "law" "executive action" or discretionary power and fails to recognise the necessity implication of numerous Supreme Court decisions on classification.

(8) Classification In Services:

It is permissible to have classification in services based on hierarchy of posts, pay scale, value of work, performance of duties, qualifications, responsibilities, and experience. The classification must, however have a reasonable relation to the object sought to be achieved.

(i) Pay Structure: Factors for fixation of pay scale

The pay structure of the employees of the Government should reflect many other social values. The degree of skill, structure of work, experience involved, training required, responsibilities under taken, mental and physical requirements, disagreeableness of the task, hazard attendant on work and fatigue involved are some of the relevant factors which should be taken into consideration in fixing the pay scale.

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2. Grih Kalyan Kendra Workers union Vs union of India AIR 1991 SC 1173
3. Delhi Veterinary Association Vs Union of India AIR 1984 Sc 1221 Para 5
(II) Equal pay for equal work

The Supreme Court has enforced the fundamental rights of equal pay for equal work in effectuating the constitutional goal of equality and social justice in number of decision.

(1) U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd. Vs Its Workmen

It this case SC held that where both senior and junior groups of promotees do the same type of work, higher wages given to one group to promotees of a particular back date, must also be given to promotees of another group on the basis of principal of equal pay for equal work.

(2) In Gopika Ranjan chaudhari Vs Union of India

It has been held that payment of higher emoluments to staff of a particular unit as against staff of other units and battalions merely on the ground that the former unit was stationed at Head quarters would be discriminatory.

(3) In Federation of A.I.C. & C.E. stenographers Vs union of India

S.C held that the differentiation in the pay scales of stenographers in the customs and excise department and their counter part in the central secretariat before the report of the Fourth pay commission was not sought to be justified on the similarity of the functional work but on the dissimilarity of responsibility confidentiality and the relationship ship with the public.

(4) Government of A.P. Vs M. Pandurang

S.C held that the parity of pay scale can not be granted to seniors where their juniors in the cadre are drawing higher pay due to grant of selection grade or length of service in the feeder cadre.

(5) In Delhi Municipal Karmachari Ekta Union Vs P.L.Singh

The Supreme court relying on Daily rated casual labour employed under P & T department Vs Union of India directed the Delhi Municipal corporation to comply with the doctrine of “equal pay for equal work” in respect of employees working as vaccinators.

7. AIR 1987 SC 2342 and UP Income Tax Department contingent paid staff welfare Association Vs Union of India AIR 1988 SC 517
immunisers on daily wages for more than eight years against those regularly appoint doing same kind of work with higher salary and wage.

(6) IN Mewa Ram Vs A.I.I. Medical Science :¹

The Supreme court said that while considering the question of application of principle of “equal pay for equal work” it has to be born in mind that it is open to the state to classify employees on the basis of qualifications, duties and possibilities of posts concerned. Thus, since the hearing therapist and audiologist in All India Institute of Medical science both render professional services and there is qualitative difference between the two on the basis of educational qualification, the principal of equal pay for equal work can not be invoked or applied.

(7) In State of U.P. Vs J.P. Chaurasia :²

It has been held that equation of posts or equation of pay must be left to the executive Government. It must be determined by expert bodies like pay commission. If there is any determination by a commission or committee the court should normally accept it. The pay commissions and pay rationalisation committee have evaluated that the section officers of the Allahabad High Court perform onerous duties and been greater responsibilities than bench secretaries. Thus the bench secretaries could not claim as of right the pay scale admissible to section officers.

(8) N.F.S., N.F.C. ( physical Education ) Teachers Association VS. Union of India :³

In this case it has been held that junior grade I Physical Training teachers do not have required educational qualification and their nature of duty and responsibility differ from those appointed as secondary school. Physical Instructors, they can not claim, equal pay scale with the latter.

1. AIR 1989 1256
2. AIR 1989 SC 19
3. AIR 1993 SC 369
(9) Central Railway Staff Assoch. Vs Director of Audit, Central Railway: ¹
In this case it has been held that Assistant Audit Officer belonging to the office of comptroller and auditors General of India and that working in Railway Audit deptt. Cannot be equated with group B Officers of Indian Railways.

(10) Govt. of A.P. Vs Veera Raghveer : ²
S C. held that when a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied.

(11) In Kshetriya Kishan Gramin Bank Vs D.B. Sharma : ³
It has been held that the concept of “equal pay for equal work” and the concept of parity with some others” are two different concepts. But two classes of persons do same work under the same employer with the same responsibility under similar working conditions the plea that the mode of recruitment of the said classes is different form each other would not be able to nullify the applicability of the doctrine of equal pay for equal work.

(12) In Chandigarh Administration Vs Rajini Vali : ⁴
It has been said down that pay parity principal may be applied even to teachers in higher secondary classes of private educational institutions receiving grant in aid and teachers of other aided schools.

(13) IN Food Corporation of India VS Shyamal K. Chatterjee : ⁵
It has been held that where casual workers doing same job which are actually work of class IV staff are entitled to wages on par with class IV employees of Government undertaking.

(III) APPOINTMENT
(1) Union of India VS Rati Pal Saroj⁶ (Central Govt. entitled to terminated appointment) :
It has been held that if a person accepting appointment does not join his new service, he is not a probationary but a selectee. If a prospective employee has not joined the central

¹ AIR 1993 SC 2467 (Para 14)
² (1999) 9 SCC 268 (Para 3)
³ AIR 2001 SC 168 (Para 7)
⁴ A.I.R. 2000 3554 (Para 7,9,10)
⁵ AIR 1998 SC 1117 Para 8,9
government service after he was offered a post by the central government on the date fixed for joining in the appointment letter, the central Govt. would be entitled to terminate the appointment as the person appointed is not available to the central government within a reasonable time of the appointment and hence he is not suitable.

(2) Ashok Kumar Vs Chairman B.S. Recruitment Board

(3) A.P. Agrawal Vs Govt. of national Capital Territory of Delhi

In these cases it has been held that article 14 and 16 confer on every citizen right to claim consideration for appointment to a post under the state. Therefore appointment of the person kept in the waiting list by the respective recruitment boards to the vacancies that has arises subsequently without notifying them for recruitment is unconstitutional.

(4) Jain Narayan Ram Vs State of U.P. (Denial of appointment improper)

Reserved quota: Candidates were duly selected for four posts against reserved quota and they opted not to join service. Denial of appointment to next four qualified candidates standing in the merit list is improper.

(5) Sushma Gosain Vs Union of India

(6) Pholwati Vs Union of India

(Death of bread earner. Denial of Compassionate appointment arbitrary)

In these cases it has been held that denial of compassionate appointment to mitigate hardship due to the death of bread earner is patently arbitrary. Such appointment should be made without delay of the department.

(IV) SERVICE CONDITIONS

H.R. Adyanthaya Vs Sandoz : India Ltd.

(Service condition and their protection fundamental)

1. AIR 1996 SC 976 Para 5
2. AIR 2000 SC 205 Para 11, 16
3. AIR 1996 SC 703 Para 7,8
4. AIR 1989 SC 1976
5. AIR 1991 SC 489
6. AIR 1994 SC 2608
S C. held that service conditions and their protection are not fundamental rights. They are created either by statute or contract employment. What service condition should be available to particular employees are matters governed by the statute or the terms of contract. Classification of employees on the basis of income is fairly intelligible.

PROMOTION

(1) C. Sharma VS Municipal Corporation of Delhi :¹

(Rules for promotion from different cadre not volatile)

In this case it has been held that rules prescribing different conditions of eligibility for Diploma holders andgraduals for promotions from one cadre to the other are not volatile of article 14 and 16.

(2) Saroj Rani Vs State of Punjab :²

In this case rule 12 of Punjab State Assistant grade examination rules 1984 exempting certain class or category of persons from the operation of the said rules was held to be valid for department promotion.

(3) State of M.P. Vs Mahesh Kumar :³

(Empanelled candidates do not have vested right)

It has been held that empanelled candidates do not have vested right and they can not complain of the violation of the principles of natured justice not for promoting them.

(4) Orissa Small Industries Corp. Ltd. VS Narsingha Charan Mohanty :⁴

S C. held that where promotion is considered the criteria of suitability cum-merit and the respondent was not selected, it can not be said that his constitutional right has been infringed.

(5) Union of India Vs Anil Kumar :⁵

S.C. held that block deprivation of promotion avenues and service benefits can not be sustained when no cogent reasons are assigned by the administrative set up. No discrimination can be permitted at the whims of the administration or to
satisfy another section of the civil service. The union of India in the instant case (above) has failed to justify the differential treatment made to assistant foremen by putting them en bloc junior to the senior scientific assistant (SSAs) particularly when they have all along been enjoying better position and higher grade as compared to SSAs in the junior pay scale.

(6) Bihar State Subordinate Industries Fld Officers Assn. Vs ¹ Kapil deo Prasad Singh

(Clubbing of two groups to improve the chances of promotions- irrational)

There may be varied reasons or situations or consideration that may be the basis for decision by the government in clubbing together two groups to improve the chances of promotions even though one was a feeder channel for the other. such combination of groups of employees can be said to be irrational.

(7) N. Abdual Basheer VS K.K. Karunaxan : ³

(Promotions Quota-held invalid) (Para 14)

The prescription of a ratio dividing the quota of promotion between graduate preventive officers and non graduate preventive officers is invalid on the ground that it violates Art. 14 and 16 of the constitutions.

PAY SCALE

(1) Union of India Vs Bijoy Lal Ghosh : ³

(Denial of benefit of Higher Pay scale –Violative of Article 14)

Primary Teachers were entitled to benefit of difference of pay scale between the one granted by the 4th pay commission and the one enhanced later by the national commission. S.C. held that denial of such benefit without any reasonable classification would be arbitrary and violative of article 14 of the constitution.

(1) (2000) 6 5 CC 506 (Para 24)
(2) AIR 1989 SC 1824
(3) AIR 1996 SC 1992 Para 28,29
(2) T.R.C. Scientific officers (Class-I) Asson. Vs Union of India :¹

( Denial of special pay—held discriminatory)

Promotee officers were granted special pay which was denied to direct recruits, though they were doing same jobs and possessing equal qualifications. S.C. held that the denial was discriminatory.

INCREMENT

Union of India Vs Sarangapani :²

( Increment for Technicians and non-technical persons—order not arbitrary)

Where the Government order provided that technicians having training of one year should be on par with non-technical persons having training of three months with effect from a cut off date of 1st January 1986 it was not arbitrary or discriminatory. The persons who were appointed to the technical posts, and the persons who were appointed to the non technical posts do not stand on the same footing. The nature of their jobs was different the qualities for appointment was different and the training period was longer for the technical staff. Thus no equality in the dates of accrual of the increment can be claimed by the technical persons comparing themselves to the non-technical persons by invoking 14.

RETIREMENT

Union of India Vs Jagdishwar Bhat :³

( Voluntary retire and retire on Superannuation ) As to benefit Art. 14 & 16 not attracted )

There is no discrimination between an employee who retire voluntarily and an employee who retires on superannuation, because they are not similarly circumstanced. The person who retire on superannuation has been treated separately and for him benefit have been given by way of superannuation pension by notionally extending the period of service. Such benefit of pension is not given to an employee who retire voluntarily. Thus article 14 and 16 of the constitution are not attracted in such cases.

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¹ AIR 1987 SC 490 Para 8,9
² AIR 2000 SC 2163, Para 11, 12
³ AIR 1999 SC 847 Para 4
PENSION

1. Bhagwat Vs Union of India ¹
   (Pension rule 5(14) (b) held unconditional)
   It has been held that the classification between marriage during service and marriage after retirement for the purpose of giving family pension is arbitrary and violative of article 14. S.C. held that the limitation in pension rule 5(14) (b) that the word 'family' does not include "Son or daughter" born after retirement is ultra vires of article 14 therefore unconstitutional.

2. M.L. Jain Vs Union of India ²
   It was held by the supreme court that the disparity in giving liberty to state government to appoint date for grant of revised pension to the high court Judge is violative of article 14.

3. D.S. Nakara Vs Union of India ³
   (C.S. Pension Rule 34 struck down)
   In this case the S.C. struck down rule 34 of the central services (pension) rule 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a particular date and retiring after that date was not based on any rational principle and was arbitrary and violative of article 14 of the constitution.

(9) Rules, Regulations, Act, Ordinance ,
   (1) Sub Inspector Rooplal Vs Lt Governor (2000) 1 SCC 644 (Para 23)
      (Rules, Regulations taking away the service – violative of article 14 & 16)
      It has been held that when any rule, regulation or executive action has the effect of taking away the service rendered by a deputationist in an equalent cadre in the parent department his seniority if not counted in the deputedpost it would be violatiive of article 14 and 16 and as such the same is liable to be struck down.

(1) (1989) SCC 2038
(2) AIR 1989 SC 669 (Para 15)
(3) AIR 1983 SC 130
2. Air India Vs Nargesh Meerza

Regulation 46 provided that an air hostess would retire from the service of the corporation upon attaining of 35 years of age or on marriage if it took place within four years of service or one first pregnancy which ever occurred earlier.

Under regulation 47 the managing director had the discretion to extend the age of retirement by on year at a time beyond the age of retirement up to the age of 45 years if an air hostess was found medically fit.

The supreme court held that the termination of service on pregnancy was manifestly unreasonable and arbitrary and was therefore clearly violative of article 14 of the constitution. Having taken in service and after having utilised her services for four years to terminate her service if she because pregnant amount to compel in the poor Air hostesse not have any children and thus interfere with and divert the ordinary course of human nature. The termination of service of Air hostess in such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrocant and cherished institution. Thus S.C struck down Air India regulation 46 and 47 being in constitutional, irreasonbale and arbitrary.

3. A.V. Nachane Vs Union of India

(LIC Amendment Act 1981 and rules – upheld)

This case is popularly known as bonus case. In this case the supreme court upheld the constitutional validity of L.I.C. Amendment Act 1981 and the ordinance preceding it and the rules framed thereunder prospectively relating to bonus payable to class III and IV employees. The rules had stated that the new basis would apply retrospectively i.e. from July 1 1979 but the court held that the basis for fixation of D.A. and bonus will apply prospectively i.e. from February 2, 1981.

4. K. Nagaraj Vs State of A.P.

(Ordinance reducing age of retirement upheld)

the validity of A.P. public employment (Regulation of conditions of service) ordinance was challenged on the ground that it was violative of article 14 of the constitution. By his
ordinance, the A.P. Government reduced the age of retirement of all age of retirement of all Govt. servants from 58 to 55 years. It was argued that there was no basis for reducing the age of retirement. The court held that the reduction of age of retirement was not arbitrary and unreasonable and not violative of article 14 as it was taken by the government after due consideration and with a view to providing employment opportunity to younger section of society.

5. Delhi Transport Vs D.T.C. Mazdoor Congress ¹
(Regulation 9 (B) held violative of article 14)
The supreme court in the instant case held that regulation 9 (b) of the Delhi Road Transport authority (Conditions of appointment and service) Regulation 1952 which conferred power on the authority to terminate services of a permanent and confirmed employee by issuing a notice without assigning any reasons and without giving any opportunity of hearing was held arbitrary, unreasonable and violative of article 14 of the constitution, and therefore void.

6. Frank Anthony Public School Employees Association Vs Union of India ²
(Section 12 DSE Act held violative to article 14)
The supreme court struck down section 12 of the Delhi School Education act as unconstitutional on the ground that it was violative of article 14 of the constitution. Section 8 to 12 of the act lays down the terms and conditions of service of employees of recognised private schools. Section 10 required that the scales of pay etc. of the employees of recognized private schools must not be less than those of Government schools. Sections 12 excludes the operation of section 8-11 to unaided minority schools. The court held that the teachers and employees of Frank Anthony schools are entitled to parity in pay scales and other conditions of service with those available to their counterparts in government schools.

7. Indian Council of Legal Aid and Advice Vs Bar Council of India ³
(Rule of the Bar Council rules-held unreasonable arbitrary)
In this famous case the validity of new rule 9 added by the Bar Council of India in the Bar Council rules which barred the entry of persons who have completed the age of 45 years on the date of application for enrolment as an advocate was challenged as discriminatory and unreasonable and violative of article 14 of this constitution and also section 24 of advocate act 1961. The S C. held the rule 9 unreasonable and arbitrary.

(10) D.E. Proceedings & Principle of Natural Justice

(1) Nar Singh Pal Vs Union of India

( Termination of service of casual labourer – Punitive )

It was held that a casual labourer who worked in a government department for more then 10 years acquired temporary status. Where he was prosecuted for criminal offences on allegation of assaulting a gateman on duty can not be terminated on the basis of same incident by paying him retirement compensation. Beside the impugned order of termination of his services was passed on the basis of preliminary enquiry and not on the basis of regular departmental enquiry without issuing a charge sheet or giving opportunity of hearing. Such impugned order being punitive is liable to be set aside.

(2) Wasim Beg Vs State of Uttar Pradesh

Where the rule relating to discharge of a confirmed employee requires that the competent authority should give an opportunity to the employee concerned for explaining himself before coming to a decision for his discharge, non compliance of such rule is a serious violation of the principal of natural justice and vitiates the decision of discharge. The word ‘may’ used in the rule shall be construed ‘shall’ so that the principles of natural justice are complied with.

(3) Radhey Shyam Gupta Vs U.P. State Agro Industries Coprn. Ltd.

( Termination order violtive of the principle of Natural Justice )

It was held that where the enquiry officer examined witnesses recorded their statements and gave a clear finding of dismissal on the ground of misconduct and accordingly the employee was dismissed and everything was done behind the back of the appellant the termination order was held to be punitive in nature and was violative of the principles of natural justice.

1. AIR 2000 SC 1401 ( para 9,10,12,13 )
2. AIR 1998 SC 1291 Para 20
3. AIR 1999 SC 609 ( Para 35 )
(4) V.P. Ahuja Vs State of Punjab

(Requires protection even to probationer)

The termination of services of a probationer on the ground that he had failed in the performance of his duties administratively and technically, ex facie, stigmatic. Such order can not be passed without holding a regular enquiry and giving an opportunity of hearing to the probation who like a temporary servant is also entitled to certain protection for termination of his service arbitrarily or with punitive manner.

(5) Central Inland Water Transport Corpn. Ltd. Vs Brojo Nath

(Service Rule violative of article 14)

The judgment given in this case is of far reaching importance. In this case the supreme court held that service rules empowering the government corporation to terminate services of permanent employees without giving reason on three months notice or pay in lieu of notice period is violations of article 14 being unconstitutional, unreasonable and against the public policy as it wholly ignores the audi alteram partem rule (i.e. hearing of the parties).


(Doctrine of natural justice not only to secure justice but to prevent miscarriage of justice)

It has been held that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. It is a fundamental requirement of law that the doctrine of natural justice be complied with. In a department proceeding the disciplinary authority is the sole judge of facts and the High court may not interfere with the factual findings. Judicial review of administrative action has its fullest application in department proceedings where it is found that the recorded findings are based on no evidence or are totally perverse or legally untenable. Thus where the managing director leveled 13 charged against the respondent and appointed the enquiry officer, who aforesaid enquiry and services of the respondent were terminated, the bias stands proved.

1. AIR 2000 SC 1080 (Para 7,8)
2. AIR 1986 SC 1571
The principle of equality is embodied in article 14 of the constitution. This principle is well applied in service matters also. It is open to the government to make classification of services based on work to be done, performance of duties involved, qualifications of the employees and the responsibilities attached to them. In several decisions our supreme court has held that the employees are entities to get the equal pay for equal work but at the same time, it has directed. In the case of qualitative difference duties and responsibilities between the two groups or two persons of the same rank, the principle of equal pay for equal work would not apply. Now it is for the government to make differentiate and define these two groups and two persons of the same rank making opportunity rules and to include them in the conditions of service but no concrete step was taken by the government as yet.

As to appointment, SC held that in the case of death of bread earner compassionate appointment should be made immediately and should not be denied. This requires inclusion in conditions of civil service rules and immediate compliance in all appropriate cases. Uniform promotion rule applicable to all employees are also required to be framed in the light of the judicial decisions. So also in the case of pay scale and retirement. Similarly pension rule 5 (14) (a) and rule 34 have been struck down by the supreme court being unconstitutional. Pension rule requires modifications but the government failed to modify or alter them. Regulation 46-47 B of Delhi School Education Act and rule 9 of Indian Bar Council were held to be arbitrary and violative of article 14 of the constitution were struck down by the Supreme court. As a whole all the regulations and the rules require fresh look & modification according to the need of the employees.

In Departmental proceedings, principle of natural justice must be followed. But the disciplinary authorities overlook them. A direction from the Govt. or amendment in the rules are essential for the disciplinary authorities.

References:
2. Budhan VS State of Bihar (1955) SCR 1045 (1049)
3. Mewa Ram Vs AIR Medcial science AIR 1989 SC 1226
5. Union of India Vs Anil Kumar (1999) 5 SCC 743
7. Union of India Vs Jagdishwar Bhatt AIR 1999 SC 847
8. Bhagwati Vs Union of India (1989) SCC 2038
9. D.S. Nakara Vs Union of India AIR 1983 SC 130
10. Air India VS Nargesh Meerza AIR 1981 SC 1829
11. Delhi Transport VSO T.C. mazdoor Congress AIR 1991 Sc 101
12. Frank Antoni Public School Employee Association Vs Union of India (1986) 4 SCC 707
ARTICLE 16 : EQUALITY OF OPPORTUNITY IN PUBLIC EMPLOYMENT

Article 16 Provides-

[1] There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

[2] No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State.

[3] Nothing in this Article shall prevent parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within a state or union territory, any requirement as to residence within that state or Union territory prior to such employment or appointment.

[4] Nothing in this Article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, in the opinion of the state, is not adequately represented in the services under the state.

[4A] Nothing in this Article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

[4B] Nothing in this Article shall prevent the state from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.

(1) Inserted by the constitution (Seventy Seventh Amending) Act 1995
(2) Substituted by the constitution (Eight fifth Amendment) Act 2001 which was previously the constitution Ninty Second Amendment) Bill 2001
(3) Inserted by the Constitution (Eighty first Amendment) Act 2000
[5] Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religions or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(2) Analogous Provisions:
As Article 16 we find analogous provisions to-
(i) Article VI of the Constitution of the United States.
(ii) Section 116 of the Common wealth of Australia Constitution Act.
(iii) Article 29 of the constitution of people's Republic of Bangladesh and
(iv) Section 275 and 298 (1) of the Government of India Act 1935.

(3) Amendments in Article 16
In order to secure the services of scheduled castes scheduled tribes and back ward classes Article 16 of the constitution have been amended several times. It has been amended by the constitution (seventh Amendment) Act 1956: by the (seventy-seventh) Amendment Act 1995 and also by the constitution (Eighty first Amendment) Act 2000. Clause (4A) empowers the state to make any provisions for reservation in promotion in Government jobs in favour of SC's and ST's if the state is of the opinion that they are inadequately represented in the service under the state. This amendment is made to nullify the effect of the supreme court decision in Indra Sawhney Vs Union of India AIR 1993 SC 477 in which SC held inter alia that reservation in promotion ought not to be made. The new clause (4B) ends the 50% Ceiling on reservation for SC, ST and OBC in backlog vacancies which could not be filled due to the non availability of eligible candidates of these classes in the previous years. The new clause provides that the unfilled vacancies would be treated as a separate class and would be filled in succeeding year or years and will not be counted with vacancies of the year in which they are being filled up, even if the limit of 50% imposed by the supreme Court in Indra Sawhney's case (AIR 1993 Sc 477) is crossed. In that are 50% limit was laid down for both current as well as backlog vacancies. This Article was affected by the constitution (Eighty Second Amendment) Act 2000 which is intended to
restore the relaxation in qualifying marks and standard of evaluation for job reservation and promotion of scheduled castes and scheduled Tribes be inserting a new proviso to Article 335 of the constitution. Again we find by constitution. Again we find by constitutional (Eight firth Amendment) Act 2001 the words "in matters of promotion to any class" in clause (4A) are to be substituted by the words "in matters of promotion, with consequential seniority, to any class" with retrospective effect from 17th June 1995.

(4) OBJECT AND SCOPE

We observe that clause (1) and (2) of Article 16 guarantee the equality of opportunity to all citizens in the matters of appointment to any office or of any other employment under the State which is the main object and scope of this Article. At the same time we also find several exceptions to the above rule of equal opportunity under clause (3) to (5) of the Article 16: They are-

(I) Through any citizen of India, irrespective of his residence is eligible for any office or employment under the Government, residence may be laid down as a condition for particular classes of employment under a state or any local authority their in by an Act of Parliament in that behalf [clause 3]

(II) The state (as defined in Article 12) may reserve any post or appointment in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the state-[clause 4]

(III) Offices connected with religious denominational institutions may be reserved for members professing any particular religion or belonging to a particular denomination [clause 5] Clause (4) of Article 16 only permits reservation for backward classer of Citizens, who are not in the opinion of the state adequately represented in the services of the state. The majority of 9 Judges Bench ¹ held that-

(i) Clause (4) of Article 16 is not in the nature of an exception to clause (1) of that Article as held in some cases. ²

(ii) Like Article 14, Article 16(4) permits for reasonable classification ³

¹ Indra vs union of India AIR 1993 SC 477 (Para 57)
² Rajendra vs Union of India AIR 1968 SC. 507 devadasom vs union of India A.I.R. 1964 Sc. 179
³ Indra vs union of India A.I.R. 1993 Sc 477 (Para 57)
(iii) Clause 14, to Article 16 is an instance, and elaboration of the principle of the classification which is inherent in clause (1) of Article 16.

(iv) Clause (4) to Article 16 is exhaustive of the concept of reservation in favour of backward classes.

But the reservation would be valid only if it satisfies the test of reasonable classification and the state shall have to satisfy that such a provision was necessary in the public interest to redress the exceptional situation.

(5) EXTENT

Article 16 (1) extends to-

(i) Initial appointments

(ii) Promotions

(iii) Termination of employment

(iv) Matters relating to salary, periodical increments, leave, gratuity, pension and age of super annuation

(6) ARTICLE 16 AND ITS EXPRESSIONS :-

(I) Equality of Opportunity:-

The equality of opportunity in matters of appointments means equality as between members of the same class of employees and not equality between members of separate and independent class.

Appointment refers appointment to all office and therefore implies the conception of tenure, duration, emoluments, duties and obligations fixed by land or some rule having the force of law, these elements are absent in the case of "employment" which means a contract for temporary purpose, e.g. the engagement of labourers or professional experts by bilateral of contracts. The expression covers all posts under the state, permanent or temporary and also public employment under the State. Article 16 (1), however does
not apply to appointments to constitution offices as regards the procedure is specially prescribed by the constitution itself i.e. Article 124 (1) and who do not office under the state

(ii) State:

State means the state in the extended sense an defined in Article 12 of the constitution

(iii) Caste

According to Article 16 (2) of the Constitution, scheduled castes and scheduled Tribes are no castes in the tribes, communities or parts thereof found on investigation to be the lowest and in need of massive state aid and notified as such by the president. It is also an occupational grouping, with this difference that its membership is hereditary.

(iv) Any Requirement:

The words "any requirements" in Article 16 (3) bear upon the kind of residence of its duration rather than its location. It is impossible to think that the constitution Assembly was thinking of residence in District, Talks, cities, towns or villages.

(v) Residence:

The words "any requirement as to Residence" in Article 16 (3) cannot mean requirement as to residence in part of the state. The words bear upon the kind of residence for its residence rather than its location within the state.

(vi) Scheduled Caste:

What clause (3) of the constitution (Scheduled castes) order 1950 contemplates is that for a person to be treated as one belonging to a scheduled caste within the meaning of that order, he must be one who professes either Hindu or Sikh religion.

1 Dalpatrij vs President AIR 1993 Raj 1 (Para 23)
2 Narsimharaos vs state of A.P. (1970) 1 SC W.R. 52
3 State of Kerla vs N.M. Thomas AIR 1976 SC 490:
4 Indra Sawhney vs Union of India 1992 Supp (3) Scc 217
5 A.V.S. Narasimha Rao vs state of A.P. AIR 1970 SC 422
6 A.V.S. Narasimha Rao vs state of A.P. AIR 1970 SC 422
7 Indra Sawhney vs Union of India 1992 Supp. (3) scc 217 Chattar Singh vs state of Rajsthan AIR 1997 SC 303 (para 18-19)
The expression “backward class” of citizen’s is wider and includes in it socially and educationally backward classes of citizens and scheduled castes and scheduled Tribes.

(VII) Class:
The word “Class” in Article 16 (4) is used in the sense of social class and not in the sense it is understood in Marxist Jargon.

(VIII) Post:
The words “appointment” or ‘posts’ in Article 16 (4) should be understood in the sense it is used in other parts of the constitution. Post should be deemed to be posts inside services and not outside them.

(IX) Weaker Sections of the people:
The expression “backward class” of citizens in Article 16(4) does comprise all the weaken sections of the people, but only those who are socially, educationally and economically backward and which are inadequately represented in the services.

(7) OTHER EXPRESSIONS:
(i) “Adhoc,” Stop-gap” and “Fortuitous”

If an appointment order indicates that the post in created to meet a particular temporary contingency and for a period specified in the order then the appointment to such a post can be aptly described as “ad hoc” or “stop-gap”. If a post is created to meet a situation which has suddenly arisen on account of happling of some event of a temporary nature, then the appointment of such a post can aptly be described as “fortuitous” in nature.

2. Indra sawhney vs union of India AIR 1993 SC 477 (552)
3. Indra sawhney vs union of India AIR 1993 SC 477 (552)
4. General manager, s Rly vs Rangachari AIR 1982 SC 36
5. Indra sawhney vs union of India AIR 1993 SC 477 (552)
6. O.P. Singh vs Union of India AIR 1984 SC 1595
(ii) **Adhoc employees:**

The term 'adhoc employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of case. Article 16 is not applicable to the termination of the services of an ad hoe employee. It is strictly confined between him and state. No right of regularisation for ad hoc appointment can be made in breach of rules.\(^1\)

Appointment of teachers on ad hoc basis who still hold the posts cannot be terminated till the vacancies are duly filled up. If any of the petitioner has acquired the right to be treated as a regularly appointed teacher under existing rule his case shall be considered by the state Government and appropriate order may be passed in his case.\(^2\)

(iii) **Temporary Employee:**

Article 16 applies to all permanent as well as temporary employees.\(^3\) It was not disputed that the order of termination of services of the appellant was made with ought giving one mouth's notice or one month's salary in lieu of notice as required under terms of appointment, the order of termination was void and illegal.\(^4\)

(8) **CLASSIFICATION OF EMPLOYEES:**

There can be a reasonable classification of the employees for the purpose of appointment or promotion.\(^5\)

A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of law.\(^6\)

The state can constitute two services consisting of employees doing work but with different scales of pay or subject to different conditions of service.\(^7\)

Clerks who are directly recruited to Grade I and the promotions from Grade II constitute different classes and such classification is not arbitrary.\(^8\)

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1. S.K. Verma vs State AIR 1979 Punj. 149 (para 9, 12)
2. Rathan Lal vs State of Haryana AIR 1987 Sc 478 (Para 2)
3. Chanpak Lal vs Union of India AIR 1984 Sc 1854 (para 8)
5. Govind Dattatrav vs ch controller AIR 1987 Sc 839 (para 12)
7. State of Punjab vs jaglinder Singh AIR 1963 Sc 913 (para 21)
8. Ganga ram vs Union of India AIR 1970 sc 2178 (para 3)
(9) Recruitment:

The source of recruitment may be either internal or external. Internal source would relate to cases when appointments are made by promotion or by transfer and by absorption. External sources would conceive recruitment of eligible person who is not already in service in the organisation in which the recruitment is to be made.\(^1\)

(10) Necessary Qualification and Selective Test:

Article 16 (i) does not prevent the State from prescribing the necessary qualifications and selective test for recruitment to Government services. The qualifications prescribed may besides mental excellence include physical fitness sense of discipline, moral integrities and loyal to the State.\(^2\)

(11) Technical qualification:

Where the appointment requires technical knowledge technical qualifications may be persevered. The character and antecedents of candidates may be taken into consideration for appointments in Government services.\(^3\)

(12) Rule of Quota:

Once a quota was fixed according to the rules, it could not be altered except by fixing a fresh quota under the relevant rules.\(^4\) of course the rules may be relaxed in the proper manner.\(^5\)

(13) Promotion:

We observe that the words employment or appointments are wide enough to include the matter of promotion, including promotion to selection posts.\(^6\) But a 9 – Judge Bench in Indra Sawhney\(^7\) case held that promotion is not covered by appointment. In order to restore the earlier interpretation, a new cl. (4A) has been inserted in Article 16 by

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2 Sukhnandan Thakur vs state of Bihar AIR 1975 Para 817
3 Banarasidas vs State of U.P. AIR 1956 Sc 520
4 Badami vs state of mysore: AIR 1980 Sc 1561
5 keshav vs U.O.I (1992) 1 Scc 371 (Para 33 )
6 General Manager vs Rangaeban AIR 1962 Sc 1993 (1296)
7 Indra vs Union of India (19922) 3Scc 217 para 845 9 Judges Bench
the constitution (77th Amended) Act 1995. But Article 16 (i) will be infringed only if equaling of opportunity for promotion is denied to Government Servants holding different posts in the same grade, 1 It does not prohibit the creation of different grades in the government services. 2 or differential treatment between independent or separate classes. 3

Where the cadre consists of direct recruits on probation and promotes, fixation of seniority according to the date of confirmation would be discriminatory against the promotes 4 There would be similar discrimination against the promotes where the quota rule of recruitment is not applied in the matter of promotion, where the quota rule is linked up with the seniority rule 5

Seniority in the gradation list does not give any right 8 to be promoted to a selection grade or selection post where promotion is to be made on the basis of merit and seniority would count only if the merits of two officers are equal. 7 Where merits of promottee and respondent are equal, seniority of respondent can not be ignored. Besides selection of promottee without considering medals, awards, and letters of appreciation received by promottee and respondent is relevant. Thus notifications promoting the promottee ignoring the about considerations are set aside. 8

Supreme Count has laid down 9 the following principle after analysing different case law 10 for promotion-

Under Article 16 right to be “Considered “ for promotion is a fundamental right. It is not the mere “consideration “ for promotion that is important but the consideration must be ‘fair‘ according to established principles governing service produce

Courts will not interfere with assessment made by departmental promotion committees unless the aggrieved officer establishes that the non promotion was bad according to Wednesbury principles or it was malafide.

1 Kishon vs Union of India AIR 1962 Sc 1139
2 ibid
3 Mervyn vs collector customs (1986) 3 SCR 600:
4 Patwardhan vs state of Maharashtra AIR 1977 Sc 2050 para (39-43)
5 Param git vs Ram (1979) 3 scc 481 (para 13)
6 Dt. Registrar vs koyyakutty: AIR 1979 Sc 1080 (para 28-29)
7 Saksena vs union India AIR 1968 sc 754 (759)
8 Government of Karnataka vs Dinakar AIR 1999 SC 448(para 11-12)
14 **Seniority:**

Seniority in service law has its own weightage and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authority to ignore the weightage.

Where persons are drawn from one source for promotion, the seniority among such persons will be determined from the date of their continuous acting in the higher grades.

15 **PAY SCALES:**

Recommendations of pay Commission:

In revision of pay scales in a particular category of government servants, the government is bound to implement the recommendations of the pay commission in respect of Government employees. It if does not implement the report regarding some employees only it commits a breach of Article 16. Denial of benefits to instructors of National Fitness corps on the ground that the proposal to transfer their services state Govt. pending was violation of Article 14 and 16.

16 **Fixation of pay Scale:**

One of the basic principle for pay fixation is that the salary must reflect the nature of duties and responsibilities attached to the post, meaning there by that the pay scale must be commensurate with the task to be performed and the responsibilities to be undertaken by the holder of the post.

Pay fixation is essentially an executive function ordinarily undertaken by an expert body like pay commission whose recommendations are entitled to great weight through not binding on the in a court of law since the court, of law is not well equipped to take upon itself the task of job evaluation which is a complex exercise.

17 **Higher pay denied :**

The teachers working in different schools in the State of Haryana are not entitled to claim higher pay on the scales of pay applicable to lecturers on their acquiring

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1. R.B. Desai vs S.K. Khanolkar AIR 1999 Sc 3306 (para9)
2. Mervyn continho vs collector of customs AIR 1967 Sc 52 (Para 8)
3. Union of India vs Ramgopi Agrawal 1998 (2) Scc 589 Para 11
4. Chandigarh Administration vs Rajni vall AIR 2000 Sc 634
5. State of U.P. vs J.P. Chaurasia AIR 1989 Sc 19
post graduate qualifications without being appointed as lecturers.¹

(18) **Allowance to non-medical category:**

Allowance such as book allowance, risk allowance, conveyance allowance and higher degree allowance admissible to doctors in medical wing in directorates of Health Services should also be admissible to non medical category “A” group scientist ²

(19) **Option of Compensatory allowance:**

Option of Compensatory allowance was given to employee of state electricity Board who joined Beas project before 14th September 1972, but the same benefit was not denied to the employes joining the project after the said date. It was held discriminatory and violative of Article 14 and 16 ³

(20) **Payment of gratuity:**

The members of All India services who had retired prior to 1st January 1972 are not entitled to payment of gratuity as part of retirement benefits as per Notification ⁴

(21) **Disparity in wages:**

Higher wages were given to one group of promottees from certain back date but these were denied to another group who were promoted later. This is unjustified ⁵

The payment of higher emoluments to staff of one unit as against staff of other units and Battalions was held discriminatory ⁶

The classification of officers between direct results and officers drawn from various state cadres for payment of different rates of special pay was violation of Article 14 and 16 ⁷

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¹ State of Haryana vs Kamal Singh Saharisat AIR 1999 Sc 3775 Para. 42
² O.Z. Hussan vs union of India AIR 1990 Sc 311 (Para. 6)
³ State of Rajasthan vs Gurcharan Singh Garenal AIR 1990 1760
⁴ Union of India vs A.I.S. pensioners Assoch AIR 1988 sc 50 (Para. 8) A.P. state Govt Pensioners Association v. 1967 not applying D.S. Nakara vs union of India AIR 1983 sc 130
⁵ U.P. Rajya Sahakari Bhoomi Vikas Bank Ltd vs its works AIR 1990 SC 495 (Para. 3)
⁶ Gopika Ranjan Choudhari vs Union of India AIR 1990 Sc 1212
⁷ M.P. Singh vs union of India AIR 1987 Sc 485
The teachers of Government aided school and Government school are entitled to same pay.

Different pay scales for persons holding same post on the basic of educational qualifications were arbitrary.

When two posts under different wings of the same ministry are not only identical but also involve performance of the same nature of duties, it will be unreasonable and unjust to discriminate between the two in the matter of pay.

But in a case SC held that semi-skilled workers could not be treated on par with unskilled workers with regard to pay scales.

(22) P. F. AND PENSION SCHEME:

The option given to the Railway employees covered by provident fund scheme to switch over to pension scheme with effect from a specified cut off date is not discriminatory.

Where the state Government appointed different dates for grant of revised pension it was held to be denial of equal treatment.

The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules.

Where the Government servant rendered Service to compensate which a family pension scheme is devised the widow and the dependent minors would equally be entitled to family pension as a matter of right. Pension is not only a statutory right, but it partakes also the character of public assistance in cases of unemployment, old age, disablement or similar other cases of underserved want.

In a case it has been hold where respondent employee was given option to elect either for the provident fund scheme or for the pension scheme he failed to avail the same inspite of six opportunities given to him. Thus he would not be entitled to opt for the pension scheme after lapse of considerable time.

1. State of Haryana vs Rajpal Sharma 1996 Lab IC 2727 AIR 1997 SC 449
2. State of Mysore vs B. Basavalingappa AIR 1987 SC 411
3. Y.K. Mahata vs union of India
4. Parasnath vs union of India AIR 1990 sc 296
5. Krishna Kumar vs Union of India AIR 1990 Sc 1782 (Para. 30)
6. Deokinandem Prasad vs State of Bihar AIR 1971 Sc 1409
7. poonamal (Smt.) vs union of India AIR 1985 Sc 1196
8. union of India vs A.J. Fabian AIR 1997 Sc 1921
(23) REVERSION:

From out of group of about 200 officers most of whom were junior to the aggrieved person who was reverted alone to the substantive post, the order was held violative of Article 16. Where an appellant was granted two promotions he is entitled to opportunity of hearing before being reverted two steps below on the ground that some period was wrongly counted for his seniority. Reversion of promotion on the ground of non reservation as per instructions of the government is not proper.

(24) COMPULSORY RETIREMENT:

Compulsory retirement of government servants in public Interest after completion of certain period of qualifying service or attainment of certain age does not violate Article 16. A ban on reappoint of compulsorily retired persons in Government or semi Government institutions is no invalid.

(25) ABOLITION OF POSTS: (Claim For reappointment:)

When there is an abotion of posts in a particular cader of Government service, those who have to lay down office are those who are appointed last. when posts are created for fulfilling needs of a particular project these can be abolished for want of funds. The claims of employees can be given preference for appointment in case additional post are created in future.

(26) Remuneration of Suspension Period:

Any law denying the employee the right to get his full remuneration for the period of his suspension after the order of suspension is merged in the order of his acquital violates Article 14 and 16.

(27) CLAUSE [2] OF ARTICLE 16

Article 16 (2) prohibits discrimination and thus assur the effective enforcement of the fundamental right of equal opportunity guaranteed by Article 16 (1). Article 16 in the first instance by clause (2) prohibits discrimination on the ground, interalia

1. state of U. P. vs Ughar Singh AIR 1974 Sc 423 (Para. 20)
2. Ram Ufarey vs union of Inida AIR 1999 Sc 309 Para. 15-18
3. Balbir Singh vs state of H.P. AIR 1999 3785 (Para.4)
4. P.R. Naidu vs Govt. of A.P. AIR 1977 (Para. 9)
5. P.R. Naldu vs GovtofA.P. AIR 1977 sc 854 (Para. 16)
7. Rajendra vs state of Rajasthan AIR 1999 sc 923 (Para. 13)
8. A.P SRT corpn vs labour AIR 1980 AP 132 (Para. 12)
9. General Manager Rangachari AIR 1962 Sc (Para. 17)
of religion, race, caste, place of birth, residence and permits an exception to be made in the matter of reservation in favour of backward classes of citizens. 1 Article 16 (2) would invalidate a law or a rule or an order 2 if it authorises discrimination in the matter of appointment under the State on any of the grounds specified there in, e.g, decent 3 caste, 4 or religion even though if professors to make a reservation in the interests of the backward classes 5

Descent:

An Act providing for appointment to an office under the State (viz, than of a village Munsif) has been set aside as being discriminatory on the ground of descent only in as much as it directed than the person considered best qualified from among the family of the last holder of the office the opportunity of being appointed to the office 6 Any custom contrary to Article 16 (2) would be void 7

Any appointment on the ground of descent only is banned by cl (2) 8 Exceptions to this is provided by clause (3) [legislation by parliament on ground of residence] and clause (5) [hereditary religious office]. Any further exception must be justified by particular grounds, which are constitutionally valid. 9

Hence any reservation or relaxation of qualifications for children of employees, who are in office, is invalid, but it would be valid if it is made in favour of son, daughter or Widow of an employee who dies, in harness, because reservation would be not on ground of descent only, but on the compassionate ground to relieve the family from sudden economic distress. 10

(28) CLAUSE (3) OF ARTICLE 16:

While under Clause 2, residence in a state cannot be a ground for discrimination in the matter of employment, under that state; an exception is made under

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1. Trilok Nath vs state of J&K AIR 1969 SC 1 (Para. 4)
2. Verskata raman vs State of Madras AIR 1951 SC 229
4. Venkata raman vs State of Madras AIR 1957 SC 29
5. Ibid
6. Paranath vs State of A.P. AIR SC 564 (569)
7. Sukhnandan vs State of Bihar AIR 1957 (Para. 617)
8. Javed vs union of India AIR 1981 SC 794 (Para.5)
9. A.G. vs Ananta (1994) 1 Scc (Para 5,6)
10. Ibid
clause (3) by which parliament (not any state legislature) is empowered to make any law prescribing residence in a particular state to be a requirement for residence within that state. ¹

The power to make such exception belongs exclusively to the union parliament. Hence in the absence of any such legislation by parliament the condition imposed by any state Government or local authority that a person shall not be employed unless he is a 'local' candidate would be violative of Article 16 (1) ²

The word "state" however includes the authorities enumerated in Article 12 as well as union territories

Though Article 16 (3) derives the power to state legislature the pre constitution laws in this behalf are, saved by Article 35 (b) until parliament chooses to legislate under Article 16 (3). The supreme Court thus upheld the validity of the Hyderabad Mulky Rules, read with section 3 of the public employment (Requirements as to residence) Act 1957, and the Ruler framed by the central Government there under. ³

(29) CLAUSE (4) OF ARTICLE 16

(1) In clause (4) of Article 16 the word "Provision" has been used where in clause [3] the word "Law" The word 'provision' as distinguished from law means under these sub clauses that the reservation under clause (4) may be made not only by statute but also by an executive order ⁴ but any determination of backwardness by the executive is not a matter of subjective satisfaction but must be founded on objective tests e.g, social to judicial review.⁵

(2) The executive order providing for reservation will be effective from the movement it is made, and is make it enforce, it is not necessary to enact a law or to incorporate it into a rule made under Article 309 ⁶

(3) The words "any provision " is wide enough to include not only reservation but other supplemental and ancillary provisions such as exemptions, concessions, which are necessary for the upliftment of the backward classes: of course consistently with Article 335 ⁷

¹ Narsimha Rao vs State of A.P. AIR 1970 Sc 422 (4-25)
² Union of India vs Sanjay AIR 1993 Sc 1365 (Para.7)
³ Director of Industries vs Venkata (1972) Sc. [C.A. 903/72 dt 3.10.72)
⁴ Indra vs union of India AIR 1993 Sc 477 (Para. 55,56) 9 judge bench
⁵ Indra vs union of India AIR 1993 Sc 477 (Para. 55,56) 9 judge bench
⁶ Indra vs union of India AIR 1993 Sc 477 (Para. 55,56) 9 judge bench
⁷ Indra vs union of India AIR 1993 Sc 47 (Para. 55,56)
(30) **Reservation For Backward Class : (Cl. 1&4)**

[1] S.C. held that clause (4) is not in the nature of an exception to clause (7) and (2), but an instance of classification permitted by clause (1).  

[2] Clause (4), however, does not cover the entire field covered by clauses (1)-(2). Some of the matters relating to employment in respect of which equality of opportunity has been granted by clauses (1) and (2) do not fall within the exception of clause (4). Thus, as regards the conditions of service relating to employment such as salary, increment, gratuity, pension and age of superannuation, there can be no exception even in regards the backward classes of citizens. The only matter which cl (4) covers is a provision by reservation of appointments in favour of backward class of citizens.  

(31) **(6) Article 16 (4) and Article 335:-**

It has been held that Article 16 (4) has also to be interpreted in the background of Article 335. It follows that Article 16(4) is an enabling provision and confers a discretionary power the state to make reservation of appointments in favour of backward classes of citizens, which, in its opinion is not adequately represented either numerically on qualitatively, in services of the state. In short it confers no constitutional right upon members of the backward classes. Prohibition of reservation for promotion (Para. 107) to the higher posts requiring higher degree of efficiency would not therefor violate, Article 16(4)  

(32) **Valid Reservation: (not to exceed 50 percent)**

(1) The extent of reservation to be made is primarily a matter for the state to decide, subject of course, to judicial review on the ground that the reservation is so excessive that it renders the guarantee of equality in Article 16(1) or Article 335 meaningless. Thus the reservation of more than 50 per cent of the vacancies as they arise in any year or a “Carry forward” rule which has sense, effect will be out side the protection of Article 16(4)
The normal rule is that the reservation under Article 16 (4) should not exceed 50 percent of the appointments of posts to be made in a particular year (Para 94 A). Otherwise clause (1) of Article 16 would be illusory.

Extraordinary situation may, however, call for exception, e.g. additional reservation may be required for the people inhabiting remote areas, out of the main stream of the national life (Para 94 A).

But the more fact that reservation may give extensive benefits to more of the persons who have the benefit of the reservation shall not by itself, make the reservation bad.

In making reservation under clause (4) 'each year' of recruitment has to be considered separately, and the problem cannot by should by framing a general rule without bearing in mind its repercussions from year to year. On the other hand in remedying injustice to a candidate wrongly excluded in a previous year, injustice cannot be caused to a candidate who has been selected by merit for the current year.

Clause (4) is wide enough to include not only reservation but also relaxation of standard competitive examinations for member of backward classes or preferences or exemptions which may be regarded as ancillary to reservation. But the burden of establishing that the reservation is unreasonable is on the person who takes that plea. A reservation cannot be struck down on hypothetical grounds.

Once a decision has been taken to reserve vacancies for a backward class the Programme effected to that end should not be disturbed unless the on ever for fulfilling it have been explored and have failed.

If there is only our post in the cadre, there can be no reservation with reference to that post. Reservation pre supposes availability of at least more than one post in the cadre.

1 Indra vs Union of India AIR 1993 Sc 477 (Para. 57, 58,94A, 292, 399-400)
2 Indra vs Union of India AIR 1993 Sc 477 (Para. 57, 58,94A, 292, 399-400)
4 Prem vs Union of India AIR 1984 Sc 183
5 Comptroller & Auditor General vs Jagannath (196) 2 Scc 679
7 Sharma vs union of India AIR 1981 sc 588 (Para. 9)
8 Chakradhar vs stete of Bihar AIR 1988 Sc 959
(33) **Carry Forward Rule:**

S.C. held that the carry forward rule as modified by Railway Board in 1964 for reserved Vacancies did not violate Article 14 and 16 (4) provided it should not exceed 50% reservation.

(34) **Appointments or Post /Reservations in Promotion**

The words “appointments or posts” in Article 16 (4) contemplate not only initial appointments but also offices or posts to be filled up by promotion power of state to apply the rule of reservation in promotion is dealt with in the case – “Comm. of commercial Taxer, Hydrabad vs G.S. Rao Reservation can be made not merely in respect of initial recruitment but also in respect of posts to which promotions are to be made in Indra’s case I judge Bench has decided that the word appointment in Article 16 (4) does not include promotion (Para. 107) But the decision on this point become ineffective due to insertion of clause (4-A) by the constitution (77th Amended) Act 1995 W.E.F. 17-6-1995. This clause empowers the state to make provisions for reservation in promotions for SC’s and ST’s.

(35) **Solitary Post:**

It has been held that if there is only one post in the cadre, there can be no reservation with reference to that post either for recruitment at the initial stage or filling up a future vacancy. Article 16 (4) pre supposes the available of at lest more than one post in that cadre.

(36) **Roster:**

The court said that it would be reasonable to fix the roster for points as minimum as possible for cadres in which the posts available are only a few and therefore the roster requires to be reviewed and modified. In Suresh Chandra Vs J.B. Agrwal it has been held that reservation in promotional post can be made by applying the rule of roster.

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1 A.R. Chaudhari vs union of India AIR 1974 Sc 532
2 Indra vs union of India AIR 1993 Sc 477
3 Haripada Ray vs union of India (1975) 79 Cal Wn 834 (Para. 7)
4 AIR 1996 Sc 1915 (Para 10)
5 Comptroller and Auditor General vs Jagannathan AIR 1987 537
6 Indra vs union of India AIR 1993 Sc 477 (Para. 107)
7 Indra vs union of India AIR 1993 Sc 477 (Para. 107)
8 (2000) 1 SCC 430 (Para. 4)
9 Rajkmar Vs Gulbarg University _ AIT 1990 Kant – 320 ( Para 32)
10 AIR 1997 SC 2487 (Para. 6)
(37) **Eligibility:**

When a scheduled Tribe candidate was not available to fill the vacancy at No 1 in the roster, the candidate belonging to the scheduled caste rules and given promotion on seniority cum fitness basis.  

(38) **Notified caste as Scheduled Caste:**

A person of Numiya caste notified as a scheduled caste in West Bengal was born and educated in Bihar but has been residing in West Bengal for 30 years prior to IAS examination. It has been held that the candidate was entitled to benefit of reservation.

(39) **Nullifying a decision of the Court Invalid:**

Bawa community from Sindh was held to be nomadic community by the High Court. A resolution of state Government simply declaring by way of clarification that Bawa community of Sindh is excluded from list of nomadic Tribe is in valid as because the executive or Legislature has no power to nulity a decision of the court by a simple declaration.

(40) **MANDAL COMMISSION**

(Indra Shawhney Vs Union of India)

The case is popularly known as Mandal case. The Supreme court thoroughly examined the scope and extent of article 16(4) of the constitution in this historic case of Indra Shawhney Vs Union of India

S.C. held the decision of the union government to reserve 27% Government Jobs for backward classes valid, provided socially advanced persons-creamy layer among them are eliminated. It is only confined to intial appointments and not promotions and the total reservation shall not exceed 50%.

The majority held that Article 16 (4) is not an exception to Article 16 (1) but an independent clause. Reservation can be made under clause (1) of Article 16 on the basis

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1 Superintendent Engineer Public Health Chandigarh vs Kuldeep Singh AIR 1997 Sc 2133
2 Union of India vs Oudh Nath Prasad AIR 2000 Sc 525 (Para. 6,8,9,11)
3 State of Maharashtra vs Tajuja AIR 1999 sc 791 (para. 11)
4 1993 AIR SC 477
of reasonable classification. The Court accordingly overruled its previous decision in Balaji vs state of Mysore in which it was held that Article 16 (4) is an exception to Article 16(1). The court approved the decision in state of Kerlav vs N.M. Thomas 1. Where it was held that Article 16 (4) is not an exception of Article 16 (1), but a facet of the doctrine of equality enshrined in Article 14 and permits reasonable classification just as Article 14 does.

The Majority held that the backward class of citizens as contemplated in Article 16 (4) is not the same as socially and educationally backward classes referred to in Article 15(4). It is much wider: Clause (4) does not contain the qualifying word "socially and educationally" as does clause (4) of Article 15. Backward class of citizens in Article 16(4) takes in SC and ST and all the backward classes of citizens including the socially and educationally backward classes; scheduled castes and scheduled Tribes mentioned in Article 15 (4)

The majority held that while identifying the backward classes the socially and advanced persons creamy layer among backward classes should be excluded. For example the children of IAS IPS or persons of any other all India services should not be given the benefit of reservation. Because their situation in society raiser and are no longer socially disadvantaged. The Majority said that while the rule of reservation cannot be called anti mition, there are certain services and posts to which it may not be advisable to apply the rule of reservation. For example Technical posts in research and development organization, departments institution in specialties and super specialties in medicine, engineering and other such courses in physical services and mathematics connected there with. Similarly in the case of posts of higher echelons e,g, professor in (education), pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application.

In Baleyis case 2 it was held that the sub classification between backward classer was unconstitutional. In madal case 3 the court held that classification is necessary to help the more backward classes, otherwise the advanced Sections of backward classer might take all the benefits of reservation.

The court held that Article 16 (4) is not aimed of economic up liftment or alleviation

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1 Air 1976 Sc 490
2 AIR 1963 SC 649
3 AIR 1993 SC 477
of poverty. It is specially designed to give a due shame in the state power to those who have remained out of it mainly account of their social backwardness. Therefore the backward class of citizens cannot be identified only and exclusively with reference to economic criteria.

The majority held that the maximum limit of reservation cannot exceed 50%. However, in extra ordinary situation it may be relaxed in favour of people living in far flung and remote areas of country who because of their peculiar conditions and characteristics need a different treatment. On this point the majority affirmed Balaji ¹ and Devadasan ² cases in which the 50% rule was laid down and overruled the state of Kerla vs N.M.Thomas ³ cases. The courts also overruled the decision in Devadasan vs union of India and held provided it should not exceed 50% of reservation. The 50% limit can only be exceeded in extra ordinary situations prevailing in a for flung states i.e. (Nagaland, Tripura etc)

The majority held that a provision under Article 16 (4) can be made by an executive order. It need be made by parliament or Legislature.

The majority held that the reservation under Article 16 (4) can not be made in promotions. The reservation is confined to initial appointments. However it shall not effect promotions already made. Such reservations may continue for a period of 5 years. Within this period the authorities will revise, modify or re-issue the rules relating to reservation. On this point the court has overruled the following Cases-- General Manager, Southern Rly vs Rangachari ⁴ state of Punjab vs Hira Lal. ⁵ Akhil bhartiya shoshit Karmachari Sangh vs union of India. ⁶ and comptroller and auditor General of India Gian Prakash vs K.S. Jagannathan ⁷ This is consistent with the object enshrined in Article 335.

Ashoka Kumar Thakur vs State of Bihar: ⁸

In this case. The Supreme Court has quashed the economic criteria laid down by the Bihar and Uttar Pradesh Government for identifying the affluent sections of the backward classes (creamy layer) and excluded them for the purpose of job reservation and held that such econom criteria for identification of "Creamy layer" is violating of Article 16 (4) and Article 14 and also against the law laid down by this court in mandal case. The court held that the supreme Court in the mandal case had categorically held that a person belonging

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1. AIR 1963 SC 649  
2. AIR 1964 SC 179  
3. AIR 14976 SC 490  
4. AIR 1962 SC 36  
5. (1970) 3 sc 567  
6. (1981) 1 Scc 246  
7. (1986) 2 Scc 679  
8. (1995) 5 Scc 403
is a backward class who becomes a member of IAS, IPS or any other. All India Service could not seek benefits of reservation for his children.

**State Bank of India SC/ST Employers Welfare Association vs State Bank of India**

In this case the court held that the policy of reservation in promotion was not violative of Article 16(4) and (4A) and the vacancies lapsed due to non-availability of reserved category candidates with required length of service could not be revived and filled retrospectively.

**P.G. Institute of Medical and Research vs Faculty Association:**

In this case a five judge Bench of the supreme court comprising s.c. Agrawal, G. N. Ray Dr. A.s. Anand, S.P. Bhanicha and S. Rajendra Babu, JJ, has held that there cannot be any reservation in a single post cadre either directly or by device of rotation of roster point. Such total exclusion of general members of the public and cent percent reservation for the backward classer is not permissible under Article 16(1) and 16(4) of the constitution.

**(41) No violation of Article 16:**

Transfer of member of the Indian Administrative Service to post equal in status and responsibility was not arbitrary and unfair and violative of Articles 14 and 16 of the constitution.

It cannot be said that a typing test is unconstitutional with the duties of clerks who desire a promotion to the next grade. There is no discrimination made up such a ground and it does not violate Article 16.

The law in relation to the validity of the rules permitting compulsory premature retirement of Government servants does not violate Article 16.

Where the rules apply to all Government servants these are not open to challenge under Article 16.

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1 (1996) 4 Scc 119.
2 AIR 1998 SC 1767
3 E.P. Royappa vs State of Tamil Nadu; AIR 1974 SC 555 (Para. 89)
4 N.S. Mehata vs Union of India AIR 1977 SC 1673: (Para. 9)
5 Shiva Charana vs state of Mysore AIR 1965 SC 260 Para 5 Shyamal vs state of U.P. AIR 1954 Sc 369
6 Shiva Charana vs state of Mysore AIR 1965 SC 260 Para 5 Shyamal vs state of U.P. AIR 1954 Sc 369
Rule 9(a) of Delhi Judicial service Rules does not violate Article 16. For the purpose of initial recruitment to the service officers of the Judicial cadre of a state, and officers although not belonging to the judicial cadre but by and Large performing Judicial functions could be put together. 1 Where an Executive Engineer (Tele communication) was appointed from Assistant Engineers with specialized qualifications by promotion though junior in service without any rules for that purpose, it was held that Article 16 was not violated. 2

An adhoc appointment of fully qualified teachers through the open medium of Regional employment Exchange does not violate Article 16 3

The administrative instructions of the government fixing the age limit for the appointment of the principal of a medical college are not fit by Article 14 and 16 4

Where a junior was getting more pay than a senior due to earlier ad hoc promotion, the senior is not entitled to stepping up of his pay 5

(42) Violation of Article 16:

The decision of the Public service Commission of account of the active participation of its chairman who was a relating of the selected candidate was held violative of Article 16 6

The appointment of a Government servant on the ground of a local candidate offends Article 14 and 16 7 A rule laying down that a woman of the Foreign service must obtain a written permission of the Government before new marriage was held violative 8

The preference clause on that "Preference will be given to those who have passed the examination from the same medical college" appearing in any rule while making the appointment of Registrar of Government Medical college, infringes Article 16 9

Special rules for recruitment of local ST/SC/BC are violative of Article 16 (1) 10

Where the civil servant was denied the senior time scale which was given to his Juniors on the basis of confidential report which did not indicate anything against him the denial of senior time scale to him was unjustified and arbitrary 11

2 Ramesh Prasad vs State of Bihar AIR 1978 SC 327 (333)
3 Daljit Singh Vs state AIR 1978 Punj 117 (Para. 303)
4 S.S. Mishra vs state of U.P. 1975 Lab ic 38 (Para. 9)
5 nion of India Vs Sushil Kumar Paul AIR 1998 SC 1225 Para 6
6 Bhusan Kumar Vs state of Punjab 1978 Lab ic 417 (Para. 8)
7 R.N. Nanjundappa vs T. Thimmaigh AIR 1972 Sc 1767 (Para. 38)
8 C.B. Muthamma Vs union of India AIR 1979 SC 1868 (Para. 6)
9 Mehta Rupaben vs state of Gujarat 1998 Lab ic 235 (Para .33)
10 State of Karnataka Vs G.N. Ambiga AIR 1995 SC 1691 (Para. –8)
11 Vijai kumar Vs State of Maharastra AIR 1988 SC –2060 (Para.6)
In R S Dhull Vs state of Haryana it has been held that with holding of G.P. Fund, and the Gratuity in spite of directions given by the Supreme Court to pay all the pension any benefit is violative of Article 16.

Order of termination made in breach of regulations is illegal and invalid

Regulation conferring termination of service of an employee on bank even though simpliciter is unconstitutional

When there is a provision of appeal against the order of disciplinary authority exercise of powers by authority higher than the disciplinary authority is discriminatory

From the decisions given by the Supreme Court we find that the main object of Article 16 is to afford the equality of opportunity to all citizens in the matter of appointment to any office in the State. At the same time we find also that the state is empowered to make classification and reservations in public services in favour of the backward classes of citizens. Such classification and reservation must be reasonable, fair and just. The expressions in corporated in Article 16-like equality of opportunity appointment and employment state caste any requirement scheduled caste, scheduled Tribe backward class, post, weaker section of people etc have been well explained by the Supreme Court. Other relative words live Ad hoc, stop Gap, Fortuitous, Ad hoc employee temporary employ etc have also been discussed. Centre well as state Government are required to keep in consideration of all these Civil service Jurisprudential expressions while enactment of service laws or framing the rules for regulating the recruitment and conditions of service for the persons serving in the union of states.

1 A.I.R 1998 SC 2090 (Para. 10)
3 M.K. Agrawal vs Gurgoan Gramth Bank AIR 1988 SC 286 (Para.5)
4 Surjit Ghosh vs chairman & M.D. united Commercial Bank AIR 1995 SC 1053.
5 Govind Dattatray vs controller AIR 1967 SC 839 Para.12
6 Indra Vs union of India AIR 1993 SC 477
7 Mohamad Shujat Ali vs Union of India AIR 1974 SC 1631
8 Sham Sundar Vs union of India AIR 1969 SC 212
9 Sukhnandan Vs state of Bihar AIR 1957 Para 617
10 Narsimha Raw Vs state of AP. (1970) 1 SC WR 52
11 State of Kerla Vs N.M. Thomas AIR 1978 SC 490
12 A.V.S. Narsimha Rao Vs A.P.AIR 1970 SC 422
13 Indra sawhani Vs union of India supp. (3) SC 217
14 Indra Vs union of India AIR 1993 SC 477
15 Ibid
16 General Manager, S.Rly Vs Rangacharl AIR 1962 SC 36
17 Indra sawhani vs Union of India AIR 1993 Sc
It has been held that the Government is bound to implement the recommendations of pay Commission and if the government fails to implement it is violative of Article 16.  

There should be no disparity of payment to the staffs of the same unit working the same work.  
The teachers of Government must added school are also entitled to the same pay as that of Government school.  
There should be equal treatment for the pay must of pension.  
Denial of payment of remuneration of suspension period when already acquittal of the charges, was held to be violtive of Article 14 and 16.  

Denial of compassionate appointment is void.  
Denial of appointment of not being a local candidate was violative of Article 16 (1).  
Appointment on the ground of local candidate is also violative of Article 16 (1).  
Reservation should not exceed 50%.  
Reservation in single post is not applicable.  

A Rule providing prior permission of marriage of a lady was held to be violative of Article 16 (1).  

Similarly, special rules for recruitment of local candidates of ST/SC/ &OBC were held to be violative of Article 16 (1).  
Expense of power by the authority higher than the disciplinary authority was hold to be discriminatory.  

Thus we see that the rules for recruitment and conditions of Service require modification in the light of the judicial decions cited above.

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1 State of U.P. Vs J.P. Chaurasia AIR 1989 SC 19.  
2 U.P. Rajya Sahakari Bhoomi Vikas Bank LTD. Vs Lts work Meh. Air 1990 SC 495 (Para. 3)  
3 state of Haryana Vs Rajpal Sharma AIR 1997 SC 449  
4 M.L Jain vs Nnion of India AIR 1989 Sc 569  
5 Rajendra Vs state of Rajasthan AIR 1999 SC 923  
6 A.G. Vs ananta (1994) 1 Scc 192  
7 R.N. Nandundppa Vs T.Thimmaian AIR 1972 SC 1767  
8 Ibid  
9 Indra Vs union of India AIR 1993 SC 477 (overruling General manager case)  
10 Chakradhar Vs state of Bihihar AIR 1988 SC 959  
11 C.B. Muthamma Vs union of India AIR 1979 SC 1868 (Para. 6)  
12 State of Karnataka Vs G.N. Ambiga AIR 1995 SC 1891  
13 Surjeet Ghose Vs Chairman and M.D. united Commercial Bank AIR 1995 SC 1053.
ARTICLE 21. PROTECTION OF LIFE AND PERSONAL LIBERTY

(1) Article 21 provision – “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

(2) Analogous Constitution:
This article corresponds to –
(i) The Megna carta 1215
(ii) The fifth amendment to the constitution of the united states
(iii) Article 40(4) of the constitution of Eire 1937
(iv) Article XXXI of the constitution of Japan 1946.
“Due process” clause has also been interpreted in Article 103 of the constitution of Federal Republic of Germany.

International Charters
This Article is closely related to (i) Article 3 and 9 of the universal declaration of Human rights 1948; (ii) Article 9 of the U.N. convenant on civil and political rights 1966; (iii) Article 2 of the Europian convention on human rights 1950. In people's union for civil liberties Vs Union of India 1 it has been held that article 21 of the constitution of India is to be interpreted in confirmity with article 17 of the international covenant on civil and political rights 1966 and article 12 of the universal declaration of human rights 1948 for the purpose of proetecting the right to privacy.

(3) Object:
The object of Article 21 is to prevent encroachment upon personal liberty by the executive save in accordance with law and in conformity with the provisions thereof 2 Before a person is deprived of his life or personal liberty the procedure established by law must be strictly followed and must not be departed from to the disadvantages of the person effected. 3

Prior to the decision in 1978 in Menka Gandhi’s case 4 Article 21 was construed narrowly only as a guarantee against execution unsupported by law 5 But Menka Gandhi’s case opened a new dimension and laid down that it imposed a limitation upon law as well 6 namely, that while prescribing a procedure for depriving a person of his life or personal liberty it must prescribe a procedure which must be reasonable, fair and just. 1

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(1) (1997) 1 SSC 301
(2) Gopalan Vs state of Madras (1950) S.C. R. 88
(3) Makhan Singh Vs State of Punjab (1952) SCR 368 Narajan Vs Sate of Punjab AIR 1950 SC 106
(4) Menka Gandhi Vs union of India AIR 1978 SC 97
(5) Gopalan Vs state of Madras (1950) S.C. R. 88
(6) Francy Vs Union Territory AIR 1981 SC 746 (Para 3)
(4) **Scope**

The world "except according to procedure established by law" suggests that article 21 does not apply where a person is detained by a private individual and not by or under authority of the state. No fundamental right is infringed when the detention complained of is by a private individual. Article 32 also cannot be invoked in such a case. But a petition under article 226 would lie. The protection of this Article extends to 911 'person' not merely citizens including even persons under imprisonment (as regards restrictions imposed in jail) It applies to preventive detention, under Article 22. This Article has no application to a corporate body. The liquidation of society, i.e. a corporate body cannot be equated to deprivation of life or personal liberty. Article 21 and 22 apply to members of legislatures who have been convicted and sentenced to short terms of imprisonment and to persons detailed under the valid orders. This article only applies to the deprivation of life and personal libatry by the state. A person whose right is infringed by a private person must seek his remedy under ordinary law.

(5) **Deprived**

In Gopalan's case it was held that article 21 was attracted in case of 'deprivation' in the sense of total loss and that accordingly, it had no application in case of a restriction upon the right to move freely which came under article 19(1) (d).

But in later decision the supreme court changed its view to the effect that article 21 would require authority of law even for restrictions on personal liberty i.e. interference with the freedom of a person at home i.e. by domiciliary visits by the police at night or interference with the right of a prisoner in jail to publish a book outside the jail. Deprived does not mean that the court is powerless to interfere with an imminent threat to the freedom of life or personal liberty and must wait until the person has actually been taken into custody. But in order to constitute 'deprivation' there must be some direct overt and tangible act which

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(1) Francis Vs Union Territory AIR 1981 SC 746 (Para 3)
(2) Vidya Verma Vs Shivnarayan (1955) 2 S.C.R. 983
(4) State of Maharastra Vs Prabhakar, AIR 196 SC 924 Sunil Vs Delhi Administrator AIR 1998 SC 1675
(5) S. Nageswara Rao Vs Government of A.P. AIR 1978 A. P. 21 (IBY (Para 40)
(6) Ansumali Vs State of West Bengal AIR 1952 cal. 632 *SB) para 25
(7) Vidya Verma Vs Shiv Narayan AIR 1956 SC 106 (para 6)
(8) Gopalan Vs State at Madras (1950) S.C.R. 88
(9) Kharag Singh Vs State of UP AIR 1983 SC 1295 (1300)
(10) State of Maharashtra Vs Prabhakar AIR 1966 SC (424)
threatens the fullness of the life of a person or members of the community as distinguished from vague or remote acts threaten the quality of life of people at large

(6) Life

Right to life, enshrined in Article 21 means something more than survival or animal existence. It would include the right to live with human dignity, a right to minimum & subsistence allowance during suspension allowance during suspension. It would include all those aspects of life which go to make a man's life meaningful complete and worth living. It would include all that given meaning to a man's life e.g, his tradition, culture, heritage and protection of that heritage in its full measure. Thus it would include, the right of a person not to be subjected to bonded labour or to unfair conditions of labour, the right of a bonded labourer to rehabilitation after release, the right to livelihood by means which are not illegal, immoral or opposed to public policy. Hence public employment cannot be taken away by any procedure which is not reasonable, fair and just. A Division Bench has extended this principle to hold, that when an employee is disabled by a disease to perform the duties of his post, the employer should make an attempt to a just him in some other suitable post. A decent environment and reasonable accommodation also have been included under right to life enshrined in Article 21.

An obligation upon the state has also been included under Article 21 to preserve the life of every person by offering immediate medical aid to every patient, regard less of the question whether he is an innocent or a guilty person. the criminal law shall operate after the life of the injured is saved. As applied to a prisoner, it would include his right to the

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(1) Ramsharan Vs Union of India A.I.R. 1989 SC 549 (Para 13-14)
(2) State of Maharashtra Vs Chandrabhan – AIR 1983 SC 803 (Para 1, 20)
(4) State of Maharashtra Vs Chandrabhan AIR 1983 SC 803 (Para 1, 20)
(5) Maneka Gandhi Vs union of India AIR 1978 SC 597 Board of Trustees Vs Nadkarmi AIR 1983 SC 109 (para 14)
(6) Ramsharan Vs Union of India AIR 1989 SC 549 (para 13-14)
(7) Bondhwa Vs Union of India AIR 1984 SC 802 (para 10)
(8) Peoples Union Vs Union of India AIR 1982 SC 1473.
(9) Neeraja Vs State of M.P., AIR 1984 SC 1099 (para 1,5,11)
(10) Olga Teli Vs Bombay Corpn. AIR 1986 SC 180 (para 33-34)
(11) Board of Trustees Vs Dilip AIR 1983 SC 100.
(12) Narendra Vs State of Haryana AIR 1995 SC 519 (para 7)
(13) Narendra Vs State of Haryana AIR 1995 SC 519 (para 7)
(14) Shantistar Vs Narayan, AIR 1990 SC 630 (para 9)
(15) C.P.M.S.S. Vs State of U.P. AIR 1990 SC 2060 (Para 8) vincent Vs Union of India AIR 1987 SC 990 (para 16)
(16) Parmanand Vs Union of India AIR 1989 SC 2039 (para 7.8)
(17) Parmanand Vs Union of India AIR 1989 SC 2039 (para 7.8)
bare necessaries of life such as adequate nutrition, clothing, shelter over the head, facilities for reading, writing, interviews with members of his family and friends¹ subject of, course, to prison regulations if any.²

(7) Personal Liberty:

Primarily, personal Liberty in Article 21 means freedom from physical restraint of person by incarceration or otherwise.³ But it also includes all the varieties of right which go to make up a man’s personal liberties other than those which are already included in the several clause of Article 19.⁴ The expression is of the widest amplitude.⁵

Thus it includes –

(i) The right of locomotion, except in so far as it is included in Article 19(1) (d)⁶
(ii) The right to travel abroad, i.e. to move out of India⁷ and to return to India.⁸
(iii) The right to socialise with members of one’s family and friends.⁹
(iv) The right of a prisoner to speedy trial ¹⁰
(v) Loss of citizenship which would entail deportation, was assumed to be included in this expression.¹¹
(vi) An order made under section 144 Cr.P.C. to shoot anybody violating a curfew order has been held to violate Article 21, Since an order to shoot was ultra vives Section 144 of the cr. P.C.¹²
(vii) The right of an employee in a disciplinary proceeding¹³ or of a detenu before an advisory Board¹⁴ to take legal aid where the employer or the government is represented by a lawyer.

In Unni Kirshnan Vs State of A.P.,¹⁵ the Supreme Court has stated that several unenumerated rights fall within Article 21. Since the expression “Personal Liberty” is of the widest amplitude.

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¹ A.K. Roy Vs Union of India AIR 1982 SC 710 (para 108) Francis Vs Union Territory AIR 1981 SC 746 (para 3)
² A.K. Roy Vs Union of India AIR 1982 SC 710 (para 108) Francis Vs Union Territory AIR 1981 SC 746 (para 3)
³ A.K. Gopalan Vs State of Madras AIR 1950 SC 27
⁴ Kharak Singh Vs State of U.P. AIR 1963 SC 1295 (1300)
⁵ State of Maharashtra Vs Chandrabhan AIR 1983 SC 803 (para 1, 20)
⁶ Satwant Vs Asstt Passport Officer AIR 1967 SC 1836
⁸ Satwant Vs Asstt. Passport Officer AIR 1967 SC 1838.
⁹ Hussainara Vs Home Secy. AIR 1979 SC 1360 Kadra Vs State of Bihar AIR 1982 SC 1165 (para 2)
¹⁰ Hussainara Vs Home Secy. AIR 1979 SC 1360.
¹¹ State of U.P. Shah Md. AIR 1969 SC 1234 (para 7)
¹³ Board of Trustees Vs Nalikarni AIR 1983 SC 109 (Para 13)
¹⁴ A.K. Roy Vs Union of India AIR 1982 SC 710 (para 14)
¹⁵ Unni Kirshnan Vs State of A.P. (1993) 1 SCC 645
The court enumerated the following lists of the rights also covered is article 21.  

(i) The rights to go abroad  
(ii) The rights to privacy.  
(iii) The rights against solitary confinement.  
(iv) The rights against the fetters  
(v) The rights to legal aid  
(vi) The rights to speedy trial  
(vii) The rights against handcuffing.  
(viii) The right against delayed execution  
(ix) The right against custodial violence. 
(x) The right against public hanging.  
(xi) Doctors assistance.  
(xii) Shelter.  

But the right of the shelter would not stand in the way of the legislature imposing reasonable restrictions upon the rights of statutory term of residential premises.  

Due to public Interest Litigations, the supreme court has widened the scope of Article 21. Some of the examples are as under –  

- Children in jail being entitled to special treatment,  
- health hazard due to pollution,  
- beggars interest in housing,  
- health hazard from harmful drugs  
- starvation death  

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(1) Unni Krishnan Vs State of A.P. (1993) 1 SCC 669-70  
(2) Satwant Vs Asstt. Passport office AIR 1907 SC 1836  
(3) Govind Vs State of M.P. AIR 1925 SC 1378 (para 28)  
(4) Sunil Batra Vs Delhi Administration (1978) 4 SCC 494  
(5) Charler sobraj Vs supptt. Central Jail (1978) 4 SCC 104  
(6) Hoscot Vs State of Maharastra (1978) 4 SCC 494  
(7) Hussainara Vs Home Secy. AIR 1979 SC 1390.  
(8) Premshankar Vs Delhi Administration (1980) 3 SCC 526  
(9) Vatheeswaran Vs State of T.N. AIR 1983 SC 361.  
(10) Sheela Barse Vs State of Maharastra (1983) 2 SCC 96  
(11) A.G. Vs Laehma Devi AIR 1986 Sc 467  
(12) parmanand Vs Union of India (1989) 4 SCC 286  
(13) Shantistar Builders Vs Totame.  
(14) Gauri Shankar is Union of India AIR 1995 SC 55 (para 9)  
(15) Sheela Vs Union of India (1986) 3 SCC 596.  
(16) Mehota Vs Union of India (1987) 4 SCC 463  
(18) Vincent Vs Union of India AIR 1987 SC 990  
(19) Kishey Vs State of Orissa AIR 1989 SCG77
(8) Procedure Established by law

The word law in Article 21 of the constitution has been used in the sense of state made law or enacted law and not an equivalent of law in the abstract or general sense embodying the principles of natural justice. Hence the expression a procedure established by law* in the same Article means the procedure prescribed by the law of the state. But it should not be arbitrary, unfair or unreasonable. Procedure established by law here means the law prescribed by parliament, Parliament has the power to change the procedure by enacting a law by amending it when the procedure is so changed it becomes the procedure established by law. Thus it is a valid law if it is enacted by a competent legislature and if it does not violate any of the other fundamental rights declared by the constitution, e.g Article 14 or Article 19. Hence, notwithstanding Article 21 it is open to challenge the constitutionality of a law, which deprives a person of his Life or personal liberty on the ground-

(i) That it has not been enacted by a competent legislation

(ii) That the law suffers from the vice of excessive delegation.

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(1) Reliance Vs Indian express (1988) 4SCC 592
(2) Kahan Singh vs state AIR 1988 SC 1982
(3) Vikram Vs state of Bihar AIR 1988 Sc 1782
(4) Subhash Vs state of Bihar AIR 1991 SC 420 (Para. 13)
(5) Shantilato Vs Narayan (1990) 2 SC J 10 (Para. 8,13)
(6) Kishan Vs state of orissa AIR 1989 SC 677
(7) Shantilato Vs Narayan (1990) 2 SC J 10 (Para. 8,13)
(8) Ramsharan VS Union of India AIR 1989 Sc 549 (Para. 13-14)
(9) Vishal Vs union of India (1990) 3 Scc 318 (Para. 14)
(10) State of H.P. umed AIR. 1986 SC 847
(11) Mohini Vs State of Karnataka AIR 19925 SC 1858 (Para 12-14)
(12) State of H.P. Vs Umed AIR 1986 SC 847
(13) Vidya Verma Vs Shilnaranay (1958)2 SCR 983 Ramcharanay Vs State of Bihar AIR 1961 SC 1629
(14) Mantoo Vs state of Bihar AIR 1980 SC 847
(15) Maneka Gandhi Vs Union of India AIR 1978 SC 597 Inderjeet Vs State of U.P. AIR 1979 SC 1867 Francis Vs Union Territory AIR 1981 SC 746 (Para. 3)
(16) State of UP Vs shoh md AIR 1969 SC 1234 (1238)
(18) RamKrishan Vs State of Delhi (1953) SCR 708 (715)
(19) Maneka Gandhi Vs Union of India AIR 1978 SC 597
(20) Mantoo Vs state of Bihar AIR 1980 SC 847
(21) Makhan Singh Vs State of Punjab AIR 1964 SC 381
(iii) That it constitute colourable exercise of the legislative power. ¹
(iv) That if the law is a subordinate legislation, it is ultra vires or, if it is an order, that it is malafide ²
(v) That it is vague ³
(vi) That it contravenes any of the fundamental fights other than Article 21, ⁴ i.e Article 14 ⁵ or 19 ⁶ or 22 ⁷
(vii) That it does not offer to the prisoner a right to legal assistance. ⁸
(viii) That it is unfair or unreasonable. ⁹
(ix) That it violates principal of natural justice. ¹⁰

But whether the procedure prescribed by the legislature is just, fair and reasonable would depend upon the circumstances of each case. ¹¹

(9) LAW-

It has been held that law would not include mere executive or departmental instructions. ¹² which have no statutory basis, ¹³ e.g, the U.P police Regulation. ¹⁴ but would include an ordinance. ¹⁵ intra virus rules or Regulations made in exercise of statutory power, ¹⁶ inherent powers of the High courts and Suprem Court which have the force of law. ¹⁷ or the pre constitution privileges of the legislatures, continued by Article 105 (3) or 194 (3) or Rules made under Article 208 of the constitution. ¹⁸ The law would include not only criminal law but also civil law which provides for arrest and detention, e.g, for the recovery of public dues ¹⁹ or a statutory Service Rules. ²⁰ When there is no constitutional bar to retrospective legislation the procedure established by law may be changed retrospectively. ²¹ If a law

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¹ CF. State of Nagaland Vs Ratan Singh AIR 1967 SC. 212
² Makhan Singh Vs State of Punjab AIR 1964 SC.381
³ Abbas Vs Union of India AIR 1971 SC 481
⁴ Makhan Singh Vs state of Punjab AIR 1964 SC 381
⁵ Antulay Vs Nayak AIR 1988 SC 1531 (Para. 60-61)
⁶ Malkani Vs state of Maharashtra AIR 1973 SC 157 (Para. 30)
⁷ Mantoo Vs State of Bihar AIR 1980 SC 847
⁸ Nand Vs state of Punjab AIR 1981 SC 2041 (Para. 9)
⁹ Maneka Gandhi Vs Union of India AIR 1975 SC 597
¹⁰ Antulay Vs Nayak AIR 1988 SC 153, (Para 60-61)
¹¹ Charan Vs union of India (1990) 1 SCC 613 (Para. 97-98)
¹² Patnaik Vs State of A.P. AIR 1974 SC 2092 (Para.8)
¹³ Makhan Singh Vs state of Punjab AIR 1964 SC 381
¹⁴ Kharak Singh Vs state of U.P. AIR 1963 SC 1295
¹⁵ A.K. Roy Vs Union of India AIR 1982 SC 710 Para 18,19,31
¹⁶ Govind Vs State of M.P. AIR 1975 SC 1378 Para 10-11
¹⁷ Rati Lal Vs Asslt. Collector AIR 1967 SC 1639
¹⁸ Sharma Vs Srikrishna AIR 1959 SC 345 (410)
¹⁹ Agrawal Vs State of U.P. AIR 1983 SC .1224
²⁰ State of Maharasra Vs chandrobhac AIR 1983 SC 803 (Para. 20)
²¹ State of M.P. Vs Shah Md. AIR 1969 SC 1234 (Para. 7)
has been validly enacted; it cannot be challenges on the ground that it applies the spirit of
Cr. P.c. as distinguished from its technical provisions to a back ward areas. ¹ Any Law
dephring a citizen of his liberty, whether there providing for punitive or preventive detention
must be strictly construed ² and if the procedure prescribed by the relevant law has not in
fact been followed by the executive in the case before the court the prisoner must be set
free.³

(10) Right to Livelihood: And Article 21:

The right to life conferred by Article 21 is wide and far-reaching. It does not mean
merely that life cannot be extinguished or taken away as, for example by the imposition and
execution of death Sentence, except according to procedure established by law. That is
but one aspect of the right to life.

An equally importance fact of that right is the right to Lively hood because, no person
can live without the means of living that is the means of livelihood. If the right to live hood is
not treated as a part of the constitutional right to Life the easiest way of depriving a person
of his right to life would be to deprive him of his means of livelihood to the point of abrogation.
Such deprivation would not only denude the Life of its effective content and meaning fullness
but it would make life impossible to live and such deprivation would not have to be in
accordance with the procedure established by law, if the right to Lively-hood is not regarded
a part of the right to life. ⁴The right to carry on any trade or business and the concept of life
and personal liberty within Article 21 are too remote to be connected together.⁵ So also
non-payment of subsistence allowance during suspension period is violative of Article 21
of the constitution of India and as such inability of the delinquent employee to attend
departmental proceedings if justified departmental proceedings stand vitiated.⁶The right
to public employment is undoubtedly a new form of property. It is not only a vast source of
patronage for the Government but is also a great source of living and happiness to the
unemployed millions. It is as justice marshall stated in Board of Regents Vs Roth,⁷the
"every essence of the personal freedom and opportunity" secured by the 14th Amendment
of the constitution. It is therfore, clear that making of law denying the acquitted employee

¹ State of Nagaland Vs Ratan Singh AIR 1967 SC –212 (224)
² Kishori Vs State AIR 1972 SC 1949
³ Naranjan Vs state of Punjab AIR 1952 SC 27 (29)
⁴ Olga Tellis Vs Bombay Municipal corporation AIR 1986 SC 1810 (Para. 32)
⁵ D.D.H.E. union Vs Delhi Administration- AIR 1992 SC 789
⁶ D.D.H.E. union Vs Delhi Administration- AIR 1992 SC 789
⁷ Sodan Singh Vs New Delhi municipal committee AIR 1989 SC 1988 Para .20
⁸ M.Paul Anthony Vs Bharat Gold Mines Ltd. AIR 1999 SC 1416 (Para 33)
⁹ (1972) 33 USl Ed. 548
his remuneration for the period of suspension would be beyond the the legislature since such a law would be in violation of Articles 14, 16 and 21 of the constitution. In a famous case the Supreme Court held that non-payment of minimum wages to the workers employed in various Ashiad projects in Delhi was a denial to them of their right to Live with basic human dignity and as such violative of Article 21 of the constitution. In this case Bhagwati J (as he then was) said that the right and benefits conferred on the workman employed by a contractor under various labour laws are "clearly intended to ensure basic human dignity to workmen and if the workmen are deprived of any of the rights and benefits, that would clearly be a violation of Article 21. He held that the non-implementation by the state authorities of the provisions of various labour laws violated the fundamental rights of the workers to live with human dignity. It is Submitted that this decision has heralded a new revolution. It has clothed millions of workers in factories, fields, mines and project sites with human dignity. They got the fundamental rights to maximum wages, drinking water, shelter, medical aid and safety in the respective occupational covered by the various welfare legislations. In state of maharastra Vs Chandrabhan 3 the Supreme Court struck down a provision of Bombay Civil Service Rules 1959, which provided for payment of only a normal subsistence allowance of Rs 1-00 per Month to a suspended Government servant upon his conviction during the pendency of his appeal as unconstitutional apposed to human dignity and violative of Article 21.

In D.K. Yadao Vs J.M.A. Industries4—the Supreme Court held that the right to Life inshrined in Article 21 includes the right to Livelihood and therefore termination of the service of worker without giving him reasonable opportunity of hearing is unjust arbitrary and illegal. The procedure prescribed for depriving a person of Livelyhood must meet the challenge of Article 14 and so it must be right just and fair and not arbitrary, fanciful or oppressive. It must be in conformity of the rules of natural justice. It was further said that Article 21 clubs life with liberty dignity of person with means of livelihood without which the glorious content of dignity of persons would be reduced to animal existence.

(2) People’s Union For Democratic Rights Vs Union of India AIR 1982 Sc 1473
(3) 1983 (3) SCC 387
(4) (1993) 3 SCC 258
Thus right to livelihood is included in Article 21 of the constitution: So for as Government servants are concerned they require fair trail in D.E. proceedings and the penalty of dismissal, removal suspension must conform Article 14, and 311 (2) of the constitutions as Article 21 requires fairness in procedure.

B. CIVIL SERVICES UNDER THE UNION AND THE STATES (Articles 309, 310, 311, 312 and 313)

Chapter 1 of Part XIV of the constitution of India provides the services under the union and the states as well. Articles 309 to 312 deals with the civil services. Recruitment and conditions of services of person serving the union or the state have been provided in Article 309. Article 310 speaks of the tenure of the office of person, whereas Article 311 for dismissal, removal or reduction in rank of persons employed in civil capacities under the union or the state. Article 312 provides for all India services. Article 313, is transitional provision.

(1) Article 309 says –

"Subject to the provisions of the constitution 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.

Provided that it shall be competent for 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 the case of services and posts in connection with the affairs of the state to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature under this Article and any rule so made shall have effect subject to the provisions of such Act."
The constitution does not provide detailed rules for recruitment or conditions of services of the union or the states. The power is left to the respective legislatures (Entry 70 of List I and 41 of List II) The power of appointment belonging to the executive will thus be subject to legislative control. It is however, not necessary for the exercise of the legislative power under entry 70 of List I or 41 of List II that it must be made by a specific legislation under Article 309.

The power conferred by Article 309 is subject to the opening words of the Article which govern not only the power of the legislature but also the rule-making power conferred by the provis. 1 Hence, if any rule contravenes any of the provision of the constitution, e.g. Articles 142 153 164, 195, 299-2346, 310(1)-311(1)7, or 311 (2)8, the rule shall be void.

On the other hand the constitution itself provides the mode of appointment and conditions of service of certain officers in connection with the affairs of the union and the states, e.g. the Attorney General (Article 76)9 Articles 146(2) (Relating to officers of the Supreme Court) Article 148(5)10 persons serving in the Indian Audit and Accounts Department. Article 299(2) Officers of High Court) Article 309 shall have no application to these classes of Government Servants.11

But Article 235 does not confer upon a High Court the power to make rules relating to conditions of service of judicial officers attached to the District and Subordinate Courts, which power belongs to the state legislature and the Governor12 But the application of those rules to judicial officers is a matter exclusively for the High Court 13

In regard to making appointments to clerical posts in the Subordinate Courts, the chief justice of the High Court can not depart from the constitutional and statutory provisions on the subject 14

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(1) State of U.P. Vs Baburam. AIR 1961 SC.751 (761)
(2) Padmanabham Vs D.P.I (1980) U.I.S.C.833 (Para 14)
(3) Padmanabham Vs D.P.I (1980) U.I.S.C.833 (Para 14)
(4) Yadav Vs State of Haryana AIR 1981 SC.561 (Para 46)
(6) Nadaf Vs State AIR 1967 Mys 77(78) State of W.B. Vs Nripen Bagchi AIR 1966 SC.447 (450)
(7) Motial Vs Union of India AIR 1965 Pun) 444 (448-49)
(8) Motilal Vs N.E.F. Ry AIR 1964 SC.600 (610) State of Mysore Vs Padmanabhacharya, AIR 1966 SC.602 (605)
(9) Motial Vs Union of India AIR 1965 Pun),444 (448-49)
(10) Acctt General Vs Doraiswami AIR 1981 SC.783 para 6
(11) CT.P.K. Bose Vs Chief Justice (1955) 2 SCR 1331
(12) Yadav Vs State of Haryana AIR 1981 SC 561
(13) Yadav Vs State of Haryana AIR 1981 SC 561 (Para 46)
(14) Putta Swamy Vs Chief Justice AIR 1991 SC.295
(i) Thus he cannot disregard the authority vested in the Public Service Commission to make selections for such appointments. He cannot bypass the district Judge who has power to make such appointment. If the chief justice takes upon himself the power of both the authorities mentioned above to make selections for, as well as appointments in the establishments of this subordinate courts, such appointment shall be void. ¹

(2) **SCOPE**

The proviso of Article 309 is a transitional provision empowering the Executive to make rules having the force of law, relating to the above matters until the appropriate legislatures legislate on the subject. Further, until the powers conferred by the present Article is exercised the existing rules will continue to be in force, under Article 313, in so far as they are not inconsistent with the provisions of the constitution.

But the mere fact that a pre constitution rules has been kept in force by a notification issued under this provision would not enlarge the scope of such rule so as to bring within its fold persons to whom the rule otherwise did not apply. ²

In view of section 21 of the General clauses Act, it is competent for the President or a Governor to amend or vary the rules made by him, so long as the appropriate legislature does not exercise its powers under Article 309 ³

The proviso merely enables the President or the Governor to make rules to regulate the "recruitment and conditions of service" of persons mentioned therein and is not co-extensive with the powers of the legislature under item 70 of List I or 41 of List II. It does not confer any power to validate an order which was invalid when it was made e.g. to make a rule to declare that the persons who were invalidly retired on a particular date shall be deemed to have been, validly retired. Such a rule is ultravirous the proviso to Article 309 and is accordingly, invalid ⁴ though the legislature acting under the proviso could have exercised such power of validation.

In the case of the Union Territories, the rule making power belongs to the President, ⁵ until Parliament chooses to legislate.

In states reorganised under the States Reorganisation Act, 1956, the power of the...

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¹ Putta Swamy Vs Chief Justice AIR 1991 SC.295.
² Ranjit Vs State of Bihar AIR 1987 SC.1894 (Para 6)
³ Iyengar Vs State of Mysore AIR 1996 Mys.37 (41)
⁴ State of Madras Vs Padmanabhacharya AIR 1966 SC.602 (605)
⁵ Gobalousamy Vs Pondicherry AIR 1968 Mad.298
Governor to make rules has been controlled by section 115 (7) of the Act so that no rule made by the State Govt. would be valid and effective unless the prior approval of the Central Govt. has been obtained. ¹

(3) JUDICIAL ATTITUDE

(Article 309)

Rules made under Article 309 have a statutory force. ²

Rules made under Article 309 can be amended only by a rule or notification duly made under Article 309 ³

So long as a rule framed under Article 309 is not duly amended, it is binding on the Government and its action in matter covered by the rules must be regulated by the rules. ⁴

A rule made in exercise of the power under the proviso to Article 309 constitutes law within the meaning of Article 235 ⁵

For the same reason such rule may be struck down only on such grounds as may invalidate a legislative measure i.e violation of Article 14, 16 of the constitution ⁶

The rule making power conferred by Article 309 of the constitution cannot be fettered by any contract. ⁷

Rules made under Article 309 have the same force as an Act passed by the appropriate legislature. ⁸

So long as rules under Article 309 are not framed qualifications may be laid down by executive order ⁹ Even after rules are framed under Article 309 there is nothing to depart the Government to fill up gaps by administrative instructions (issued under Article 162) on matters in respect of which the rules are silent ¹⁰ through the rules cannot be amended or superseded by administrative instructions ¹¹ nor can they be super imposed by anything inconsistent with the rules. ¹²

Om or Executive orders made under Article 73 have for their operation, an equal

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² Praphulla Vs Prakash (1993) 25 A.T.C. 242 (Para 24) SC.
³ Nagrajan Vs State of Mysore AIR 1966 SC.1942
⁴ Bhatnagar Vs Union of India (1991)1 SC.544 (Para 13)
⁵ Yadav Vs State of Haryana AIR 1987 SC.561 (Para 46-47).
⁷ Union of India Vs Arun AIR 1986 SC.737 (Para 17-19)
⁸ Dinesh Vs State of Assam AIR 1978 SC.17 (21)
⁹ Ramesh Vs State of Bihar AIR 1978 SC.327 (Para 5)
¹¹ Aggarwal Vs State of U.P. AIR 1987 SC.1676 (Para 19)
¹² Sachdeva Vs Union of India AIR 1981 SC.411 (Para 13)
efficacy as an Act of Parliament or the rules made by the President under Article 309. But statutory rules cannot be altered by administrative instructions.

(4) CIVIL SERVICE RULES AND ARTICLE 14

S.C. held that Article 14 is applicable to employment under the State so as to invalidate discriminatory rules or orders relating to employment, from the stage on initial appointment to its termination. A rule or order will be discriminatory, if the classification made by it is not reasonable. There is a violation of Article 14 if an individual is deprived of his right of access to a court of law for the vindication of his first grievances, a right which belongs to every individual.

A rule which prohibits Government servants from having recourse to a court without previous sanction of the Government would be unconstitutional and its enforcement would amount to contempt of court.

(5) CONDITIONS OF SERVICE

Though the conditions of service have not been defined nor enumerated in the constitution itself, yet we find its meaning in judicial decisions -

On plain language of Article 309, the proposition that any rule framed under this Article has to be confined to recruitment and conditions of service of persons mentioned therein admits of no doubt. It has been held by the Supreme Court that the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. In the normal course what falls within the purview of the term "Conditions of Service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion, seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and

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(1) India Vs Union of India (1992) Supp. (3) SCC 21 (Para 52)
(2) Balasubramaniam Vs State of T.N. (1991) 2 SCC 708
(3) State of Punjab Vs Joginder AIR 1963 SC 913 Kishori Vs Union of India AIR 1962 SC 1139
(4) Gangaram Vs Union of India (1970) II SC WR 221 (224)
(5) State of Punjab Vs Joginder AIR 1963 SC 913
(6) Ramprasad Vs State of Bihar 1963 (SCR) 1172 (1178).
(7) Pratap Singh Vs Gurbaksh Singh AIR 1962 SC 1172 (1178)
disciplinary proceedings. Prosecution of Government servant after retirement for commission of an offence cannot be treated to be something pertaining to conditions of service 1

(i) **APPOINTMENT**
Appoint means an actual act of posting a person to a particular office.

(ii) **RECRUITMENT**
Recruitment is an initial process that may lead to eventual appointment in the service 2
If, in laying down the qualifications for an appointment, the state lays down qualifications which have no nexus with the object to be achieved, the rule or order in question shall be invalid. 3

(iii) **RECRUITMENT RULES**
The scheme intended for recruitment should be on the basis of an examination comprising of a written test and interview. Interview has its own place in the matter of selection process and the choice of the candidate. It would be appropriate to require every candidate to pass the interview test and for that purpose there should be a basic limit provided. In the absence of any prescription of qualifying marks for the interview test the same prescription of 40% as applicable for the written examination seems to be reasonable 4

**COMPULSORY RETIREMENT**
A provision authorising compulsory retirement of Government servants after 25 years of service can not be held to contravene Article 14 merely because the normal time for retirement is after 30 years of service. If the rule be applicable to all classes of Government servants it cannot be challenged as discriminatory, but if it is malafide 5 or arbitrary or purverse 6 the order may be struck down 7

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1 State of Punjab Vs Kailash Nath AIR 1989 SC 558 Para (6-7)
3 Mehata Vs Union of India AIR 1977 SC 1673 (Para 8, 9) (605)
4 Manjit Singh Vs Employees State Insurance Corporation AIR 1990 SC 1104 (Para 6)
5 Shivacharan Vs State of Mysore AIR 1965 SC 280 (282)
7 Shivcharan Vs State of Mysore AIR 1965 SC 280 (282)
(V) CONFIRMATION

The fixation of an arbitrary date for confirmation or determination of seniority of an employee on the basis thereof may constitute discrimination and violation of Article 14 and 16.

(VI) PAY

The abstract doctrine of equal pay for equal work has nothing to do with Article 14. But later the court held it to be implicitly enshrined in Article 14.

Article 14 would not debar the state from dividing the employees doing the same kind of work into superior and interior classes with different pay scales.

But there would be a violation of Article 14 if differentiation is made between employees doing identical work, without any intelligible ground.

(VIII) PENSION

In the leading case of Nakara Vs Union of India, a constitution Bench of the Supreme Court has laid down that classification of pensionary benefits on the basis of the retiring date is not founded on any rational principle and is therefore void as violative of Article 14.

The object of providing a pension or a liberalisation thereof (in view of a rise in the price-index) is to provide a decent standard of life to the working people after their superannuation. Hence, where the retirees belong to the same class no unequal treatment can be made on the ground that some retired earlier and some retired later.

GRATUITY

But the decision in Nakara's case has been held in applicable in the matter of payment of gratuity which exists on that date. The reason is that while pension is payable periodically as long as the pensioner is alive, gratuity is ordinarily paid only once on retirement. Hence a pensioner retiring on a particular date can claim gratuity only in

(1) Patwardhan Vs State of Maharashtra AIR 1977 SC 2051 (Para 32, 43)
(2) Ibid
(3) Bansal Vs Union of India AIR 1988 SC 978 (Para 22, 25)
(4) Kishori Vs Union of India AIR 1962 SC 1139
(5) State of M.P. Vs Pramod (1993) 7 SCC 539
(6) Menon Vs State of Rajasthan AIR 1968 SC 81 (84)
(7) Savita Vs Union of India AIR 1985 SC 1124 (Para 11) Randhir Vs Union of India AIR 1982 SC 879 (887)
(8) Nakara Vs Union of India AIR 1983 SC 130 (Para 17, 31, 35)
(9) Nakara Vs Union of India AIR 1983 SC 130 (Para 17, 31, 35)
(10) Nakara Vs Union of India AIR 1983 SC 130
(11) Abhayankar Vs Union of India AIR 1984 SC 1247
accordance with the rules regarding gratuity which exist on that date.  

(X) PROVIDENT FUND

While under a pension scheme Government has a continuing obligation so long as the retiree is alive, in Provident fund scheme, each retiree's right is crystallised on the date of retirement and Government has no continuing obligation thereafter. Hence if option is given to the employees under the P. F Scheme to switch over to the pension scheme from a specified cut off date, it would not be hit by Article 14. It follows that contributories P.F retirees and Pension scheme optees form two different classes.

Any rule which places at the absolute discretion of an administrative authority, the power to grant or refuse pension or gratuity or any other retrial benefit at its weet will, is arbitrary and violative of Article 14. The Government has no discretion to forfeit gratuity on any ground.

(X) PROMOTION

A typing test for promotion of clerks cannot be said to be unreasonable.

As between employees of the same class of service, it would be permissible to give weightage to those who acquire a relevant higher qualification which is reasonable, i.e. educational qualification or giving accelerated promotion to the most meritorious in order to attract brilliant candidates to the public service.

(XI) EFFECT OF DEPARTMENTAL OR CRIMINAL PROCEEDING ON PROMOTION

In "Union of India Vs K. V. Jankiraman" the S.C. has pointed out the following effect of departmental or criminal proceedings on promotion against the employee:

(1) Union of India Vs A.I.S.P.A. AIR 1988 SC 501 (Para 68)
(2) Krishna Vs Union of India AIR 1990 SC 1782 (Para 30-31)
(3) Krishna Vs Union of India AIR 1990 SC 1782 (Para 30-31)
(5) Sudhir Vs TISCO, (1984) UJ SC 986 (Para 20)
(6) Jesuratnam Vs Union of India (1990) Supp. SCC 840 (Para 2)
(7) Mehta Vs Union of India 1977 SC 1673 (Para 8-9)
(8) Deviprasad Vs Govt. of A.P.(1980) UJ SC 688 (Para 5-6)
(10) Bishwa Vs State Bank of India (1991) 2 UJ SC 567 (Para 4)
The consideration of an employee for promotion may be postponed if he is suspended in view of the initiation of disciplinary or criminal proceedings against him (Para 16)\(^1\).

But mere pendency of a departmental proceeding of any stage is not sufficient for not considering his case for promotion or to withhold his promotion (Para 17)\(^1\).

But when a charge memo or charge sheet is issued against the employee in a departmental or criminal proceeding (as the cases may be) his promotion may be withheld till the termination of their proceedings.\(^1\)

If he is completely exonerated and is not visited with the penalty even of a censure, he has to be given the benefit of the salary of the higher post along with its other benefits from the date on which he would have normally been promoted\(^1\).

If however (a) the proceedings are delayed at the instance of the employee himself or (b) he is not completely exonerated but is discharged with benefit of doubt, or the non-availability of evidence due to acts attributable to the employee — in the interest of discipline in the administration, it should be left to the appropriate authority to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it (Para 26)\(^1\).

The broad proposition asserted in an earlier Division Bench Case\(^2\) viz., that he must be considered for promotion "if exonerated or acquitted of the charges" is thus modified by the larger Bench (Para 26)\(^1\).

If the employee is found guilty of misconduct it is permissible to treat his case differently from that of other employees.\(^1\) Hence in considering an employee for promotion, the relevant authority is entitled to take into consideration the penalties imposed upon him, including censure, up to the date when such consideration takes place.\(^1\)

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(1) Union of India Vs K.V. Jankiraman (1991) 4 SCC 109 Para 16, 17, 26
(XII) SELECTION

It has been held that the court would not interfere with the selection made by competent administrative bodies in the absence of arbitrariness\(^1\) in which case it would be hit by Article 14 & 16 of the constitution\(^2\) Thus, what process should be adopted for the selection and if a competitive examination is held, how many marks should be allotted to the written examination, and how many to viva voce or interview test, are matters for expert bodies and not the court to judge (Para 23)\(^3\)

(XIII) SENIORITY

Mandamus would be issued to cancel a seniority list or promotion and to make necessary adjustments, where the seniority list has been made in contravention of Article 14 or 16 (1)\(^4\) e.g. making adhoc deviation there from\(^5\) or on an arbitrary basis.\(^6\)

(XIV) SUPERANNUATION

It is competent for the Government to raise or reduce the age of superannuation from time to time\(^7\) provide it is not done arbitrarily or in violation of Article 14.\(^8\)

(XV) TERMINATION

A rule which empowers the executive to select particular employees for termination of their service under a special procedure without furnishing definite guide for such selection would offend against Article 14, but not so where a classification is made on the basis of an intelligible differentia which bears a reasonable relation to the purpose of the rules, e.g. a provision for procedure under the safeguarding of National Securities Rules against "Person engaged in subversive activities". A hostile discrimination in the application of rules also constitution violation of Article 14\(^9\).

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\(^1\) Ashok Vs State of Haryana (1985) 4 SCC 417 (Para 21-22)
\(^2\) Ajay Vs Khalid AIR 1981 SC 1104 (Para 6)
\(^3\) Ashok Vs State of Haryana (1985) 4 SCC (41) (Para 21-22)
\(^4\) Jaisinghani Vs Union of India AIR (96)n SC 1427 (Para 13, 16, 17)
\(^5\) Jaisinghani Vs Union of India AIR (96)n SC 1427 (Para 13, 16, 17)
\(^6\) Ranvir Vs Union of India (1993) UJ SC 119 (Para 4, 6)
\(^7\) Kailash Vs Union of India AIR 1961 SC 1346
\(^8\) Nagaraj Vs State of A.P. AIR 1985 SC 551 (Para 13-14)
\(^9\) State of Orissa Vs Dhrendranath AIR 1961 SC 1715
(XVI) RETRENCHMENT

SC held that a rule will be violative of Article 14 if it vests unguided direction in any authority to terminate the services of permanent employees e.g. by issuing a notice. Where retrenchment takes place in an establishment owing to reduction of work or shrinkage of cadre the principle of "last come first go" is applicable where this principle is violated and the services of a senior is terminated, retaining his junior in service there is a violation of Articles 14 and 16 of the constitution.

(XVII) TRANSFER

Even when two posts belong to the same class of service, if one of them carries higher benefits and higher powers, a transfer from that post to the lower post would be hit by Article 14, if it is done capriciously and without any rational principle or guideline. But there would be not contravention of Article 14 where the two posts are inter-changeable, but the post from which the petitioner is transferred or reverted, carried a "special pay" for specified reasons, so that it could not be treated as a higher post on promotion.

(6) CIVIL SERVICE RULES AND ARTICLE 15

S.C. held that Article 15 (1) will be attracted if there is discrimination in the matter of employment under the state solely on the ground of religion, race, caste, sex or place of birth even though discrimination is professed to be made in the interest of backward class. Exclusion on the ground of language in the case of employment under a state is not barred.

(7) CIVIL SERVICE RULES AND ARTICLE 16 (1)

The equality of opportunity guaranteed by it however means "equality as between members of the same class of employees and not equality between members of separate, independent class."
Article 16 is only an application of the general principle of equality guaranteed by Article 14.1

(i) APPOINTMENT

The equality which is guaranteed by this Article is the opportunity to make an application for a post and to be considered for it on the merits. The right does not extend to being actually appointed.

Article 16 (2) would invalidate a law or a rule or an order if it authorises discrimination in the matter of appointment under the state on any of the ground specified therein e.g. descent, caste or religion even though it professes to make a reservation in the interests of the backward classes of the claim of a senior employee is not taken into consideration at all in the matter of promotion on a seniority cum merit basis.

(ii) CONFIRMATION

There could be only one norm for confirmation or promotion of persons belonging to the same cadre, viz., that no junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle shall be struck down as violative of Article 16 (1).2

(iii) PAY

It has been held, that in matters of pay, Article 16 would be violated, when the principle of equal pay for equality of work enshrined in Article 39(d) is violated.

When the pay scale of existing posts is revised with a higher pay, the existing incumbents should be entitled to the higher pay and this right cannot be defeated by the Government by directly recruiting other persons to hold the same posts with the higher pay scale though the duties and responsibilities were identical.

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(1) General Manager Vs Ram Sachari DiR 1962 SC 36 (40-41) State of Mysore Vs Narsimha Rao AIR 1968 Sc 349
(2) Santram Vs State of Rajasthan AIR 1967 SC 1910 (1915)
(3) Krishna Chandra Vs C.T.O. AIR 1962 SC 602
(4) Channavasaviah Vs State of Mysore AIR 1965 SC 1965 SC 1293
(5) Rama Rao Vs State of A.P. AIR 1961 SC 565 (573)
(6) Channavasaviah Vs State of Mysore AIR 1965 SC 1293
(7) Channavasaviah Vs State of Mysore AIR 1965 SC 1293
(8) Channavasaviah Vs State of Mysore AIR 1965 SC 1293
(9) Nagnoor Vs State of Mysore AIR 1964 Mys. 229
(10) Balkishan Vs Delhi Admn. (1989) Supp (2) SCC 35 (Para 9-10)
(12) Ramachandra Vs Union of India (1984) SCC 141 (Para 17, 31, 33)
(iv) PROMOTION

Equality of opportunity in the matter of promotion means that all employees holding posts in the same grade shall be equally eligible for being considered on the merits, for appointment to the higher grade. Inequality of such opportunity for promotion as between citizens holding different posts in the same grade may, therefore be an infringement of Article 16.

(v) QUALIFICATION

S.C. held that it is open to the Government or appropriate authority to make rules providing qualifications for appointment or promotion to different posts. Courts have no jurisdiction to interfere with such qualifications unless the qualifications so laid down discriminate amongst the candidates in contraventions of Article 14 or 16 on the ground of residence within a particular area, so long as the rules are duly amended an administrative authority can not allow any such relaxations in the prescribed qualifications as would constitute an amendment of the rule.

(vi) SENIORITY

It has been held by the S.C. that it is open to the state to lay down any rule for determining seniority in service and the court cannot interfere unless it results in inequality of opportunity amongst employees belonging to the same class.

As between a direct recruit and temporary or adhoc appointee a direct recruit takes his seniority from the date when he joins his post, while a temporary or adhoc appointee gets seniority only from the date when he gets a regular appointment.

(vii) TERMINATION

It has been held that the rules that employment under the state is held at pleasure does not militate against the application of Article 16 (1) to the matter of termination of such employment where there has been an arbitrary discrimination in terminating the services of particular employee.

(1) High Court Vs Amal Kumar AIR 1962 SC 1706.
(2) Krishna Chander Vs C.T.O. AIR 1962 SC 36 (40-41)
(3) All India Station masters' Association Vs General Manager AIR 1960 SC 284 General Manager Vs Rangachari AIR 1962 SC 36 (40-41)
(4) Narsimha Vs State of A.P. AIR 1976 SC 422.
(5) Umesh Vs Union of India AIR 1985 SC 1351 (Para 4)
(6) Reserve Bank of India Vs Paliwal (1976) UJ SC 129.
(7) Sreenivasa Vs Govt. of A.P. 1995 SC 586 (Para 14-15)
(8) Pandurang Vs Union of India AIR 1959 Bom 134.
(8) CIVIL SERVICE RULES AND ARTICLE 16 (4)

(Reservation for backward class)

Where the state makes a rule providing for the reservation of appointments and posts for such backward classes, it cannot be said to have violated Article 14 merely because members of the more advanced classes will be considered for appointment to these posts even though they may be equally or even more meritorious than the members of the backward classes, or merely because such reservation is not made in every kind of service under the state.

But if the reservation is so excessive that it practically denies a reasonable opportunity for employment to members of other communities the position may well different and it would be open for a member of a more advanced class to complain that he has been denied equality by the state. Similarly, there would be a violation of Article 16 (1) read with Article 14, if a rule providing retrenchment of temporary employees, given preferences to scheduled castes and scheduled tribes employees even as against approved probationary of general category 2

(9) CIVIL SERVICE RULES AND ARTICLE 21

A constitutional Bench of the Supreme Court has held that a person's livelihood is included in his right to life under Article 21.

But this Article cannot be invoked—

(a) Where a post is abolished by law and its existing incumbent loses his office thereby or

(b) The Constitution itself takes away the right to be heard before termination of service e.g. in case coming under the 2nd provision to Article 311 (2).

The court disapproved the instructions of the L.I.C which required a lady employee to give a correct declaration as to her periods of menstruation in order to detect whether she was pregnant observing that the requirement of such particulars affected "the modesty and self respect" of a lady and the corporation might achieve its object by a medical examination rather than requiring such declaration.

(1) Devedasan Vs Union of India AIR 1964 SC 179 Inra Vs Union of India (1992) Supp (3) SCC 217
(2) Govt. of A.P. Vs Bala (1995) 1 SCC 184 (Para 7)
(3) Olga Vs Bombay Municipal Corporation (1985) 3 SCC 545 (Para 32-34)
(4) Olga Vs Bombay Municipal Corporation (1985) 3 SCC 545 (Para 32-34)
(5) Venkata Vs State of A.P. AIR 1955 SC 724 (Para 23)
(6) Union of India Vs Tuliram AIR 1985 SC 1418 (Para 44)
(10) CIVIL SERVICE RULES AND ARTICLE 310 (1)
A rule which seeks to fetter the power of the President or Governor to dismiss a Government servant at pleasure (subject to qualification in Article 311) shall be void."}

(11) CIVIL SERVICE RULES AND ARTICLE 311 (1)
If any rule seeks to make a Government servant liable to be dismissed by an officer subordinate in rank to the appointing authority, such rule shall be void."}

(12) CIVIL SERVICE RULES AND ARTICLE 311 (2)
Any rule which seeks to affect the protection offered by Article 311 (2) shall be void. e.g –
(i) A rule providing that certain Government servants who have been unlawfully retired should be deemed to have been lawfully retired.
(ii) A rule providing that a permanent Government servants' services may be terminated by serving a notice or otherwise than by complying with Article 311 (2)
(iii) A rule which empowers the authority to order compulsory retirement of an employee without fixing a minimum period of service after which such retirement may be ordered or permits the authority to order retirement at any time before the age of superannuation fixed by the rules.
(iv) A rule which provides that an employee may be punished on the basis of cumulative evidence that he was suspected of corruption in a number of instances without any proof of his guilt.

PENSION
Under the Civil Service Regulations, no order of forfeiture of pension can be made without resorting to disciplinary proceedings in compliance with principles of natural justice.

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(3) Srikant Vs Union of India AIR 1963 Pat. 38 (46)
(5) Union of India Vs Tulsiram AIR 1985 SC 1416
(6) Balakdas Vs Asst. Security Officer AIR 1960 M.P. 183
(7) State of Madras Vs Srinivasan AIR 1966 SC 1827.
The new philosophy adopted since 1983 is that pension payable to employees of the Government or any instrumentality of the Government is not a charity or bounty dependent on the sweet will of his employer as was thought during the British days, but is a deferred portion of compensation for past service of the employee.

Arrears of pension which has thus accrued is a valuable right and property in the hands of the pensioner and not a matter of bounty. If therefore, it is wrongfully withheld or delayed owing to the culpable negligence of an employee, otherwise than in accordance with the rules, the employee, as well as the Government may be liable to answer in damages or penal interest for such negligence.

(13) AMENDMENT OF RULES-EFFECT OF:-

The conditions of Service Rules can by virtue of the proviso to Article 309, be amended retrospectively. Rules made under the proviso to Article 309 are legislative in character, and therefore can be given effect to retrospectively. It is well settled rule of construction that every state or statutory rules is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the rules showing the intention to affect existing rights the rule must be held to be prospective. Amendment of rules can not be challenged on ground that for higher post of Deputy Director General degree of Engineering was not essential.

(14) ADMINISTRATIVE INSTRUCTIONS

No administrative instructions can override, enlarge or reduce the scope of a rule duly framed under Article 309 though administrative instructions may be regarded as a guide for the exercise of jurisdiction. Government has no lawful authority to prejudicially affect the civil rights of a Government servant retrospectively by a mere executive instructions. Absence of statutory rules regulating promotion to selection grade posts is
no bar to the administration giving instructions as long as such instructions are not inconsistent with any rule on the subject. ¹

(15) PRESCRIPTION OF QUOTA BY EXECUTIVE INSTRUCTIONS
The quota for recruitment from the different source may be prescribed by executive instructions, if the rules are silent on the subject. ²

(16) FRAMING OF SERVICE RULES
The power under Article 309 to frame rules is the legislative power. This power has to be exercised by the President or the Governor of the state, as the case may be. Thus the High Courts or Administrative Tribunals cannot issue a mandate to the state Govt. to legislate under Article 309. ³Breach of rules or statutory rules made under Article 309 or which are continued under Article 313 in relation to conditions of service, the aggrieved Government servant can have recourse to the court for redress under Article 226. ⁴When the service of a Government servant has come to an end by an order of Government the Government can not by unilateral action create a fresh contract of service to take effect subsequently. ⁵

ARTICLE 310, TENURE OF OFFICE OF PERSONS SERVING THE UNION OR STATE.

(1) Provision:-
(i) Except or expressly provided by this constitution, every person who is a member of a defence service or of a civil service of the union or of an all-India service, or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of civil service of a state or holds office during the pleasure of the Governor of the state.
(ii) Notwithstanding that a person holding a civil post under the union or a state holds office during the pleasure of the President or as the case may be of the

(1) Lalitmohan Vs Union of India AIR 1972 SC 995 Para 9
(2) Direct Recruti Il Engg. Officers Association Vs State of Maharashtra 1990 Lab IC 1304 Para 44 G : AIR 1990 SC 1607
(5) State of Assam Vs Padma Ram AIR 1965 SC 473 (Para 7)
Governor of the state, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the union or a state, is appointed under this constitution to hold such a post may, if the President or the Governor as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his post, required to vacate that post.

(2) **Analogous Constitution:**

This Article corresponds to (i) – Section 240 (1) and (4) of the Government of India Act 1935; and (ii) to section 96-B (1) of the Government of India Act 1915.

(3) **Scope and Application:**

The opening words of Article 310 (1) quite clearly refer inter alia to Article 124, 148, 218 and 324 which respectively provide that the Supreme Court judge the Audit General, the High Court judges and the chief election commissioner shall not be removed from office except by an order of the President passed after an address by each house of Parliament subject to these exception. Article 310 (1) has adopted the English Common Law.¹

(4) **Article 310 and 311:**

While the doctrine of pleasure incorporated in Article 310 cannot be controlled by any legislation, the exercise of the power by the President or the Governor as the case may be, is however made subject to the other provisions of the constitution, one of them is being Article 311, which is not made subject to any other provisions of the constitution and is paramount in the field occupied by it.²

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(1) P.L. Dhingra Vs Union of India AIR 1958 SC 36 (Para 9)

(2) K. Rajendra Vs State of T.N. AIR 1982 SC 1107 (Para 22)
(5) **Office During the Pleasure:**

Clause 1 of Article 310 provides that subject to the other provisions of the constitution in this behalf all civil posts under the Government are held at pleasure of the Government under which they are held and are terminable at its will. This right of the Government is, however subject to the restrictions imposed by Article 310 (2) and Article 311 (1) (2). Hence the dismissal of civil servants must comply with the procedure laid down in Article 311 and Article 310 (1) cannot be invoked independently with the object of justifying a contravention of Article 311 (2).

It is now settled that the pleasure under Article 310(1) need not be exercised by the President or the Governor personally. It may be exercised—

(a) By the President or the Governor acting on the advice of the council of Minister because it is an "executive power" within the meaning of Articles 53 (1), 74(1), 77(1), 154(1), 163(1) and 166(1) or

(b) By the authority specified in the Act made under Article 309 or the rules made there under who is competent to dismiss such serving under the union or a state as the case may be.

(6) **Whether the Pleasure can be Fettered by Legislation?**

Article 310(1) provides that all service is held at the pleasure of the President or Governor "except provided by this constitution". Hence this pleasure cannot be fettered except by the provisions of Article 311. The pleasure cannot be fettered by ordinary legislation.

(7) **Whether the Pleasure is subject to rules made under Article 309?**

It has been authoritatively laid down by the Supreme Court that since Acts of the legislature must be subject to the constitutional provision in Article 310(1), and since the

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(1) Union of India Vs Tulsiram AIR 1985 SC 1416 Para (45, 58-59)
(2) Purshottam Vs Union of India AIR 1958 SC 36 (41) Khem Chand Vs Union of India A?IR 1958 SC 300 (304) Motiram Vs Union of India AIR 1965 SC 600(610)
(3) Motiram Vs Union of India AIR 1965 SC 600(610)
(4) Shyam Vs Union of India AIR 1987 SC 1137 Para 1,3
(5) Shyam Vs Union of India AIR 1987 SC 1137 Para 1,3
(6) Motiram Vs N.E.F. Rly. AIR 1961 SC 75 (Para 57)
(8) Union of India Vs Tulsiram AIR 1985 SC 1416 (Para 39)
authority to make rules under Article 309 is co-extensive with the power of the legislature to make laws under their provision, it follows that the pleasure of the President or the Governor under Article 310(1) is not subject to Article 309 and cannot therefore be fettered or impaired by rules made under Article 309. Article 309 \(^1\) is to be read subject to Article 310. \(^2\)

(8) Compensation for Premature Termination

Though all services under the Government is terminable at any time, clause (2) of Article 310 provides for payment of compensation when the service is held under a 'special contract' which provides for such compensation and the service is terminated before the expiry of contractual period.

After expiry of that term, the service terminates \textit{Ipso Facto} and notice is necessary for terminating the contractual service. \(^3\)

The General principles of service jurisprudence such as "Superannuation" Premature retirement are not applicable to tenure posts. \(^4\)

Thus we see that –

Article 309 of the constitution empowers the legislature of the Union and the States to enact laws for those person who serve the union or the states for their recruitment and conditions of service. Proviso to Article 309 empowers the President of India and Governors of the states to frame rules for the union and states employees to regulate the recruitment and conditions of service until the enactment of such laws by the appropriate legislatures. 

Thus high duty is casted by this provision of the constitution on the legislature President and Governor of the states. But as have been seen there is no law enacted by the legislatures till now. Rules framed by the President for the union employees, and by the Governors of the states for the state employees are in existence at present.

From the case study we find several decisions of the Supreme Court of India in regard to recruitment and conditions of service. The Supreme Court has well explained the civil service jurisprudential expressions like appointment – Recruitment – \(^5\) 

\(^{1}\) Union of India Vs Tulsiram AIR 1985 SC 1416 (Para 39)
\(^{2}\) Union of India Vs Tulsiram AIR SC 1416 (Para 39)
\(^{3}\) State of Gujarat Vs Kamparat (1992) 3 SCC 226 (Para 11)
\(^{4}\) Agrawal Vs Union of India (1992) 2 U.J. SC 266 (Para 16)
\(^{5}\) Praphulla Vs Mishra (1993) Supp. (3) SCC 161 Mehta Vs Union of India AIR 1977 SC 1673 (Para 6, 9)
rules, compulsory retirement, confirmation, pay, pension, gratuity, provident fund, promotion, selection, seniority, superannuation, retrenchment, termination, transfer etc. with reference to the rules framed under Article 309 and if such rule do not confirm the provision of Article 14 or 16 (1) or if found arbitrary they have been declared null and void. In the case of discrimination in employment on the ground of religion, race, caste, S.C held such appointment void under Article 15. Similarly S.C. held the order invalid under Article 16 (1) if the order was made on the base of descent, caste or religion. S.C. has applied the principle of equality under Article 16 (1) in the matter of confirmation, pay, promotion, seniority, termination. As to reservation S.C. said that the reservation of backward class should not be excessive else void and total reservation in service should not exceed 50%.

The above decision of the SC reveal that most of the rules regulating the recruitment and conditions of service as also the orders of the authority do not confirm the principles of equality inshrined in Article 14 and 16(1) of the constitution.

As regards Article 310 (1) the pleasure of the President and Governor is controlled by Article 310 (2) and 311 (1)(2). Hence the dismissal of civil servant must comply the procedure as laid down in Article 311 of the constitution.

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1. Manjeet Singh Vs Employees Insurance Corporation AIR 1990 SC 1104
2. Sheocharan Vs State of Mysore AIR 1965 SC 280
3. Patwadhan Vs State of Maharashtra AIR 1977 SC 2051
5. Nakara Vs Union of India AIR 1983 SC 130
6. Krishna Vs Union of India AIR 1990 SC 1782
8. Union of India Vs K.V. Janakrishnan AIR 1991 SC 2010
9. Janinghani Vs Union of India AIR 1967 SC 1427 (Para 13)
11. Triveni Vs State of U.P. AIR 1992 SC 496
15. Ramarao Vs State of A.P. AIR 1961 SC 565
17. Randhir Vs Union of India (1982) 1 SCC 818
18. All India Station Masters Association Vs G.N. AIR 1960 SC 284
20. Pandurang Vs Union of India AIR 1959 Bom 134
22. Motiram Vs Union of India AIR 1965 SC 600.
ARTICLE 311. DISMISSAL REMOVAL OR REDUCTION IN RANK OF PERSON, EMPLOYED IN CIVIL CAPACITIES UNDER THE UNION OR A STATE.

(1) Provision:-

(I) No person who is a member of a civil service of the Union or an All-India Service or a civil service of a state or holds a civil post under the union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(II) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

Provided that where it is proposed after such enquiry to impose upon him such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply——

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry or

(c) Where the President or the Governor as the case may be is satisfied that in the interest of the security of the state it is not expedient to hold
such enquiry.

(III) If, in respect of any such person as aforesaid, a question arises, whether it is reasonably practicable to hold such enquiry as is referred to in clause (2) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

(2) Amendment:-

The Article was first amended by the constitution (fifteenth amendment) Act 1963 and then by the constitution forty second amendment Act 1976 with effect from 3rd January, 1977.

(3) Analogous Constitution:-

The Article corresponds to section 240 (2) and (3) of the Government of India Act 1935.

Scope: Article 311 gives two fold protection to persons who come within the Article namely (1) against dismissal or removal by an authority subordinate to that by which they were appointed and (2) against dismissal or removal or reduction in rank without giving them a reasonable opportunity of showing cause against the action proposed to be taken in regard to them. Thus the purpose of Article 311 (1) is to ensure a certain amount of security to civil servants. ¹

Article 311 is not subject to Article 309, 310 or any other provisions of the constitution. ²

Article 311 has no application –

(a) To persons in the Military service. ³

(b) To persons who do not serve under the union or a state, but a statutory corporation, such as Life Insurance Corporation. ⁴

(4) Meaning of the Expressions:-

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¹ P.L. Dhirg Vs Union of India AIR 1958 SC 36 (Para 9)
² Motiram Vs General Manager AIR 1964 SC 600
³ Union of India Vs Ramchand AIR 1955 Punj. 167
⁴ Agarwal Vs Hindustan Steel AIR 1970 SC 1150
(i) Appointing Authority

Appointing authority means the authority which actually appointed the officer to the service which has been terminated. ¹

The appointing authority referred to in Article 311 (1) means the authority who appointed the Government Servant to the post from which he has been dismissed or removed. He may be an authority other than the authority who made the order of initial appointment of the employee concerned. ²

(ii) Subordinate

Subordinate refers to subordinate in rank, ³ and not in respect of function ⁴

Any rule which seeks to vest the power of dismissal in an authority subordinate in rank to appointing authority shall be void. ⁵

(iii) Civil Servant

The term civil servant includes members of a civil service of the center or a state, or of an All-India service, or all those who hold civil posts under the center or a state. ⁶

The term “Civil Servant” does not include a member of a defence service ⁷ or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence, ⁸ and these persons therefore, while falling under Article 309 and 310 do not enjoy the protection of Article 311. A member of the police force, however is a “Civil Servant”⁹ officers and members of a High Court are Civil Servant. ¹⁰

(iv) Civil Post

A Civil post means an appointment or office on the civil side and includes all personnel employed in the civil administration of the union or a state. ¹⁰

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¹ Dharam Vs Union of India (1980) U.J. SC 293
² State of M.P. Vs Ram Naresh (1970)3 SCC 173(176-77)
³ Sampuram Vs State of Punjab AIR 1982 SC 1407 (Para 1)
⁴ Mahadev Vs Chatterjee AIR 1954 Pat. 285 Ankul Vs CIT AIR 1962 Cal. 3
⁵ Motiram Vs General Manager AIR 1964 SC 600
⁷ Inder Singh Vs India AIR 1969 Del. 220
⁸ Lekhraj Vs India AIR 1971SC 2111.
⁹ Jagannath Prasad Vs Uttarpradesh AIR 1981 SC 1245
¹⁰ Pradhyat Kumar Vs Chief Justice Calcutta High Court AIR 1958 SC 285 Akhil Kumar Vs Uttar Pradesh AIR 1960 All, (193)
What, however, is necessary to make a civil post under the Government is the relation of master and servant. Some of the factors may constitute the relationship between master and servant such as (1) who selects the employee, (2) who appoints him (3) who pays him the remuneration or wages (4) who controls the method of his work (5) who has power to suspend or remove him from the employment (6) who has a right to prescribe the conditions of service (7) who can issue direction to the employee. ¹

(v) Cadre

Cadre means "the strength of a service or a part of a service sanctioned as a separate unit" ²

It is competent for an appropriate authority to create a post outside ³ or in addition to the cadre or regular establishment of a particular office.

(vi) Permanent Post

A Permanent post means a post carrying a definite rate of pay sanctioned without a limit of time. ⁴

An appointment to a permanent post may also be on a temporary basis, e.g. until further orders in which case the position of the employee is no better than in the case of an appointment on an officiating basis. ⁵

(vii) Temporary Post

"A Temporary post means a post carrying a definite rate of pay sanctioned for limited time." ⁶

The tenure of a temporary post may be for a certain special period or for a year and renewed from year to year.

Again the status of holders of temporary post which are allowed to continue indefinitely has been improved by the doctrine "Continuous officiating" evolved by the Supreme Court. ⁷

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¹ Uttar Pradesh Vs Audh Narain Singh AIR 1965 SC 360
² (2) F. R. 9(22)
³ (3) F. R. 9(13)
⁴ (4) F. R. 9(22)
⁵ (5) Ramachandra Vs Secy. to Govt. of W.B. AIR 1965 Cal. 265 (275)
⁶ (6) F.R. 9 (30)
⁷ (7) Gupta Vs Pandey AIR 1988 SC 654 (Para 14)
(viii) Quasi Permanent Status

The central civil services (Temporary service) rules 1949, have conferred a security of tenure upon a class of temporary Government servants by creating a Quasi Permanent Service. According to Rule 3 of these rules, a Government Servant shall be deemed to be in quasi permanent service –

(i) If he has been in continuous Government service for more than 3 years.

(ii) If the appointing authority, being satisfied as to his suitability for employment in a quasi permanent capacity, has issued a declaration to that effect.

Both the conditions must be satisfied. Hence, a declaration under rule 3 is essential before a persons service can be regarded as quasi permanent and the quasi permanent takes effect from the date of declaration (Rule 2 b)

(ix) Status

A person who has been appointed substantively to a permanent post acquire the legal right to continue in that post until any of the following contingencies happens:

(a) Superannuation

(b) Abolition of that post in the exigencies of public service.

(c) Compulsory retirement according to the relevant rules.

(d) Removal or dismissal in conformity with Article 311 (2) of the constitution.

(X) Dismissal, Removal and Reduction in Rank

The expression dismissal, removal and reduction in rank are technical words taken from the civil service (classification, control and appeal) rules, where they are used to denote the three major categories of punishment. It is by now well settles that from the constitutional stand points “removal” and “dismissal” stand on the same footing except as to future employment.

(1) Champaklal Vs Union of India AIR 1964 SC 1854
(2) Srinivasan Vs Union of India AIR 1958 SC 419
(3) Motiram Vs N.E.F. Rly AIR 1964 SC 600 (610)
(4) State of Bombay Vs Subhaschand AIR 1957 SC 892
(5) Parshottam Vs Union of India AIR 1958 SC 38
(6) Ramanath Vs State of Kerala AIR 1973 SC 2641
(7) State of Bombay Vs Subhaschand AIR 1957 SC 892
(8) Parshottam Vs Union of India AIR 1958 SC, 36
(9) Khemchand Vs Union of India AIR 1958 SC 300 (Para 13) P.L. Dhingra Vs Union of India AIR 1958 SC 36 (Para 25)
Difference between removal and dismissal is that while a servant who is dismissed is not eligible for appointment under the Government, but not in case of removal.

The expression "reduction in rank" means reduction of an employee from a higher to a lower rank.

Reduction in rank means the degradation in rank or status of the officer, directed by way of penalty.

When reduction in rank is imposed as a punishment, Article 311 (2) becomes applicable. When a civil servant has a right to a particular rank, his reduction from that rank operates as a penalty as he loses the emoluments and privileges of the rank.

(xii) Arbitrary Termination

The regulation permitting employer to terminate the services of workman on three months' notice or salary in lieu is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is naked "hire and fire" rule, the time for banishing which altogether from employer — employee relationship is fast approaching.

(xii) Suspension

Suspension of a Government servant pending an enquiry does not amount to dismissal or removal as it does not put an end to his service. He continues to be a member of the service in spite of his suspension, though he is not permitted to work and he draws only a subsistence allowance which is usually less than his salary.

(xii) Compulsory Retirement

Compulsory retirement of a civil servant when the service rules so provide, earlier than normal superannuation, is regarded as different from dismissal or removal. While dismissal or removal is a punishment as it results in the Government servant concerned to him in respect of the service already put in by him, compulsory retirement is not penalty as

(1) Mohd. Abdul Salam Khan Vs Sarfaroz AIR 1925 SC 1064
(1) High Court Vs Amal Kumar AIR 1962 SC 1704
Champaklal Vs Union of India AIR 1964 SC 1854
(2) High Court Vs Amal Kumar AIR 1962 SC 1704 Champaklal Vs Union of India AIR 1964 SC 1854
(3) W.B. State Electricity Board Vs Desh Bandhu Ghosh AIR 1985 SC 429 Para 24.
(4) Orissa Vs Shiva Prashad Das, AIR 1985 SC 701
the servant retired is entitled to pension proportionate to the period of service already put in by him. Normal superannuation takes place after the employee has put in 25 years service or has reached the age of 50 years.

The Supreme Court has laid down the principle that the rule providing for compulsory retirement “must nor only contain the outside limit of superannuation but there must also be a provision for a reasonably long period of qualified service”.

Compulsory retirement does not attract the safeguard of Article 311 (2) as it is not regarded as a punishment.

Compulsory retirement may be challenged on the following grounds –

That it amounts to a removal. Article 311 (2) is unconstitutional and invalid, Malafide, arbitrary or perverse.

(xiv) Resignation

The services of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority unless there is some rule to the contrary. However, it is open to the Government servant to make his resignation operative from a future date and to withdraw it such resignation before it is accepted.

Article 311 (2) is not attracted because there is no dismissal where the employee voluntarily tenders his resignation and that is accepted by the Government.

(xv) Misconduct

The word “misconduct” though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, willful in character forbidden act a transgression of established and definite rule of action or code of conduct but nor mere error of judgment.

(1) Takhetray Shivdattatray Mankar Vs Gujarat AIR 1970 SC 143
(2) Dineshchand Vs Assam AIR 1978 SC 17
(3) State of Bombay Vs Nurul Latif AIR 1966 SC 289
(6) ibid.
(7) Rajkumar Vs India AIR 1969 SC 180
(8) P. Kasilingam Vs P.S.G. College of Technology AIR 1981 SC 789
(9) Rajkumar Vs India AIR 1969 SC 180
carelessness or negligence in performance of the duty: the act complained of bears forbidden quality or character. Thus where a police constable on duty takes heavy drink, it constitute gravest misconduct warranting dismissal from service. 1

Married Government Servant Living with another Woman
If a Government Servant who is already married lives with another woman and having children by her, it is misconduct. 2

Drawing HRA on false certificate
An employee drawing house rent allowance on the basis of false certificate is guilty of misconduct. 3

The word "Misconduct" has not been defined in any statute or statutory rule, its general application, however is that it involves the transgression of some established and definite rule of action, where no discretion is left except what necessity may demand. It is a violation of a definite law, a forbidden act. It differs from carelessness. 4

Conduct which incompatible and inconsistent with the faithful discharge of obligation is misconduct. 5

Misconduct means the conduct which is blame worthy for the Government servant with context of conduct rules and if he conducts himself in a way inconsistent with the due and faithful discharge of his duty and service. 6

(xvi) Moral Turpitude
The term moral turpitude has generally been taken to mean a conduct contrary to justice, honesty or good morals and contrary to what a man over to his fellowman or society in general. 7

Theft, robbery, criminal breach of trust amount to moral turpitude. 8

(1) State of Punjab Vs Ram Singh AIR 1992 SC 2188 (Para 5, 8)
(2) Ministry of Finance Vs S.B. Romesh AIR 1998 SC 853 (Para 8)
(3) D.G. Indian Council of Medical Research Vs Anil Kumar Ghosh AIR 1998 SC 2592 (Para 3)
(5) Dy. Director Bishop Cotton School Management Committee Vs M.Yakub 1976 (1) SLR.457 (Bom)
(6) Union of India Vs Ahamad 1979 (1) SLR 840 (SC)
(8) 1977 (2) SLR 524 Mungli Vs Chakki AIR 1963 All 52
(xvii) Misbehaviour

Misbehaviour has not been defined anywhere in the constitution. However, the following facts, if proved by the evidence, would constitute "misbehaviour".

(i) That a member had slapped the chairperson (a lady) of a state public service commission in the presence of other members.

(ii) That the chairman tampered, forged mark sheets to favour certain candidates introduced a new system of viva voce test which would facilitate such manipulation and accepted bribery from a candidate.

Where misconduct, misbehaviour etc are the grounds and elements of charges against Government Servant, we find at the same time malice, malafide and unrestricted discretionary powers in the hands of superior, enquiry, disciplinary or appointing authorities and in most of the cases they use these elements as weapons freely against the silent employees. Let us see the attitudes of the judiciary in this regard.

(xviii) Malice

Malice or "improper motive" is to be found in the case of "Pratap Singh Vs State of Punjab" in which the Supreme Court by a majority judgement set a side an order of suspension and departmental proceedings against a civil surgeon on the ground that the order of the Government was made at the instance of the Chief Minister who had grudge against the appellant.

Similarly the court set aside an order of reversion of an adhoc or probationer employee with the express purpose of depriving her of the benefit of the rules providing for "regularization" in such cases.

Court is entitled to enquire whether the punishing authority has committed an "excess" or "abuse" of his power or has exercised the power for a purpose wholly extraneous to the purpose for which it was vested in the authority, namely "to ensure probity and purity in the public services by enabling disciplinary penal action against the members of the service suspected to be guilty of misconduct."

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(1) In the Megha Chandia (1994) 1 U.J. SC 465 (Para 5)
(2) Reference under Act 317 (1) 1983 SC 996 (Para 6-8)
(3) Pratap SSingh Vs State of Punjab AIR 1984 SC 72 (82-84)
(4) State of U.P. Vs Jaya (1994) 1 U.J. SC 266 (Para 4)
The state of Man’s mind is hardly capable of proof by direct evidence but may be
deduced as a reasonable and unescapable interference from proved facts that the authority
had used his power for a purpose other than the purpose just mentioned, and in such a
case the court is bound to give relief under Article 226. 1

(xix) Malafide

The order is vitiated but “Malafides” if it is passed by the authority without applying
its mind, 2 either as to the guilt of the person charged or the penalty to be imposed or upon
extraneous considerations e.g. the directions issued by a superior administrative authority
which were not disclosed to the delinquent Government servant 3 or it was made for a
purpose or upon a ground other than what is mentioned on the face of the order. 4

“Malafide” may also be established by showing that the order was intended to be a
punishment for a misconduct even though no reason were given for the order, say an order
of reversion 5 it is substance and not the character of the order that matters. 6

(5) Operation of Article 311(2)

Article 311(2) is attracted only when a civil servant is “reduced in rank” 7 or dismissed
or removed (that is to say, his services are terminated) before the normal period of his
services and against his will 8 by way of penalty.

Where a Government servant has the right to hold a post either according to contract
or the conditions of his service, the mere fact of termination of his service will be deemed to
be penal and Article 311(2) will be attracted.

Services of the following classes of Government servants cannot be terminated
without compliance with Article 311(2)

(i) Termination of the service of a Government servant holding a permanent post
substantively prior to the age of superannuation except by way of compulsory
retirement according to the rules. 9

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1 Madho Singh Vs State of Bombay AIR 1960 Bom. 285 (289)
2 State of Orissa Govind Das (1958) SC (CA 288 (58)
3 Rama Rao Vs Accountant General A 1963 Bom 121 (133)
4 Puranlal Vs Union of India AIR 1958 SC 163 (172)
5 Sukhans Vs State of Punjab AIR 1962 SC 1711
6 Jagdish Vs Union of India AIR 1964 SC 449.
7 Shyamlal Vs State of U.P. AIR 1954 SCR 476
8 Jalshankar Vs State of Rajasthan AIR 1966 SC 492
9 Motiram Vs N.E.F. Rly AIR 1964 SC 600 (610, 612)
(ii) Premature termination of services of Government servant holding a temporary post for a fixed term.  

(iii) Termination of the service of persons in 'quasi-permanent' service otherwise than according to Rule 6 of the central civil services (Temporary Services) Rules 1949.

This right cannot be defeated by an administrative exigency or by abolition of the post itself or the entire cadre to which the post belongs because the Government servant in question had a right to hold that post until superannuation or compulsory retirement under the rules, and the right can be taken away only in manner laid down in Article 311(2) of the constitution.

Article 311(2) would be attracted, if the Government takes the view that simple termination of service is not enough and that the Government servant deserves punishment. The two conditions necessary for the application of Article 311(2) in such cases are –

(i) That such punishment is intended to be awarded on the ground of Government servants misconduct inefficiency negligence and the like.

(ii) That the Government intends to inflict penal consequences upon the Government servant, by way of loss of benefits already acquired by him (e.g withholding a part of salary earned) or loss of seniority or chances of future promotion in this substantive rank (if any) or any stigma is added to the order.

It has been settled that a termination is intended to be penal so as to attract the operation of Article 311, not only where it is imposed in some misconduct but also where it is imposed on some ground which is capable of being explained that is to say against which it is possible for the Government servant to show cause Article 311(2) is attracted.

(1) Parsottam Vs Union of India AIR 1958 SC 36.
(2) Jai Shankar Vs State of Rajasthan AIR 1966 SC 492
(3) Motiram Vs N.E.F. Rly AIR 1964 SC 600 (610, 612)
(4) Union of India Vs Tulsiram AIR 1985 SC 1416 (Para 4) Murari Vs Secy. of State AIR 1985 SC 931 (Para 11-12)
(6) Union of India Vs Tulsiram AIR 1985 SC 1416 (Para 4)
(7) Rajinder Vs State of Punjab (1986) 4 SCC 141 (Para 4, 13) Union of India Vs Jeewan Ram AIR 1958 SC 905
(8) Jai Shanakr Vs State of Rajasthan AIR 1966 SC 492
(9) Balakotiah Vs Union of India AIR 1958 SC 232
(10) Rajinder Vs State of Punjab (1986) 4 SCC 141 (Para 4, 13)
e.g. where the service is terminated on the ground of inefficiency, physical or mental incapacity, lack of will or negligence to discharge the duties of the office absenting without leave and reasonable cause or over staying on expiry of leave.

Article 311(2) would also be attracted—

(i) Where the withdrawal or reduction of subsistence allowance during suspension interferes with the employees effective defence in a pending disciplinary proceedings.

(ii) Where a transfer to another post deprives the employees of the ‘Special Pay’ attached to his existing post or where the transfer is based on an allegation of misconduct of inefficiency.

(iii) Where the petitioner who had been appointed on the basis of competitive examination, and later promoted to a higher post are sought to be reverted, after a long lapse of time, on the ground that the process of appointment was against the rules.

(6) Reasonable opportunity to Show Cause Procedure:

According to Article 311(2), a Civil Servant is not to be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

The concept of reasonable opportunity to show cause is synonymous with natural justice. According to the supreme court Article 311(2) gives a constitutional mandate to the principle of natural justice.

According to 311(2) there must be an enquiry into the charges made against a Government servant before any of the three punishments is awarded to him.

Our constitution guarantees to the Government servants a fair enquiry into their conduct. The enquiry should therefore be in accordance with the principles of natural justice.

1 The delinquent servant should be informed of the charges against him. This requirement

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(1) Shamset Vs State of Punjab AIR 1974 SC 2192 (Para 63, 64)
(2) Parshottam Vs Union of India AIR 1958 SC 36 (49)
(3) Isher Das Vs State of Pepsu AIR 1952 Pepse 148
(5) Jaishankar Vs State of Rajasthan AIR 1966 SC 492 (494)
(6) Ghanshyam Vs State of M.P. AIR 1973 SC 1183 (Para 4-5)
(8) Usmani Vs Union of India (1995) 2 SCC 377 (Para 8)
(10) Nand Kishore Vs Bihar AIR 1978 SC 1277
is specially laid down in Article 311 (2). The charges must be clear, precise, and accurate. If a charge is vague the enquiry may be vitiated. As for example a vague accusation that a Government servant accepted bribe is not sufficient. He should be given particulars of specific acts of accepting bribes. ¹

Along with the charges, the Government servant concerned should also be informed of the evidence by which those changes are sought to be substantiated against him. ² After the charges have been intimated to the servant concerned, a formal hearing is to be held into those charges. Personal hearing is a part of reasonable opportunity and if it is demanded by the delinquent servant it cannot be refused. ³ At the enquiry, he must be given full opportunity to answer the charges leveled against him and to put up his defence by demonstrating that the evidence against him is untrue and unreliable. For this purpose the employee charged must be provided with an opportunity to cross-examine the witnesses produced against him. ⁴ Further all evidence, must be given in his presence. Finding a person guilty on the basis of evidence recorded behind his back is a violation of the principle of natural justice. ⁵ However, statement of the witnesses taken at the preliminary inquiry can be used of the time of the formal inquiry provided that statements are made available to the accused employee and he is given opportunity to cross examine the witnesses in respect of those statements. ⁶ A mere synopsis of those statements does not satisfy the requirements of Article 311 (2) ⁷

No material should be relied on against the accused employee without giving him an opportunity to explain it. ⁸

The enquiry officer should not make private enquires behind the back of the employee. If it is done, the evidence against him must be disclosed to him. An inquiry is vitiated if the finding are based on secret information which the accused officer had no opportunity of meeting. ⁹ Therefore, the enquiry officer can refer to the post conduct of the accused servant only after giving him an opportunity to explain it. ¹ The accused servant should be given an opportunity to give his testimony. He should have an opportunity of adducting all relevant evidence.

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¹ Surath Chandra Chakravarthy Vs W.B. AIR 1971 SC 752
² Tribhuwan Vs Bihar AIR 1960 Pot 116
³ Punjab Vs Karamchand AIR 1959 Punj. 402
⁴ Madhya Pradesh Vs Chintaman AIR 1961 SC 1623 Bhagatram Vs Himachal Pradesh AIR 1983 SC 454
⁵ Gaurishankar Vs Orissa AIR 1985 Ori 30
⁶ Uttar Pradesh Vs O.P. Gupta SC 1255
⁷ Punjab Vs Bhagatram AIR 1974 SC 2335
⁸ Punjab Vs Dewan Chunnilal AIR 1970 SC 2086
⁹ Mysore Vs Makapur AIR 1963 SC 375 Assam Vs M.K. Das AIR 1970 SC 1255
¹⁰ Nanjadeshwar Vs Mysore AIR 1960 Mys. 159
evidence on which he rules and examine witness in his defence. ¹

The enquiry officer should attempt to secure the attendance of defence witnesses. Without so trying he cannot take shelter behind the plea that he has no legal authority to compel their attendance. Refusal on his part to summarise witnesses may vitiate the inquiry. ²

But the right of the servant charged to cross examine witnesses and produce own witnesses can be controlled by the enquiry officer so as to see that cross examination is not done in an irrelevant manner, or that irrelevant evidence is not given. The enquiry officer has to ensure that the enquiry proceedings are not unduly or deliberately prolonged.³ All materials which are logically probative for a prudent mind are permissible.⁴

The Government servant against whom an enquiry is being held has a right to argue his own case, for the right to argue is deemed to be a part of personal hearing to which he is entitled.

When there is no oral evidence to be recorded and so need to cross examine witnesses and no legal complexity in a case absence of a lawyer does not amount to denial of natural justice.⁵

But there may be circumstances, when it may be regarded just to permit the help of a lawyer as a part of “reasonable opportunity” to defend himself as for example when the case is complicated and long and a large number of witnesses have to be examined.⁶

When the case against the officer is being handled by a trained prosecutor (though not a lawyer) it is good ground for allowing him to engage a legal practitioner to defend him.⁷ When however the employer appoints a legally trained person as the presenting officer, the delinquent employee must also be allowed to take the assistance of a lawyer.⁸

Under Rule 15 (5) of the Central Civil Services (classification control and appeal) Rules, 1967, a Government servant may present his case with the assistance of any Government servant approved by the disciplinary authority or with his permission through a lawyer. This is a mandatory rule. Denial of assistance of any Government servant to an accused officer at the enquiry against him amounts to denial of reasonable opportunity to defend himself. The Supreme Court has gone further and insisted that the justice and fair

(1) Khemchand Vs India AIR 1958 SC 300
(2) Hanif Vs Supdt. Police AIR 1957 All.
(3) Bomaby Vs Nurul Khan AIR 1966 SC 269
(4) K.L. Shinde Vs Mysore AIR 1976 SC 1080
(5) Hari Preasad Vs C.I.T. AIR 1972 SC Cal. 27
(6) Dr. K. Subharao Vs Hyderabad AIR 1957 A.P. 414 Jeevan ratnam Vs Madras AIR 1966 SC 951
(7) C.L. Subramaniam Vs Collector of Customs AIR 1972 SC 2178
(8) Board of Trustees, Bombay Port Vs Dilip Kumar AIR 1983 SC 109
play demand that when in a disciplinary proceeding, the department is represented by a presenting officer, like delinquent officer should be informed that he has a right to take the help of another Government servant from is department to defend him. When at the enquiry against a class IV employee the Government was represented by a presenting officer, but not the employee and he was not informed of his right to seek assistance of another Government servant in the department to represent him, the Supreme Court held the enquiry was vitiated and the order of dismissal based on such enquiry was quashed.¹ Reason must be given for their decision by the enquiry officer as well as disciplinary authority.²

Bias of the inquiry officer vitiates the inquiry. The inquiry officer should be a person with an open mind. He should not either be biased against the person against whom the inquiry is to be held or prejudge the issue or have a foreclosed mind or predetermined notions.³ An enquiry by a person who is biased against the charged officer is a clear denial of reasonable opportunity.⁴ One and the same person cannot be a witness and a judge. Therefore, the enquiry officer cannot be a witness against the Government servant against whom he is holding the enquiry. Such a procedure denotes a biased state of mind against the servant concerned.⁵ No person can be a judge in his own cause.

The inquiry is improper, if the enquiry officer delegates the task of hearing witnesses to someone else and then decides the case upon the mere record of evidence.⁶

The punishing authority has to make its own mind as regards the guilt of the accused servant and the punishment to be meted out to him on the basis of the evidence before him. In this the enquiry officers finding can assist, but do not bind the punishing authority.⁷

(7) Discretion of Punishing Authorities: (Article 311 (2))

As we observed, Article 311 (2) imposed only procedural safeguard and no substantive restriction. Therefore, the consideration on which punishment is imposed or the quantum of punishment awarded to a delinquent servant all lie within the discretion of the punishing authorities. The constitution merely guarantees reasonable opportunity of

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¹ Bhagatram Vs Himachal Pradesh AIR 1983 SC 454
² A.L. Karla Vs P&E Corpn. Of India AIR 1984 SC 1361
³ B. Martin Vs India AIR 1976 Knt. 144 Sunil Kumar Vs West Bengal AIR 1980 SC 1170
⁴ U.P. Vs C.S. Sharma AIR 1963 All. 94 Mohinder Singh Vs Supat of Police AIR 1969 ASSG. 1
⁵ Uttar Pradesh Vs Nooh AIR 1958 SC 86
⁶ Amulya Kumar Vs L.M. Bakshi AIR 1958 Cal. 470
⁷ India Vs Goel AIR 1964 SC 354 Krishna Chnader Vs India AIR 1974 1589
showing cause against the proposed punishment but not that the punishment should not exceed any prescribed standard. ¹

Discretion of the punishing authority to punish remains subject to Article 14 and 16 of the constitution as well as to the general principles of Administration law governing the exercise of discretion powers.² Thus, in Pratap Singh Vs Punjab the Supreme Court quashed the Government order suspending the appellant and ordering an enquiry against him on the ground that the order was vitiated by malafides insofar it was motivated by an improper purpose which was outside the purpose for which the discretion to punish had been conferred on the Government.³

As a sequence to police agitation, the state Government dismissed 1100 members of the police force for participation in the agitation. Later 1000 of them were reinstated. The Government was not able to explain what criteria were applied to distinguish between those who were reinstated and those who were not. The court rules that the petitioner had been arbitrarily weeded out for discriminatory treatment as compared to others who were similarly situated. The treatment meted out to the appellants was held to be arbitrary which amounted to denial of equal treatment under Article 14.⁴

In Karla,⁵, the Supreme Court held that order of dismissal to be arbitrary as the facts established did not amount to misconduct warranting dismissal. The punishment imposed should be consonant with the gravity of the offence.⁶

As the Supreme Court has emphasized in Tulsiram Patel case, that the disciplinary authorities are expected to act justly and fairly after taking into account all the facts and circumstances of the case and if they act arbitrarily and impose a penalty which is underly excessive, capricious or vindictive it can be set aside in the departmental appeal.⁶ In Shnakar Das Vs India, the order of dismissal was set aside on the ground that the penalty was whimsical and the concerned Government servant was ordered to be reinstated with full back wages. The court may not however always reinstatement. It may substitute a penalty which in its opinion would be just and proper in the circumstances of the case.⁷

When a Government servant satisfies the court prime facie that an order terminating

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¹ A.N. D.Silva Vs India AIR 1962 SC 1130 U.R. Bhatta Vs India AIR 1962 SC 1344
² Jain and Jain Principles of Administrative Law Ch. XV.
³ Pratap Singh Vs Punjab AIR 1964 SC 72
⁴ Senghara Singh Vs Punjab (1983) 4 SCC 225
⁵ A.L. Kalra Vs P&E Corpn. Of India AIR 1984 SC 1381
⁶ Union of India Vs Tulsiram Patel (1985) 3 SCC 398
⁷ Shnakar Das Vs India AIR 1985 SC 772
his services violates Article 14 and 16, the competent authority must discharge the burden of showing that the power to terminate the services was exercised honestly and in good faith, on valid considerations, fairly and without discrimination.  

(8) **Proviso to Article 311 (2)**

First proviso to Article 311(2) has been introduced by 42nd Amendment Act 1976. It has dispensed with the requirements of serving a second notice to show the cause against the penalty proposed after the enquiry into the charges is over. Hence, no defence in such notice can now nullify the disciplinary action.

(8) **Proviso 2(a): “Conviction on a Criminal Charge”**

Proviso 2(a) of Article 311(2) make the delinquent Government servant who was convicted on a criminal charge, liable to dismiss without any further proceeding under Article 311(2). 2 It includes conviction under any law which provides for punishment for a criminal offence 3 whether by fine or imprison 3. No distinction is made between crimes involving moral turpitude and other crime statutory offences 3. Thus 4 conviction for drunkenness would attract the proviso: similarly conviction under section 29 4 or 34 of the police Act are attracted.

However, the Supreme Court has held that the charge in the criminal case must relate to a misconduct of such magnitude as would have deserved the penalty of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment other than dismissal, removal or reduction in rank, the 2nd proviso cannot come into play at all, because Article 311(2) itself is confined to those three penalties only. 5

(8) **Proviso 2(b): “Decision of the authority not to give opportunity, where it is not reasonably practicable.”**

Under this proviso, no enquiry need be held if the appointing authority records it in writing that it is not reasonably practicable to hold such enquiry. In order to apply this protection to the order of dismissal etc., the following conditions must be satisfied –

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1. Nepal Singh Vs Uttar Pradesh AIR 1985 SC 84
2. Tirkha Vs S Seth AIR 1988 SC 285
5. Union of India Vs Tulsiram AIR 1985 SC 1416 (Para 54, 60-62)
(i) This proviso is attracted when the authority is satisfied from the materials placed before him that it is not reasonably practical to hold a departmental enquiry. There must be independent materials to justify the dispensing with the inquiry envisaged by article 311(2)\(^1\). Where it is evident that there was no material to hold that an inquiry was not reasonably practical the disciplinary action will be set aside under article 226 or by administrative tribunal even though the illegal order had been affirmed in appeal or revision\(^2\).

(ii) The satisfactory must be that of authority who is empowered to dismiss, remove or reduce the officer in rank and he must apply his mind to it\(^3\). Where he simply carries out the orders of some superior authority and dismisses a subordinate outright, the validity of the order can not be sustained on the ground that the power under present proviso was exercised.\(^4\)

The competent authority would, however be disqualified to make this order if he is in the position of a witness in support of the charges\(^5\).

(iii) The authority empowered to dismiss etc. must record his reasons in writing\(^6\) for denying the opportunity under CI (2) before making the order of dismissal etc.

(iv) The reasons recorded must ex facie show that it was not reasonably practice to hold a disciplinary inquiry\(^7\) and not be vague\(^8\) or irrelevant\(^9\).

(v) The power must be exercised bonafide having regard to relevant consideration\(^10\).

(11) PROVISO 2 (c) Interest of Security of the State:

It has been held that there might be cases where the more disclosure of the charge might effect the security of the State. In such case the president or the Governor might exempt the holding of an inquiry as required by article 311 (2)\(^11\).

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(1) Jaswant Vs State of Punjab (1991) 1 SCC 362 (Para 5)
(2) Union of India Vs Raddapa (1993) 2 UJ SC 568 (Para 5)
(3) Union of India Vs Tulsiram [AIR 1985 SC 1416 (Para 133), Bakshi Vs Union of India AIR 1987 SC 2100 (Para 8)]
(4) Bhugiram Vs Supdt. Of Police AIR 1954 Assam 18 (22)
(5) Union of India Vs Tulsiram [AIR 1985 SC 1416 Para 133, Arjun Vs Union of India (1984) 2 SCC 578 (Para 3)]
(6) Union of India Vs Tulsiram AIR 1985 SC 1416 Para 133, Arjun Vs Union of India (1984) 2 SCC 578 (Para 3)
(8) Union of India Vs Tulsiram AIR 1985 SC 1416 Para 133, Arjun Vs Union of India (1984) 2 SCC 578 (Para 3)
(10) Union of India Vs Tulsiram AIR 1985 SC 1418 Para 133, Arjun Vs Union of India (1984) 2 SCC 578 (Para 3)
(12) Clause (3) Finality of decision under Proviso (b)

(i) In cases coming under clause (2) Proviso (b) the decision of the authority concerned as to the impracticability of giving notice will be final.

(ii) But clause (3) will apply only if a proper decision has been made in the manner required by that proviso. Hence unless there is an order in writing stating the reason why it is not reasonably practical to give an opportunity to show cause, neither proviso (b) to clause (2), clause (3) can be invoked.

(13) Effect of Non compliance:

Both clauses (1) and (2) of Article 311 are Mandatory. They constitute express provisions of the constitution which qualify clause (1) of Article 310. Hence, dismissal by an authority lower than appointing authority, and dismissed without giving reasonable opportunity of showing cause are equally void and inoperative and therefore actionable. Similarly where there is failure to comply with Article 311 (2) at the original stage, the order of punishment becomes null and void.

Article 312 (1) All India Services:

(1) Provision-

(1) Not with standing anything in chapter VI of part VI or part XI, it the council of states has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do, parliament may by law provide for the creation of one or more all India services (including all India Judicial services) Common to the union and the states, and, subject to the other provision of this chapter, regulate the recruitment and the conditions of service of persons, appointed to any such service.

(2) The services known at the commencement of this constitution as the Indian Administration service and the Indian police service shall be deemed to be services created by parliament under this Article.

(3) The all India Judicial service referred to in clause (1) shall not include

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(1) Union of India Vs Tulsiram AIR 1985 SC 1446 (para 133)
(2) Union of India Vs Tulsiram AIR 1985 SC 1446 (para 133)
(3) Union of India Vs Jeewan Ram AIR 1958 SC 905
(4) State of U.p. vs Audh-Narain AIR 1965 SC 360 (364)
(5) Inserted by the Constitution (42nd Amendnur) Act 1976
(6) Inserted by the Constitution (42nd Amendnur) Act 1976
any post inferior of a district Judge as defined in Article 236

(4) The law providing for the creation of the All-India-service aforesaid may contain such provision for the amendment of chapter VI of part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this constitution for the purpose of Article 368

(2) Common to the Union and the states:

Since members of the all India service are common to the union and the states the posting of a member of such services, working in a state to a post under the union should be considered as on deputation unless the order of posting says so specially. 2 'State include a union territory'.

Clause (3) — (4)

These clauses were inserted and corresponding amendments made in clause (1) by the constitution (42nd Amendment) Act 1976 with the object of creating an All India Judicial service to include District Judge and judges superior there to, by enacting a law of parliament creating it, superseding the provisions relating to "subordinate courts" in chapter VI of part VI which will be deemed to have been amended protanto by such law of parliament.

The Supreme Court has in this behalf, issued. The following directions, inter alia, in the All India Judges case 4

(1) An All India Judicial service is to be set up 5

(2) Uniform designations to be provided for officers both in the Civil and criminal sides 6

(3) Retirement age to be raised to 60 Years

(4) Appropriate pay scales for judicial officers be specifically referred to by the pay commission 7

(5) Residential accommodation to be provided to every Judicial officer. 8

(1) Inserted by the constitution (42nd Amendment) Act 1976
(2) Debesh Chandra vs Union of India (1969) 2 SC 158 188
(3) Union of India Vs Prem F=2 767. SC 1856
(4) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(5) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(6) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(7) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(8) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(6) Every district Judge and chief Judicial Magistrate should have a state vehicle and judicial officer in sets of 5 should have a pool vehicle ¹

(7) Service Training institute should be established ²

(8) All the lowest rung of the judicial service legal practice of 3 years should be an essential qualification. ³

In view of the establishment of a national judicial academy, direction 7 has been made optional.

Article 312-A- Power of parliament to vary or revoke conditions of service of officers of certain services.

(1) Parliament may by law-

(a) Vary or revoke, whether prospectively or retrospectively the conditions of service as respects remuneration, leave, and pension and the rights as respect disciplinary matters of persons who having been appointed by the secretary of state or secretary of state in council to a Civil service of the crown in India before the commencement of this constitution (Twenty-Eights Amendment Act 1972 to serve under the Government of India or of a state in any service or post.

(b) Vary or revoke, whether prospectively or retrospectively the conditions of service as respect pension of persons who, having been appointed by the secretary of state or secretary of state in council a Civil Service of the Crown in India before the Commencement of this constitution retired or otherwise ceased to be in service of any time before the commencement of the constitution (28th Amendment Act 1972) provided that in case of any such person who is holding or has held the office of the chief justice or other judge of the Supreme Court or a High Court the comptroller and Auditor General of India, the Chairman or other member of the union or a state public Service Commission or the chief election commissioner nothing in sub-clause (a) or sub clause (b) shall be construed as empowering parliament to vary or revoke after his appointment to such post, the conditions of his service to his disadvantage except in so far as such conditions of service are applicable to him by reason of his being a person appointed by the secretary of state or secretary of state in

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(1) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(2) All India Judges, Association Vs union of India (1993) 4 SCC 288 (Para. 52)
(3) Ibid - Para .49
(4) Article 312 A was inserted by the constitution (28th Amendment) ACT 1972 W.E.F. 27-8-1972
council to a civil service of the crown in India.

[2] Except to the extent provided for by parliament by law under this Article nothing in this Article shall affect the power of any legislature or other authority under any other provision of this constitution to regulate the conditions of service of persons referred to in clause (1)

[3] Neither the Supreme Court nor any other courts shall have jurisdiction in—

(a) any dispute arising out of any provision of, or any endorsement on any covenant agreement or other similar instrument which was entered into or executed by any person referred to in clause (1), or arising out of any letter issued to such person, in relation to his appointment to any civil service of the crown in India or his continuance in service under the Government of the Dominion of India or a province thereof.

(b) Any dispute in respect of any right, liabilities or obligation under Article 314 as originally enacted.

(4) The provision of this Article Shall have effect notwithstanding anything in Article 314 as originally enacted or in any other provision of this constitution.

(4) Object of Article 312 A

1. By the constitution (28th Amendment) Act 1972 Article 314 was omitted and Article 312 A was inserted. Article 314 was placed on the original constitution in order to safeguard the right of members of I.C.S. and other civil servant appointed by the British crown, who continued in the service of the Government of India after the commencement of the constitution. As a result of this provision, special privileges were enjoyed by the members of these service as compared with members of corresponding rank appointed after Independence. Several cases went up to Supreme Court and controversy gathered around the words "as changed circumstances may permit" 1 In order to obviate such controversies arising out of the constitutional protection of the special privilege of these Government Servants, which prima facie offended the principle of equality Article 314 was repealed and Article 312-A, was inserted by the 28th Amendment in 1972.

2. By Article 312 A parliament was empowered to revoke the conditions of service enjoyed by this class of covenanted services and to legislate to regulate their conditions of service unhampered by any interference from any court. In exercise of this power, parliament enacted the former secretary of state service officers (conditions of Service) Act 1972, so that a member of such service lost his pre-independence privileges such as payment of pension in sterling. There is nothing to the contrary in the High Court Judges (conditions of service) Act 1954.

(1) Article 313. Transitional Provision:

Until other provision is made in this behalf under the constitution all the laws in force immediately before the commencement of this constitution and applicable to any public service or post which continues to exist after the commencement of this constitution as an all India service or as service or post under the union or state shall continue in force so far as consistent with the provisions of this constitution.

(2) Existing Laws relating to services:

Under the constitution the union and state legislatures have power to make laws to regulate the respective services under the union and the state Government (Entries 70, list and 41 of list II). But until such laws are made the existing laws relating to the services shall continue to be in force.

(3) 'Until other Provision is Made'—

(1) These words refer either to an Act or the rules made under Article 309. Hence even though the orders of the Ruler of an Indian State had the force of an Act of a sovereign legislature, it is competent for a Governor (or the president) to make rules under the proviso, to Article 309, superseding the orders of the Ruler relating to the Services.

(1) Union of India Vs Raju AIR 1982 SC 1174
(2) Union of India Vs Raju AIR 1982 SC 1174 Raju vs state of Gujrat AIR 1974 SC 2055
(3) State of Punjab Vs Ram Prasad AIR 1963 Punj. 345 (349)
(2) Instead of making new Rules, the rule making authority, under Article 309, is competent to amend the existing Rules by reason of Article 372.

(4) Law in force

1. ‘Law in force’ include, the rules framed under statutory powers, e.g., Rules framed under s. 266(3) of the Government of India Act 1935 or Section 96 B of the Government of India Act, 1919.

2. By virtue of this provision the following rules have been held to continue as laws in force at the commencement of the constitution and until they are repealed:

(a) Rules made under section 96 B, Government of India Act 1919.

   (i) The Fundamental Rules (1922).

   (ii) The Civil Services (classification, Control and Appeal) Rulers(1920).

   (iii) The Civil services Regulations, which were made sometimes prior to 1914, did not appear to have been made in exercise of any statutory powers, but they subsequently acquired statutory authority under section 96(B) (4) of the Government of India Act 1919.

   (iv) The Central Civil Services (Revision of Pay & Pension) Rules 1929.

(b) Rules made under Section 241 (2) of the Government of India Act 1935 –


   (ii) Madras Civil services (Disciplinary Proceedings Tribunal) Rules 1948.

   (iii) The regulation made under section 66 (3) of the Government of India Act 1935, exempting certain cases from the requirement of consultation with the public service commission.

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(1) Pratap singh Vs state of Punjab AIR 1968 Punj 298 (306)
(2) Pradyal Vs chief Justice (1959) 2. SCR 1331 (1343-44)
(3) Balshnob vs State of orissa AIR 1958 ori 70/72
(4) Venkataramana Vs union of India, AIR 1954SC 375
(5) Venkataramana Vs union of India, AIR 1954SC 375
(6)Kapur singh Vs union of India AIR 1960 SC 493
(7) Kamtacharan Vs P.M.G Air 1955 pat 311.
(9) Karamdeo Vs state of Bihar AIR 1956 patna 288 (232)
(5) **Rules made in exercise of statutory power:**

(i) Police Regulations made under the **police Act 1861**¹, the **U.P. Disciplinary procedure (Administrative tribunal) Rules 1947**, made under the same Act.²

(ii) Punjab Tehasildari Rules 1932 made under the **Punjab land revenue Act 1887**³

(iii) Rules made by the Board or the General manager in exercise of the power conferred by ruler 157-158 of the **Railway establishment code Vol V, e.g. disciplinary and Appeal rules for non-Gazetted Railway servants**,⁴ including orders having a general application, since Rule 157 does not prescribe any particular form for making rules under it.

But the following Rules or regulations have been held to have no force of law since they do not appear to have been made under any statutory authority-

(i) Madras public Service Commission rules of Procedure.⁵

(ii) The manual of Government orders⁶

(iii) Standing orders, issued by the inspector General of police, in Rajasthan⁷

(iv) Provisions in the posts and telegraphs manual excepting specific rules which expressly purport to have been issued under statutory power.⁸ Thus the following have no statutory force -Nos, 32A, 36A, of **Vol IV and sch 3 of Vol III**

(v) Mysore Public Service commission (Function) Rules 1957 124 (1)⁹

(vi) An administration instruction or order or letter,¹⁰ unless it is issued in exercise of a statutory power.¹¹

(6) **So far as Consistent with this Constitution:**

(1) If any "existing rule" be inconsistent with any provision of the constitution, it cannot continue to be valid under Article 313 thus-

(i) Rule 15 of the police Regulations 1915 is void on account of contravention of Article 311 (2)¹²

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¹ Jagannath vs state of U.P., AIR 1981 Sc 1245 State of up vs Baburaw AIR 1961 Sc 751 (758)
² Jagannath vs state of U.P., AIR 1981 Sc 1245 State of up vs Baburaw AIR 1961 Sc 751 (758)
³ Gian Singh Vs state of Punjab AIR 1962 Sc 219 (229)
⁴ Surjit Singh vs NortherwRly AIR 1967 All 112 (114)
⁵ State of Andhra vs kameshwar AIR 1957 Andra 794 (805)
⁶ Bhagelu Vs Civil surgeon, AIR 1960 All 353 (356)
⁷ State of Rajasthan vs ramcaran AIR 1964 Sc 1361.
⁸ Kanailal vs union of India AIR 1955 cap 166 C.W.N. 492
⁹ Nagrajan vs state of Mysore )1966) sc (C.A.No 430/64)
¹⁰ Union of India Vs Majji AIR 1977 Sc 757 (Para. 34)
¹¹ Jaisinghani vs union of India AIR 1967 Sc 1427
¹² Suresh Vs Himangthu AIR 1955 cal 316
Rule 148 (3) and 149 (3) of the Railway establishment code are void for contravention of Article 311 (2).

Rule 20 (c) of the Madras Civil Services (classification, control and Appeal) Rules which provides for an appeal from an order of the provincial Government to the Governor, acting in his individual judgment is void as much as under the constitution, the Governor cannot exercise any such function in his individual judgment.

"The existing Rules relating to the subordinate judiciary" must be read to the provisions in Articles 233-237.

Article 311 of our constitution provides for the dismissal, removal or reduction in rank of persons who are in civil service of the union or the states: At the same time, this Article also provide a fair procedure based on the principles of Natural Justice to be followed by the disciplinary authority before any actions is taken for dismissal, removal or reduction in rank against a Government servant. Thus there is a safeguard before a penalty or punishment is imposed against such employee and it is the most powerful constitutional right of the government employee. There is penal element also in this Article; therefore the Supreme Court has elaborately explained the service jurisprudential expressions and their Consequences censes involved in this Article. These expressions are Appointing authority, Subordinate Civil servant, Civil post, Cadre, permanent post, Temporary post, Quasi-permanent status, status, dismissal removal, and reduction in rank, arbitrary termination, suspension.

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(1) Motiram Vs N.E.F. Rly A.I.R. 1964 SC 600 (612)
(2) Devasahayam Vs state of Madras AIR 1958 mad.-53 (56)
(3) Devasahayam Vs state of Madras AIR 1958 mad.-53 (56)
(4) Dharam Vs union of India (1980) U.J.S.C. 293
(5) Sampuram Vs state of Punjab AIR 1982 SC 407
(7) Ibid
(8) F.R. 9(22)
(9) Ibid
(10) R.R. 9(30)
(11) Chanpak Lal Vs union of India AIR 1964 SC 600 (610)
(12) motiram Vs N.E.F. Rly AIR 1964 Sc 600 (610)
(13) Mohammad Abdul salam khan Vs sarfaraz AIR 1975 SC 1064
(14) High Courts vs Amal Kumar AIR 1962 SC 1704
(15) W.B. state electricity Board Vs Desh Bandher Ghosh AIR 1985 SC 429 (Para. 24)
(16) Orissa Vs Shiva Prasad Das AIR 1985 SC 701
compulsory retirement 1 resignation 2 misconduct 3 moral turpitude 4 misbehavior 5 malice. 6 Malafide. 7 Most of the expressions are generally used by the disciplinary authorities while passing orders against the government servants. Our Supreme Court set aside those orders of the like nature only which goes before the Court and in most of the cases which do not appear before the court in the form of writs, or appeal they remain confined unsettled which causes harm and injury to the Government servants.

Article 311 (3083082) is attracted where the civil servant is dismissed, removed or reduced in rank. 8 But these penalties can not be imposed without giving an opportunity of being heard to the Government servant. 9

Article 312 (1) empowers the parliament to create by law one or more all India service including All India Judicial service and to regulate the recruitment and conditions of service of persons appointed to such services. Article 312 (2) Provides that services known at the commencement court of the constitution as I.A.S or I.P.S. shall be deemed to be service cerated by the parliament. Sub clause (3) says that. All India Judicial service shall not include the post inferior to district judge. Like wise Article 312 (A) authorises the parliament to vary or revoke the conditions of service of persons appointed by the secretary of status in the civil service of crown in India before the commencement of the constitution prospectively retrospectively except chief justice or other judges of Supreme Court or High Court, the comptroller and Auditor General of India or the Chairman or other members of the union or states P.S.C. or chief election commissioner: Article 313 is transional provision and accordingly until the provision is made in this behalf under the constitution all laws in force before the commencement of the constitution and applicable to public services or post and which continue to exist after commencement of the constitution shall continue in force so far as consistent with the provisions of the constitution of India.

(1) Takhetraya Shivadattatray Mankad vs Gujurat AIR 1970 SC 143
(2) Rajkumar Vs India AIR 1969 SC 180
(3) State of Punjab Vs ramsingh AIR 1992 SC 2188
(4) Durga Singh vs state of Punjab AIR 1957
(5) In re Megha Chandiya (1994) U.J.SC 465 (Para. 5)
(6) Pratap Singh vs State of Punjab AIR 1984 SC72
(7) State of orissa Vs Gopvind das (1958) Sc (C.A. No 288/8)
(8) Jaishankar Vs State of Rajsthan AIR 1966 Sc 492
(9) Motiram Vs N.E.F.Rly 1964 Sc 600 (610,612)
CHAPTER -V
BASIC PRINCIPAL OF LAW TO BE FOLLOWED
BY THE AUTHORITIES

The Rule of law is mainly concerned with the administrative law. So also principal of
natural justice is related with it. Under administrative or the disciplinary proceedings, it is
essential to follow the rule of law and the principal of natural justice by the administrative or
disciplinary authorities.

A (1) Concept of the Rule of law :

"The term "Rule of law" means the principal of legality which refers to Government
based on principal of law and not men. In this sense the concept of the rule of law is opposite
to arbitrary powers" 1

Accordingly, the Rule of law means that it is the 'law and not' individual or a group of
individuals which rules or governs the people. This proposition embodies the supremacy
of law, that is to say, the law is above every thing and every one, that nobody is above the
law, and not according to the whim of any individual however high he possesses the position.
The supremacy of law gives security to the individual as against the state and protects his
rights from being invaded by the functionaries of the Government. 1

"Rule of law" is one the basic principal of the English constitution. This doctrine has been
embodied in the constitution of U.S.A. and in the constitution of India as well.

Sir Edward Coke, the Chief Justice in James Is' reign is said to be the originator of
this great principal. In a battle against the king, he succeeded in maintaing that the king
must be under the God and the law and thus indicated the supremacy of law against the
executive. Dicey developed this doctrine of coke in his classic book, "The law and the
Constitution", published in the year 1885.

(2) Meaning

Dicey has given the meaning of the expression of Rule of law is one of the cardinal
principles of the English legal system. He attributed the three meanings of this doctrine.

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1. Upadhyaya, J.J.R. Administrative law, lInd Edn 1997 P. 23 Central Law Agency 30 Dls Motilal Nehru Road,
Allahbad
Supremacy of Law

Expounding the first postulate Dicey states that Rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power or wide discretionary power.

Absence of arbitrary power on the part of the government which means their the administration possesses no arbitrary powers from those conferred by law. From this follows conferred their no man is punishable or can be made to suffer is body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. Dicey \(^1\) claimed “wherever there is discretion, there is a room for arbitraryness and that is a republic no less than under a monarchy discretionary authority on the part of government must mean insecurity for legal freedom on the part of the subject \(^1\). According Wade \(^2\) also says that the Rule of law required that the government should be subject to law, rather than the law subject to government.

Equality before the law:

As to second postulate of the doctrine of the rule of law Dicey says that there must be equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. In England, he maintained, all persons were subject to be one and the sever law, and there were no extraordinary tribunals of special courts for officers of the government and other authorities. To him courts are supreme throughout the state.

He criticized the France legal system of droit Administratif in which there were separate administrative tribunals also for deciding cases between the officials of the state and the citizens. In his new exemption of civil servants from the jurisidiction of ordinary courts of law and providing them with the special tribunals was the negation of equality.

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1. Dicey, law of the constitution, 8th Edn. P. 198
Dicey observed that not only that, no man is above the law but also every man whatever be his rank or conditions, is subject to the ordinary law of the realm and amenable to the jurisdictions of the ordinary tribunals.

But since the publication of the First Edition (1885), conditions in England have changed so as to make his classical new untenable on both the above points for.

(a) By ordinary law, he meant to common law and statute law i.e. law made by parliament. But subordinate or delegated legislation by the executive departments has since come to form the bulk of the law. So, a problem has arisen how far the rule if the ordinary law of the land can be maintained consistently with the existence and development of such department legislation. i.e., regulation by other than legislations bodies

(b) On the other hand by ordinary Courts Dicey Meant the Judicial Tribunals. But owing it's the complexity of modern Social conditions and the increase of Functions of the state (resulting from the transition from the negative or laissez faire concept to that of the welfare or public Service concept of the state) Parliament has been compelled to entrust the power of deciding administrative or quasi Judicial issues arising out of the administration of an Act to the Department which is responsible for administering that Act or to an administration tribunals, and these administration tribunals differ from common law Courts in precisely the particulars which furnish the reasons, for the common law insistence that every individual shall be entitled to have his rights tried in a court of law.

III Predominance of Legal Spirit:-

Explaining the third postulate, Dicey Says than the general principles of the constitution are the result – of judicial decisions of the courts in England In many countries rights are guaranteed by written constitution. In England it is not so. Those rights are the result of judicial decisions in concrete cases which have actually arisen between the parties. The Constitution is not the Sound but consequence of the rights of Individual. Dicey apprehended that of the source of the fundamental rights of the people is in any written constitution the right can be abrogated at any time by amending the constitution. In this way rule of law postulates judicial supremacy.

1. Dicey – Law of the Constitution 8th Examp 198
2. Hew art, New Dispotism. P.36
The doctrine of rule law proved to be a powerful instrument in controlling the administrative authorities within their limits. It worked as a kind of touchstone to judge and test the validity of administrative actions.

Wade says that the British constitution is founded on the doctrine of rule of law. Similar is the view of Yardley that in broad principle the rule of law is accepted by all as a necessary constitutional safeguard. Dicey's theory has thwarted the recognition and growth of Administrative law in England. Although in the 20th century, complete absence of discretionary power with the administration is not possible, yet this doctrine prints an effective control new the increase of execution and administrative authorities. They must act according to law and cannot like any action as per their whims or caprice it is the duty of the courts to see that these authorities must exercise their powers within the limits of law.

The doctrine of the rule of the law as expounded by Dicey was never fully operative in England even in his days. There were and are many exceptions and restrictions to it. Wade rightly states that if he had chosen to examine the scope of administration law in England, he would have to admit that even in 1885 there existed a long list of Statutes which permitted the exercise of discretionary powers which would not be called in question by courts and the crown enjoined immunity under the maxim "the king can do no wrong." The Shortcoming of Dicey's their was their he not only excluded discretionary powers but also insisted that the administrative authorities should not be given wide discretion, there is a room for arbitrary ness." Thus Dicey failed to distinguish arbitrary power from discretionary power. Through arbitrary power is inconsistent with the concept of rule of law discretionary power is not it is populay exercised. Modern welfare States cannot work properly without exercising discretionary power. Similar is the observation of wade and Philips. He says that it is contrary to the Rule of law that the discretionary authority should be given to Government department or public officers their the rule of law is inapplicable to any modern constitution. Mathew J. is also says that it is contrary to the Rule of law that discretionary authority should be given to Government departments or public offices than there is no rule of law is any modern state. According to Griffith street the doctrine of Rule of law postulates that

1 Administrative Law 1988 p.23
4 Constitutional law 1960 pp 64-65
5 Indira Nehru Gandhi us Raj Narayan AIR 1975 3c
the law binds the administration.

Rule of Law as per chief Justice Earl Warren of the United States of America.

"The Rule of law is not a new concept. There is no mystery about its principles. Throughout the recorded history of mankind the rule of law has meant the applications of right reason and fairness. All people understand it to carry such a connotation. They knew it means rules governing conduct and decisions according to what is mostly right to insure liberty, equality and justice is relationship between man and man and between man and government. The rule of law has no boundaries and is in its very nature international in character. All nations have made it a profession of faith.

(5) Modern Concept of the Rule of Law:

Modern concept of the Rule of Law is fairly and wide. Davis\(^2\) given seven principal meanings of the term Rule of Law

(1) Law and order
(2) Fixed Rules
(3) Elimination of arbitrariness from discretion.
(4) Due process of law or fairness.
(5) Natural law or observance of the principles of natural Justice.
(6) Preference for Judges and ordinary court of law to executive authorities and administrative tribunals.
(7) Judicial review of administrative action

(6) Rule of Law under the Constitution of India:

Rule of Law is a basic requirement for a democratic Government. The rule of law runs like a golden thread through every provision of the Constitution and indisputably constitutes one of the basic feature, which require that every organ of the state must act within the confines of power conferred it by the Constitution and law. The rule of law pervades over the entire field of administration\(^3\) The rule of law prevades the entire fabric of the Indian constitution and indeed forms one of its basic structure.\(^4\) Every organ of the

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1. Article on Marshalling the world law resources vide issue of the leader dated 2.4.67
administration is regulated by the rule of law. The Indian constitution embodies the modern concept at the rule of law. The concept of the rule of law exists in this country by nature of the following feature.

(i) Supremacy of the constitution:

Dicey's doctrine of the rule of law has been accepted and embodied in the constitution of India. In the preamble are embodied the ideals of justice, liberty, and equality. These concepts are enshrined in the Part III as fundamental rights and are made enforceable. The constitution is supreme and all the three organs of Government i.e., legislative, executive, and judiciary are subordinate to and have to act in accordance with it. The principles of judicial review are enshrined in the constitution and subjects can approach high courts and higher courts for enforcement of fundamental rights guaranteed under the constitution. Supreme court under Article 32, and High Court under Article 226 can issue writs for enforcement of the fundamental rights.

If the executive or the government abusers the powers conferred on it if the action is malafide the same can be quashed by the ordinary courts. All rules, regulations, ordinance, byelaws, notifications, customs, and usages are laws within the meaning of Article 13 of the constitution. If they are in consistent or contrary to any provision of the constitution, they can be declared ultra vires by the Supreme Court and High Courts. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 The executive and legislative powers of the state and the union all required to be exercised according to the provisions of the constitution. The Government and public official are not above law.

(ii) Equality before the Law:

Equality before law as a postulate of rule of law has been accepted and adopted under Article 14 of the constitution. The maxim the king can do no wrong has no application in India. The government and public authorities are subject to the jurisdiction of ordinary courts of law and for similar wrongs are to be tried and punished similarly. They are subject

The doctrine of equality is accepted in public senior also. Suits for breach of contract and torts committed by public authorities can be filed in the ordinary Courts and damage recoveries from the State Government or the union Government for acts of their employees.

In Som Raj vs State of Haryana it was held by the supreme Courts, that normally, the order of appointment would be in order of merit of candidates from the Select list. Even when the discretion is conferred on an executive authorities, it must be exercised in a reasonable manner and should not be exercised arbitrary. The absence of arbitrary power is the first postulate of the rule of law upon which our whole constitutional edifice is based. If the discretion is exercised without any principal or without any rule it is a situation anything to the authorities if rule of law.

(iii) **Rule of law as a legal concept**:

The constitution is the mandate. The constitution is the rule of law. There can not be any rule of law other than the constitutional rule of law. There can not be any preconstitution or post constitution rule of law which can run counter to the rule of law embodied is the constitution, nor can there be any invocation to any rule of law to nullify, the constitutional provisional during the time of emergency. Article 21 is our rule of law regarding life and liberty.

(iv) **Rule of law as a feature of basic structure**

In Keshvanand Bharti V/s state of Kerla, SC held that Rule of law was an aspect of the doctrine of basic structure of the constitution, which even the plenary power of parliament cannot reach to amend.

(v) **Elimination of Arbitrariness, and not of discretion**

From the conception of rule of law arbitrariness is eliminated and not discretion. Davi’s observed that all Governments his history have been governments of laws and not of men. Rules alone untempered by discretion cannot cope with the complexities modern government.

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1 Article 300 t
2 Articles – 299, 300
3 Som Raj vs State of Haryana. (1990) 2 SCC 653
4 A.D.M. Jabalpur V/s Shrivkanta Shukla AIR 1967 SC 1207
5 Keshvanand Bharti vs State of Kerla AIR 1973 sc 1461 Mohinder Singh Gill vs Chief election commn AIR 1978 sc 851
and of modern Justice. Discretion is our principal source of Creativeness. Government and in law. It therefore becomes necessary to confine structure and check discretion in order to uphold the principles of rule of law in administration, so that the discretionary power does not degenerate into arbitrary power." Davis, Discretionary Justice (1969)

In, Indira Neharu Gandhi vs Raj Narayan: Mathew observed that there is in the world no government of legal system which has no discretion. It is not possible that a government may be compared of law and men. All the governments are composed of law and men. The need of modern Government are to make wide discretionary power in escapable 1

If discretion is taken as arbitrariness, there may not be a single political system having rule of law. Discretion is essential for the viability of any political system. The only important aspect is misuse of discretion 2

(vi) Compliance with the Requirement of law:

The executive is required to observe and comply with the requirement of law society. In Sambamurthy Vs state of A.P. 3 arose a question of great legal importance having for reaching effect. In this case the Supreme Court held that article 371-D(5) proviso of the constitution violalts rule of law which is a basic structure and essential features of the constitutions. This constitutional provision empowered the state government of Andhra Pradesh to nullify any decision of the administrative service Tribunal. Declaring the provision unconstitutional the supreme court observed that. It is a basic principal or any other authority must not only be condition by the constitution but must also be in accordance with law and the power of judicial review is conferred by the constitution with a view to ensuring that the law is observed and there is compliance with the requirement of law on the part of the executive and other authority. It is through the power of judicial review conferred on an independent institutional authority such as the high court that the rule of law is maintained and every organ of the state is kept within of the law. Now if the exercise of the power of judicial review can be set at naught by the state government by overriding the decision given against it, it would sound the death-knell of the rule of law. The rule of law would cease to have any meaning because then it would be open to the state government to defy the law.

1 AIR 1975 Sc. 2299
2 Wade and Philips, Constitutional law 6th Edn pp 64-65
3 Sambamurthy Vs state of A.P. AIR 1987 Sc 357
and get away with it the proviso to clause (5) of article 371-D is therefore clearly violative of the basic structure doctrine. ¹

(vii) **Fairness in Action**

One of the advances made in the realm of the rule of law is the requirement is the action of administration. In R. D. Shetty Vs International Airport Authority ² and Ajay Hasiya Vs Khalid Mujeeb Sehavendi ³ S.C. laid down the principal that not only the state government but also every instrumentality or agency of the state government is subject to the constitutional limitations imposed by the fundamental rights and of the limitations so imposed is that every action of the state or its instrumentality or agency must be fair.

(viii) **Public Interest in security of social welfare**

The rule of the law notice as evolved by the Indian courts extends to the protection of social welfare as well. With this end in view the supreme court in Veena Sethi Vs State of Bihar ⁴ held the reach of the rule of law extended to the poor and the down-trodden, the ignorant and illiterate who constitute the large bulk of humanity in India. In this case the case ruled that the rule of law does not exist in every for those who have the means to fight for their rights and very often for perpetuation of the state quo which protects and preserve their dominance and permits them to exploit a large section of the community. Such a ruling was given on basis of a letter written by the “Free legal Aid Committee” Hajribad Bihar drawing its attention to unjustified and illegal detention of some prisoners in jail for about two or three decades. Similarly in people union for democratic rights vs Union of India (Asiad Casé) ⁵ a petition by a public spiritual organization on behalf of persons belonging to socially and economically weaker section employed in the construction work of version projects connected with the Asian games 1982 complaining of violation of various provisions

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¹ SambaMurthy Vs State of A.P. AIR 1987 SC 357
² R.O. Shetty Vs International Airport Authority AIR 1979 SC 1728
³ Ajay hasiyaVs Khalid Mujeeb Sehavandi Air 1981 SC 487
⁴ Veena SETHI Vs State of Bihar AIR 1983 SC 339
⁵ People union for democratic Rights Vs Union of India AIR 1982 SC 1473
of labour laws was held maintainable.

(ix) National Policy of Reservation for backward classes and constitutional validity of Creamy-layer:

In the Mandal commission case 1992, the Supreme court has upheld the national policy of reservation in favour of socially and educationally backward classes but at the same time has also required identification and exclusion of creamy layer for extension of the rule of law to the disadvantaged section of people. ¹

(x) Pervasiveness of the concept of rule of law

The constitution of India embodied the modern concept of the rule with the establishment of judicial system which should be able to work impartially and free from all influences. The rule of law pervades over the entire field of administration and every organ of the state is regulated by the rule of law. The concept of this rule of law would lose its validity if the instrumentaties of the state and not charge with the duty of discharging their function is a fair and from manner. ²

(7) Application for the rule of law to the Judiciary

As we already observed that our judiciary is independent from the executive. Article 32 and 226 vest power to Supreme courts and High courts respectively to afford remedies to the aggrieved persons whose fundamental rights have been violated by the state action. We see that it is under the authority of rule of law under which the courts grant relief to the aggrieved persons. Our constitutions contains specific guarantees of equality of treatment and procedure before the law.

Application of the Rule of law to administrative Executive and disciplinary authority

The rule of law as stated and explained in this chapter applied to administrative / executive and disciplinary authority. These authority are the representative or agents of the state. All action done by these are deemed to be the action of the state. Therefore all actions done by these authority must be just fair ³ and reasonable without any discrimination. ⁴ In departmental enquiry against a government servant the disciplinary

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¹ Indra Sawhney Vs Union 1993 S.C. 477
² A.K. Kriapak Vs Union of India, AIR 1970 SC 150
³ R.D. Shetti Vs International airport authority AIR 1979 SC 1728
⁴ Article 14, Constitutional of India
authority is requested to follow the principles of rule of law. While awarding penalties against such employee there should be no arbitrariness. If the authority exercises discretionary power, he must state the manner of exercises and the reason thereof.

1 Jai Singhani Vs Union of India AIR 1967 SC 1427
2. Union of India Vs. M.L. Kapoor AIR 1974 SC 87 Para 28
(B) **The Principle of Natural Justice:**

As that of Rule of law, the administrative and disciplinary authorities have to follow the Principle of natural justice positively in cases before them and particularly in departmental cases against the delinquent Government servants. Article 311(2) of the Constitution of India embodies the principles of natural justice. Let us know what the principle of natural justice is –

(1) **Meaning:**

"Natural Justice is an ethico legal concept which is based on natural feelings of human being. Rules of natural Justice have developed with the growth of civilization and the Rule of law prevailing in the country". It is a great principle of humanization which informs law and procedure with fairness and impartiality.

‘Natural Justice’ has meant many things to many writers, lawyers and systems of law including an approximate synonym for divine law and also, a form of jusgentium or the common law of nation.

Natural justice is an ideal element in administrative law. In this sense natural justice is known as “Natural law”, ‘Universal Law’, ‘Divine justice” universal justice or ‘fair play’ in action.

In Mohinder Singh Gill Vs Chief Election Commissioner Justice Krishna Iyer observed at to the significance that – Indeed natural justice is a pervasive facet of secular law, where a spiritual touch lives legislation, administration and adjudication to make fairness a creed of lie. It has many colour and shades, many forms and shapes, and save where valid law excludes, it applied when people are effected by acts of authority. It is the bone of healthy Government, recognized from the earliest time and not a mystic treatment of judge made law. Indeed from the legendary days of Adam and of Kautiya’s Arthashastra. The rule of law has had this stamp of natural justice which makes it social justice.”

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1 K.I. Shephara Vs Union of India AIR 1988 SC 686.
2 Dowrick : Justice according to English Common lawyers : 1961.
3 Cooper’s Warndworth, Board of works 1863, 14 C.B. (N.S) 180, Chepter 4.
4 Cock Institutert III, 35
5 Drew Vs 1885(2) Mac 18
6 Ridge Vs Baldwin 1963 (1)O.B.578
7 Mohinder Singh Gill Vs Chief Election Commissioner AIR 1978SC 851.
(2) England

"Natural justice" is an expression of English common law and involves procedures requirements of fairness. The doctrine as understood in England rests on two broad principles on Latin Maxim, which were drawn by common law from Jus naturale as under –

(i) "Nemo Debet esse Judex in propria causa" at means than no one should be a judge in this own cause, or their the tribunal must be impartial and without bias.

(ii) Audi Alteram partem:
It means hear the other side, of their both sides in a case should be heared before it can be decided or that no man should be condemned unheard.

(iii) Committee on Ministers Power:
In England, the committee on Ministers power formulated the maxim of Natural justice for observance of Administrative authorites acting justicialy that

(i) No man should be judge in his own cause.
(ii) No man should be condemned unheard.
(iii) Party is entitled to know the reasons of decisions.

(iv) Judicial Committee:
In an appeal 1 from Malaya Judicial committee (per Lord Denning) has summurised the principle of natural justice that if the right to be heard is to be a real right which is worth anything, it must carry with it the accused man to know the case which is made against him. He must know what evidence has been given and what statements has been made against him and then he must be given full opportunity to contradict them.... It follows of course that the judge or whatever had to adjudicate must not hear evidence or receive representative from one side behind the back of the other.

(v) Ridge Vs Baldwin: 2
According to the majority the decision of the watch committee, which terminated the service of constable was void because the rule of fair hearing had been related. Further the House of lords ruled that natural justice be observed whether the body is quasi judicial or administrative.

2. Ridge Vs Baldwin, 1964 A.C. 40
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2. Ridge Vs Baldwin, 1984 A.C. 40
(3) U.S.A.

In U.S.A. "Due process" is guaranteed by the constitution, whenever the individual's life, liberty and property is to be effected by the State Officer. Due process is of course a vague and undefined expression, the implications of which are not finally settled today. But the minimum requirement of justice embodied in the principles of natural justice from the phrase "due process" The S.C. of U.S.A. has evolved the phrase 'due process' in two fold meaning –

(i) Substantial aspect of due process and
(ii) Procedural aspect of due process.

In Snydev V/s Massachuates, the court held that there was a violation of due process, whenever a break of principle of natural justice is made and which is rooted in the tradition and conscience of people ranked as fundamental.

(4) India :-

In India also much importance is given to the principles of natural justice under the constitution under Article 19(2) to (6) reasonable restrictions can be imposed on the right on trade and business which include procedural restrictions also. Article 311 embodies the principle of natural Justice. In determining the validity of reasonableness of restrictions court have referred to the principle of natural justice. Procedural reasonableness is held to be almost similar to the American due process.2

The Principles of natural justice are embodied under Article 14 and 21 of the constitution. When the introduction of due process in Article 21 of the constitution, all that fairness which is inshrined in the principles of natural justice can be seen in article 21, when a person is deprived of his life and personal liberty.

As regards other area, article 14 incorporates the principle of natural justice. The position is that Article 14 applies not only to discriminatory class legislation but also to state action which is arbitrary and discriminatory. Violation of natural justice results in arbitrariness and as such violation of the equality embodied in Article 14 of the consist area is arbitraryness.

1 Snyder Vs Massachuates, 1934 US 97
2 Dwarka Prasad Vs U.P, AIR 1954 SC 224
In Maneka Gandhi Vs Union of India\(^{1}\) SC held that it is well established principle that where, there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual which affects the right of the individual the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has power to take punitive or damaging action.

(5) **The Principle of Natural Justice (A Broad Concept)**

Natural justice presents higher procedural principles developed by judges which every administrative agency must follow in taking decisions, adversely affecting the rights of private individuals. We find the sets of the principles of natural justice.

**Nemo Judex in Causa Sua** (Rule against Bias)

It means that no man shall be judge in his own cause, or the deciding authority must be impartial and without bias – i.e. Rule against bias.

**Audi Alteram Partem**; (Rule of hearing) -

It means hear the other side, or no man should be condemned unheard or that there must be fairness in the part of deciding authority.

(1) **Rule against Bias**

The first principle of natural justice is rule against Bias. It because that deciding authority must be impartial and natural. The Bias disqualified individual from acting as judge, flows from two principles-

- (i) No one should be a judge in his own case and
- (ii) Justice should not only be done deal also be seen to be done.

Proceeding before a deciding authority may be vitiated if he is biased or has his own interest in the case before him.

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\(^{1}\) Maneka Gandhi Vs Union of India, AIR 1978 SC 597
It is the minimum requirement of natural justice that the authority must consist of impartial persons who are to act fairly and without prejudices and bias. A decision which is a report of bias is a nullity and the trial is "Coram non judice".

There are five kinds of bias:
(1) Pecunary bias (2) Personal bias (3) Subject Matter bias (4) Departmental bias and (5) policy bias.

(i) Pecunary bias -

ENGLAND

The least pecuniary interest in the subject matter of litigation will disqualify any person from acting as a judge.

Dr. Banham Case

Dr. Bonham, a doctor of Cambridge University was fined by the college of physicians for practicing in the city of London without the licence of the college. The status under which the college acted proved that the fines should go half to the kind and half to the college. Adjudicating upon the claim, Coke, C.J. disallowed the claim as the college had a financial interest in its own judgment and was judge in his own cause.

Dimes Vs Grand Junction Canal

This case is regarded as the classic example of pecuniary bias. In this case, a public limited company filed a suit against a land owner in matter largely involving the interests of this company. The lord chancellor who was a Shareholder in the company decided the case and gone to the company the relief which was claimed. His decision was quashed by the House of Lords because of the pecunary interest of the lord chancellor in the company.

INDIA

Manaklal Vs Dr. Premchand

In this case Gajendra Ghadkar J observed -

"It is obvious that pecunary interest however small, it may be in a subject matter of the proceeding would wholly disqualify a member from acting as a judge"
Jeejjeeebhoy Vs Assistant Collector, Thana

In this case chief justice Gajendra Gudkar reconstituted the Bench on objection that one of the members of the Bench was a member of the co-operative society for which the land in dispute had been acquired.

(ii) **Personal Bias**

Personal bias arise in a number of circumstances involving a certain relationship equation between the deciding authority and the parties before him. Hence a judge may be relative, friend or business associate of the party. He may have some personal grudge, enmity or grievance or professional rivalry against him. In view of these factors there is every likelihood that the judge may be biased towards one party or prejudiced towards the other.

**State of Uttar Pradesh Vs Mohd Nooh**

In this case a departmental enquiry was held dey a Dy. S.P. against a police constable. One of the witnesses turned hostile. In order to contradict the testimony of the witness, the presiding officer offered himself as a witness to complete the inquiry and passed an order of dismissal. The supreme court quashed the order of the dismissal holding that the rule of natural justice were completely discarded and all the canons of fair play were grievously violated by the officer concerned. There is certainly a real likelihood of bias against the constable.

**A.K. Kraipak Vs Union of India**

One Naguishbund was candidate for selection to the Indian Foreign service and was also a member of the selection Board. Nagvishbund did not sit on the selection Board when his name was considered. Naguishbund was recommended by the Board and he was selected by the Public Service Commission. The Supreme Court on being challenge the selection, quashed the selection holding than it was against all canons of justice to make a man judge in his own cause.

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1 Jeejjeeebhoy Vs Assistant Collector, Thana: AIR 1965 SC 1096
2 Grith and street: Principles of Administrative law, 4th Edu. P.156
3 State of Uttar Pradesh Vs Mohd Nooh AIR 1958 SC 86
4 A.K. Kraipak AIR 1970 SC 150
(iii) **Subject Matter Bias**

Subject matter bias may arise when the judge has a general interest in the subject matter.

**Gullapalli Nageshwar Rao Vs A.P. S.R.T.**

In the Case the Supreme Court quashed the decision of Madhya Pradesh Government, which nationalized Road transport on the ground that the secretary of the Transport Department who gave hearing was interested in the subject matter. But the position is different in America and England where predisposition in favour of policy in public interest is not held as legal bias invalidating administrating action.

(iv) **Department Bias**

Department bias is inherent in administrative process. If it is not checked it will negate the concept of fairness in administrative process.

**Gullapalli Nageshwar Rao Vs Andhra Pradesh State Road Transport Corporation (Gullapalli 1)**

In this case the Transport Ministry issued a direction to the secretary to the transport department to hear objections under section 68 (a) of the Motor Vehicles Act to the proposed scheme of Nationalisation. The objections filed by the petitioners were received and heard by the secretary and thereafter the scheme was approved by the Chief Minister: The supreme court accepted the contentions of the petitioner that the official who heard the objections was in substance one of the parties to the dispute and this was against the principle of natural justice.

**Mahadayal Vs C.T.O.**

According to the opinion of the commercial Tax officer, the petitioner was not liable to pay Tax. Even then he referred the matter to his superior office. On receipt of the instruction from him he imposed tax. The supreme court quashed the decision.

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1 Gullapalli Nageshwar Rao Vs A.P. S.R.T. AIR 1959 SC 308
2 Gullapalli Nageshwar Rao Vs Andhra Pradesh State Road Transport (Gullapalli 1) AIR 1959 SC 309
3 Mahadayal Vs C.T.O. AIR 1961 S.C. 82
(v) **Policy Bias:**

Some times it happens their the minister or official concerned may announce before hand the general policy which he intends to follow. The question is whether such statement would disqualify him from acting as the deciding authority on the ground that this indicates his partiality to the issues in dispute. Ministerial or departmental policy cannot be regarded as disqualifying bias.

**T. Govindraj Mudaliar Vs State of T.N.**

In this case the Government decided in principle to Nationalise Road Transport and appointed a committee to frame the scheme. This committee consisted of Home Secretary as a member. Later on, the scheme of Nationalisation was finalised published and the objections were heard by the Home Secretary. It was contended their the hearing was vitiated on account of bias as the secretary had already made up his mind on the question of nationalization because he was the member of the committee which took his policy decision.

Rejecting the contention the court said that the Secretary as a member of the committee did not finally decide any issue as to to foreclose his mind. He simply assisted the Government in preparing the scheme.

**(2) AUDI ALTERAM PARTEM : Rule of Hearing**

The audi alteram Partern rule means that no one should be condemned unheard. The Principle is that before an order is passed against any person reasonable opportunity of being heard must be afforded to him. Generally the maxim includes two ingredients – (i) notice : and (ii) hearing :-

(i) **Notice :**

A basic principle of natural justice is that before any action is taken the affected person must be given notice to show cause against the proposed action and seek his explanation. It is a sine qua non of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio.

1 AIR 1973 SC 974 – T.Gavindraj Mudliar Vs State of T.N.
2 Govindraj Mudaliar Vs State of T.N. AIR 1973 SC 974
3 Municipal Board Pushkar Vs State Transport Authority AIR 1965 SC 458
Even if there is no provision in the statute about giving of notice, and if the order adversely affects the rights of an individual, the notice is required to be given. Further it is necessary that the notice must be clear, specific and unambiguous and this charges should not be vague and uncertain.

(ii) Adequacy of Notice:

It is not enough that notice in a given case be given, it must be adequate also. The question of adequacy of notice depends upon the fact and circumstances of each case. However a notice is order to be adequate must contain the following –

1. Time, Place and nature of hearing
2. Legal authority and justification under which hearing is beheld.
3. Matters of fact and law as regards changes.

Natural Justice is violated where the charges are vague and no materials are disclosed to explain them.

In a number of cases proceeding have been quashed because of inadequacy of notice.

J. Vilangandan Vs Executive Engineer:

In this case the executive Engineer proposed to blacklist a contractor. He gave a notice to him. But the Supreme court found that notice was inadequate as it did not contain words to indicate clearly to the contractor that it was proposed to debar him as defaulter from taking any contract in future under the department.

The notice must give a reasonable opportunity to comply with the requirements mentioned in it. Thus, to give 24 hours time to dismantle a structure alleged to be in a dilapidated condition is not proper and the notice is not valid. Where a notice of one charge has been given, the person can not be punished for a separate charge of which he had no notice, even though he may not have appeared to depend himself against the orginal charge.

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1 East India Commercial Co. Vs Collector of Customs : AIR 1862 SC 1893
2 N.R. Co-op Society Vs Industrial Tribunal AIR 1867 SC 1182
3 Section 5(a) American Administrative Procedure Act 1946.
4 N.R. Co. op Society Vs Industrial Tribunal 17 IR 1987 SC 1182
5 N.S. Transport Co. Vs state of Punjab AIR 1926 SC 57
6 J. Vilangandan Vs Executive Engineer AIR 1975 SC 930
7 State of J&K Vs Haji Walli Mohd. AIR 1972 SC 2538
The High court declared that the entire Act invalid without issuing notice or calling upon the State Government to file the counter. The Supreme Court held their the order of the High Court was liable to be Act a side.

(iii) Hearing:

The second requirement of the audi alteram partem maxim is that the party concerned must be given an opportunity of being heard before any adverse action is taken against him.

Cooper Vs Wands worth Board of works

The Board had power to demolish any building without giving an opportunity of hearing if it was erected without prior permission. The Board issued order under which the house of the plaintiff was demolished. The action was brought against the Board because it had used that power without giving the owner an opportunity of being heard. Although the action of the Board was not in violation of the statutory provision the court held that the Board's power was subject to the qualification that no man can be deprived of his property without having an opportunity of being heard.

Ridge Vs Baldwin:

In this historic case, it has been rightly described as the magna carta of Natural Justice. In this case, a chief constable had been prosecuted but acquitted on certain charges of conspiracy. While delivering the judgment certain remarks were made by the presiding Judge against the plaintiff character as a senior Police officer. Considering these remarks, the watch committee dismissed the plaintiff if from service. The court of appeal decided that the watch committee was acting as an administrative authority and was not exercising judicial or quasi-judicial power and therefore rules of natural justice did not apply to the proceedings of dismissed. Reversing the decision of the court of appeal the House of lords by a Majority of 4:1 held that the power of dismissed could not be exercised without giving a reasonable opportunity of being of being heard and without observing the principles of natural justice. The order of dismissal was therefore not upheld.

1 State of M.P. & others Vs Makers Development Service Pvt. Ltd. AIR 1994 SC 125
2 Cooper Vs Wand worth Board of works (1863) 14 CB (N.S.) 180
3 Ridge Vs Baldwin (1964) A.C. 40
4 Ridge Vs Baldwin (1964) A.C. 40
Maneka Gandhi Vs Union of India

The passport of the petitioner was impounded by the Government of India "in public interest". No opportunity was afforded to the petitioner before taking the impugned action. S.C. held that the order was violative of the principle of natural justice.

O.P. Gupta Vs Union of India:

The facts were that the applicant had retired. After his retirement he was deprived of his increments above the stage of efficiency has retrospectively. The Supreme Court held that the Government was bound to hear him before the impugned order was passed.

Shridhar Vs Nagarpalika Jaunpur

The petitioner was appointed by the Municipality as Tax inspector. The Commissioner set aside the said appointment without notice. S.C. quashed an order of commissioner being violation of principles of N.J.

(iv) Oral Hearing:

Generally "hearing" means oral hearing where the parties have right to legal representation to produce witnesses who may be cross-examined. But in England and America, it is settled as a general rule that in absence of statutory provision an administrative authority is not bound to afford to the concerned person an oral hearing. In India, also the position is same and oral hearing is not regarded as a sine qua non of natural justice. A person cannot claim the right to oral or personal hearing unless such right is confirmed by the state.

However, the importance of oral hearing should be emphasised where complex and technical questions are involved, such as the chemical composition of articles, for the purpose of applying the central excise and salt act.

1 Maneka Gandhi Vs Union of India AIR 1978 SC 597
2 O.P. Gupta Vs Union of India AIR 1987 SC 2257
3 Shridhar Vs Nagarpalika Jaunpur AIR 1990 SC 882
4 Wade, H.W.R. Administrative law 1988 P 543
7 A.K. Gopalan Vs State of Madras AIR 1950 SC 27 (43)
8 Farid Ahamad Vs Ahadabad Municipality AIR 1978 SC 2095
9 Traramcore Rayms Vs Union of India AIR 1971 SC 862 (864)
(v) Fair Hearing :-

Natural Justice is primarily identified with fair hearing. While fair opportunity to be heard should be given to the parties, the principle does not imply, unless expressly provided by the state, a right to a personal hearing.

As a general Rule, it is settled that even where the statute is silent about the procedure to be followed by the administrative authority, which determines the right of individuals or inflicts civil consequences upon them, natural justice would require a minimum of fair procedure.

Thus hearing to be fair it must fulfil several requirements:

(i) The adjudicating authority should receive all the relevant materials which the individual seeks to produce.

(ii) It should disclose all the facts, evidence or material which the authority seeks to use against the individual concerned in making its decision.

(iii) It should afford the individual concerned an opportunity to rebut all such facts or material.

Dhakeshwar Cotton Mills Ltd. Vs C.I.T.

In this case the tax payer had produced certain account books which he did not opportunity to produce earlier owing to reasons beyond his control. The Income Tax Appellate Tribunal refused to look into the said account books. The Supreme Court held that such refusal violates the rule of fair hearing. The order of passed by the Income Tax Appellate authority (Tribunal) was quashed by the court.

Malikram Vs State of Rajasthan:

Where adjudicating authority wrongly refuses to receive evidence, the proceedings will be vitiated. S.C. held that the hearing envisaged not merely arguments but also evidence which either party might seek to produce.

1 Gullapalli Nageshwar Rao Vs A.P. S.R.T.C. AIR 1959 SC 308
2 Local Government Vs Arlidge 1915 AC 120 Union of India Vs J.P. Miner AIR 1971 SC 1093
3 Maneka Gandhi Vs Union of India AIR 198 SC 557
4 Section 7 (C) of American Administrative Procedure, Act 1946
5 Dhakeshwar Cotton Mills Ltd. Vs C.I.T. AIR 1955 SC 65
6 Malikram Vs State of Rajasthan AIR 196 SC 1575
If the adjudicating authority has issued notice to the person concerned and he chooses to be absent from the proceedings despite repeated intimations, the requirement of fair hearing is fulfilled. Similarly, the requirement of natural justice is satisfied where the opportunity to make representation has been given to the party but he does not avail of the opportunity of making the representation.

(vi) Cross Examination:

Cross examination is one of the most efficacious methods of establishing truth and establishing falsehood. But it does not necessarily mean that the right of cross examination of witnesses should be given to the person concerned. It depends upon the facts and circumstances of each case and to the statutory provision. Generally, in cases of domestic inquiries by employers against their employees in the area of labour management relations and also in disciplinary proceedings under Article 311 of the constitution of India against civil servants or by a statutory corporation against its employees, the right of cross examination of witness is regarded as an essential content of natural justice and fairness.

Town Area Committee Vs Jagdish Prasad

In this case the department submitted the charge sheet got explanation and thereafter straightway posased the dismissal order. The court set aside the order holding that the rule of fair hearing includes and opportunity of cross-examination of the witness and lead evidence.

In U.S.A. the right to cross examination is ensured under due process clause and also under the administrative procedure Act 1946. In England the position is the same as in India and the courts are seeking to work out the details of the right to cross examination.

1 Roshanlal Vs Ishwar das AIR 1962 SC 646
2 John Vs State of T.C. AIR 1955 SC 160
4 Central Bank of India Vs Karunamoy 1958 SC 268 Meenglass Tea Estate Vs Workmen AIR 1963 SC 1719
5 Khemchand Vs Union of India AIR 1958 SC 300
6 Town Area committee Vs Jagdish Prasad AIR 1978 SC 1407
7 R Vs Gaming Board Exporte Benain (1970) 2B 417
(7) Legal Representation:

The right to be represented by counsel has been recognized in Administrative law. Professor Allen says the experience has taught him that to deny any persons who are unable to express themselves, the services of a competent speaker is very mistaken kindness. In Pett Vs Grehound Racing Association (1) Lord Denning observed that when a man’s reputation or livelihood is at stake, he not only has a right to speak by his own mouth, but has also a right to speak by counsel or solicitor. Even a prisoner can have his friend. According to de Smith legal representation of the right quality before the statutory tribunals is desirable and that a person threatened with social or financial ruin by disciplinary authority in a purely domestic forum may be gravely prejudiced if he is denied legal representatives.

Where there is a right to appear in person, or a technical matter of law and fact is involved, the denial of legal representation by counsel considered as an antithesis of fair hearing. Franks committee has also recommended that the right of legal representation should not be curtailed save in exceptional circumstances.

In USA the position is that outside the statutory requirement under section 6(a) of the Administrative Procedure Act 1946, the right to appear through counsel must be deduced from the requirement of ‘fair hearing’ implied in the constitutional guarantee of due process.

In India certain statutes do not permit legal representation e.g. factory laws, certain statutes permit legal representative with the permission of the Administrative Tribunal concerned e.g. Industrial disputes Act 1947, While in certain statutes the right to be represented by counsel is recognized e.g. Income tax Act 1961.

However, when the matter is very simple e.g. whether the amount in question is paid or not or whether the assessment order were correct legal representation has been disallowed. On the other hand the courts have held that is question where the person is illiterate or the matter is complicated or the person is pitted against a trained

1 Allen – Administrative Jurisdiction 1956 P. 79
2 Pett. Vs Grehound Racing Association(s) (1968) 2 AH ER 545
3 De Smith Judicial Kevin of Administrative Action 1980 p. 214
4 R Vs St Mary Assessment committee (1891) 1 Q.B. 378
5 Frains Committee (1957) Cmd 218
7 Goss Vs Labez (1975) 419 US 555 (574)
8 S.C. Sarin Vs Union of India AIR 1976 SC 1686
9 Krishnachand Vs Union of India AIR 1974 SC 1589
10 Natya Ranjan Vs State AIR 1962 on 78
prosecutor he shold be allowed to engage a legal practioner to defund him. Lest the scaler should be weighed against him. These are all relevant grounds and in these circumstances refusal to permit. Legal assistance may cause serious prejudice to the person concerned and may anout to denial of fair hearing.

M.H. Hosket Vs State of Maharasra

In this case the Supreme Court ruled that while importing the concept of fair procedure in Article 21 of the constitution, the Supreme Court ruled that the right to personal liberty implies provision by the State of free legal service who is indigent or disabled from securing legal assistance where the ends of justice so demend.

In Khatri VS State of Bihar, the Supreme Court further held that the State is under constitutional obligation to provide legal assistants to the poor accused not only at the stage of trial but at the time of remand also.

Board of Trustees of the Port of Bombay Vs Dilip Kumar

In this case the same approach was adopted by the court. In this case there was a disciplinary proceedings against an employee of a statutory authority. It was held that it will be violation of the rule of natural justice if the employer is represented by a presenting officer who is legally trained sector the enquiring officer while the employer devices such facility to the employee.

(8) Right to Know the Evidence:

The right to know the materials on which the authority is going to make a decision is part of the right to depend on self. There are several judicial pronouncements where non-disclosure of evidence to the affected has been held to be fatal to hearing proceedings. The general principle is that the adjudicating authority must base the decision on the material known to the partyer. No evidence can be taken into consideration which has not been

1. C.L. Subramaniam Vs Collector of Customs AIR 1972 SC 2128
2. C.L. Subramaniam Vs Collector of Customs AIR 1972 SC 2128
4. Khatri Vs State of Bihar AIR 1981 SC 928
5. Board of Trustees of Port of Bombay Vs Dilip Kumar AIR 1983 SC 109
6. State of Madhya Pradesh Vs Chintaram AIR 1951 SC 1623
7. State of Orissa Vs Binapani AIR 1957 SC 1269
known to the parties concerned and for which no opportunity has been afforded to rebat  
Therefore evidence must not be given behind the back of the other party, but in his presence, so that if written evidence is given it must be made available to the other party to contradict it.  

S.P. Paul Vs Calcutta University:  
In this case the Calcutta High Court held that there was violation of natural justice in So far as evidence of witnesses had been heard behind the candidates back which was not known to him.  

(9) Opportunity of being heard : Fair Trial :  
The requirement of the opportunity of being heard is a part of fair procedure. Any order passed by the adjudicating authority without providing the opportunity of being heard to the party concerned is bad and can be set aside.  

The expression reasonable opportunity to show cause in Article 311(2) of the on situation has been interpreted to mean that for the purpose of a termination of service or reduction in rank under the constitutional provison an enquiry of the" trial" type will be required in India including the right of a delinquent office to adduce evidence and confront the evidence adderced against him.  

Even in ordinary statutes which relates to termination of employment. The right to examine and cross examine withnesses has been deduced from the expression "reasonable opportunity of being heard", although article 311(2) of the constitution is not applicable  
Natural justice postulates that the opportunity of being heard should be provided to the person who is affected by an administrative proceedings, even though the statute under which such proceedings has been authorised does not provide for hearing. The opportunity to be heard requires two things –  
(a) Opportunity must be given  
(b) The opportunity must be reasonable.  
Thus the reasonable opportunity of being heard should be provided.
(10) Reasoned Decisions or Speaking Order –

A reasoned decision means a decision which must contain reasons in support of it. The value of reasoned decisions as a check upon the arbitrary use of administrative power is quite clear. A party has right to know not only the result of inquiry but also the reasons in support of the decision.

The giving of reasons is one of the fundamentals of good administration.

(i) England:

The Common law rule is that natural justice does not require reasons to be given for decision. The Committee on minister's power, however, had insisted that natural justice required that there should be reasoned decisions. Similarly, the Franks Committee insisted that there should be a general practice for adjudicating bodies to give reasons for their decisions. Section 12 of the Tribunals and Inquiries Act 1958 (now Act of 1971) imposes a duty upon a tribunal or minister to give reasons under two conditions:

(i) The duty to give reasons arises, only when a request to give them is made to the Tribunal or minister. And

(ii) No such duty arises under the Act if the request is made after the decision has been given or noticed. Reasons form part of the decision and record.

(ii) U.S.A. –

The requirement of giving reasons for decision has been given statutory force, for section 8(B) of the American Administrative Procedure Act 1946 requires all administrative decisions to be accompanied by finding and conclusions as well as the reason or base therefore upon all the material issues of facts, law or discretion presented on the record. Even outside the scope of the statute, it has been held that the who decider must give reason for his decision. The Supreme Court said that the reasons are essential for enabling the court to effectively exercise the power of judicial review.

1 Lord Denning – Breen Vs Amalgamated Engineering Union (1971) 1 All E.R. 1148.
2 R. Northumberi and Compensation Tribunal (1952) 1 K.B. 338 (352).
3 Committee on Administrative Tribunal an Enquiries – 24, 75 (1957).
4 U.S. Vs Forness (1942) 125 F. 2 & 928 (942).
India :-

Natural justice postulates that party has right to know not only the decision but also the reasons. But this is not a universally established rule although in certain situations it is rigidly enforced. The duty to give reason may be statutory or non statutory. Where the duty is required by the statute, the authority is bound to give reasoned decision in cases to which that provision applies. But in the absence of statutory requirements the courts have been emphatic to advise judicial or quasi judicial bodies to assign reasons in such a form as to justify the orders being called what are described as speaking order.

Speaking Order:

A Speaking order means an order which speaks by itself. Thus every order must contain reasons for support of it speaking orders are necessary to make judicial review effective. The effected party must know why and on what grounds an order has been passed against him. This is a cardinal principle of natural justice. If an order does not give any reasons, it does not fulfil the elementary requirements of a quasi judicial process.

M.P. Industries Vs Union of India

In this case it was held that the conditions to give reasons minimises arbitrariness, gives satisfaction to the party against when the order is made, and it also enables an appellate or supervisory court to keep the tribunal within bounds.

(11) Implied Statutory requirement –

The obligation to give reason for judicial or quasi judicial decision has been particularly implied where the statute provides for appeal, review or revision against those orders.

In Mahabir Prasad Vs State of M.P. The Supreme court ruled that if a quasi judicial decision is subject to appeal the law necessary implies the requirement of reasons otherwise the right of appeal shall become an "empty formality".

1 Express News papers Vs Union of India, AIR 1958 SC 578.
2 Syad Yakub Vs Radha Berishana AIR 1964 SC 477.
3 Manuvrhat Union Moter Services Ltd. VSRTA AIR 1953 Mad 59.
4 Harinarayn Sugar Mills Vs Shyam Sundar AIR 1961 SC 1669.
5 M.P. Industries Vs Union of India AIR 1966 SC 671 (675-76).
(12) Reasons by Appellate Authority:

In general if the decisions of authority of first instance is wholly or partly reversed in appeal, the authority must give reasons for such reversal. However, where the decision in appeal or revision is simply conformed reasons are not to be given.

(13) Disclosure of Reasons:

Disclosure of reason is the only possible safeguard against possible injustice and arbitrariness and affords protection to the person adversely affected.

In Union of India Vs M.L. Kapoor: Justice Beg of Supreme Court has held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose “how the mind is applied” to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a “rational nexus” between “facts” considered and the conclusions reached. Only in this wasy can opinion or decision recorded be shown to be mainifesty just and reasonable.

Maneka Gandhi Vs Union of India:

In this case Chandrachud J. observed that the power to refuse to disclose reasons in support of the order is exceptional in nature and it ought to be exercised fairly sparingly, and only when fully justified by the exigencies of an uncommon situation.

In T.R. Thakur VS Union of India

Supreme Court held that the requirement of recording reasons / speaking order is implicit even in absence of express statutory provision in that regard Every State action must satisfy the rule of non arbitrariness.

14. The Process in Financial Incapacity to attend the Enquiry - New Aspect

This is a new aspect of natural justice which has special significance in developing countries. Where the circumstances are such that owing to financial incapacity a person cannot attend enquiry proceeding and thus he does not have the opportunity to produce and contradict evidence. Such a situation may amount to denial of natural justice.

1 Hari Nagar Sugar Mills Ltd. Vs Shyam Sundar AIR SC 1669
2 Union of India Vs M.L. Kapoor AIR 1974 SC 87 (97-98)
3 Maneka Gandhi Vs Union of India AIR 1978 SC 597
4 T.R. Thakur Vs Union of India (1996) 3 SCC 690
Ghanshyam Das Shrivastava Vs State of M.P. ¹

In this case the employee was not paid even suspension allowance for a long time. A departmental enquiry was held away from his home. Due to his financial incapacity he could not attend the enquiry proceedings. Exparte order was passed against him by the Government. The Supreme Court held that the exparte order of government violated the fundamentals of fair hearing. ²

Mumtaz Husain Ansari Vs State of U.P. : ³

In this case a police employee who was District Superintendent had been charged on several courts including wilful absence from duty. In this connection proceedings were under consideration before a Tribunal. He wanted that 8 witnesses be examined in this defence. Tribunal asked him to deposit Rs. 900.00 which would be paid to the witnesses as allowance. As the amount could not be paid by the appellant the witnesses were not examined. The supreme Court held that if the appellant was under suspension for a long time and therefore he could not deposit the amount because of his financial incapacity, the failure not to summon defence witness at the Government expenses was a violation of the principle of fair hearing. ⁴

15 Post Decision Hearing: A New Approach

The principle of Natural justice have been evolved by the courts for the purpose of controlling the exercise of power so that it does not lead to arbitrariness of dispute use of power. One of such principles of audi alteram partem which requires that no one shall be condemned unheard and it has received its finest flowering in the recognition and enforcement of the doctrine of post decision hearing. If in a given case prior hearing would frustrate the object and purpose of the exercise of power it can be dispensed with but in that event it must be substituted by post decision hearing. The doctrine of post decision

¹ Ghanshyam Das Shrivastava Vs State of M.P. AIR 1973 SC 1143
² Ghanshyam Das Shrivastava Vs State of M.P. AIR 1973 SC 1183
³ Mumtaz Husain Ansari Vs State of U.P. AIR 1984 SC 1116
⁴ Mumtaz Husain Ansari Vs State of U.P. AIR 1984 SC 1116
hearing was propounded by the Supreme Court in Maneka Gandhi Vs Union of India. In this case the Supreme court laid down the principle that it is public interest immediate action was indispensable and it is impracticable to afford a hearing before the decision, it should be aforesaid after the decision. The passport of the petitioner Journalist was impounded by the Government of India in the interest of Public Safety. The petitioner was not given any opportunity before taking the impugned action. When the validity of the impoundment order was cancelled the government contended that the application of the adialterm partem rule would have frustrated the very purpose of impounding passport. Even though supreme court rejected the contention, it accepted the doctrine of the post decisional hearing in cases of exceptional nature. It laid down the proposition that where in an emergent situation, requiring immediate action it is not possible to give prior notice of hearing the preliminary action should be soon followed by a full remedial hearing.

(16) Exclusion of Natural Justice:

Through the normal rule is that a person who is affected by administrative action is entitled to claim natural Justice the requirement may be excluded under certain exceptional circumstances. There and exceptional situations which demand exclusion of the principle of natural Justice. In the following cases, the requirement of natural Justice may be excluded:

(i) Statutory Exclusion:

The Principle of natural justice do not supplant the law but supplement it. It follows where the statute is silent about the compliance with the statute is silent about the compliance with the principles of natural justice, Such statutory silence is taken to imply observance of the principles of natural justice. However, where a statute excludes the application of any or all the rules of natural justice then the court can not ignore statutory mandate and into the concerned provision the requirement of natural justice.

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1 Maneka Gandhi Vs Union of India AIR 1978 SC 597.
2 Mohinder Singh Gill VS Chief Election Commissioner AIR 1978 SC 851
Charanlal Sahu Vs Union of India AIR 1990 SC 1480
3 A.K. Kraipak VS Union of India AIR 1970 SC 150
4 Union of India VS J.N. Sinha 1971 SC 40
Union of India Vs Tulsiram Patel AIR 1985 SC 1476
In Union of India Vs J N. Sinha. The competent authority acting under Rule 56 (J) of the fundamental rules passed order of compulsory retiring of Government Servant. It did not provide for giving any opportunity to the government servant concerned concerned to show cause against the proposed action. The Supreme Court upheld the said decision.  

But in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provisions. Even if there is no provision under the statute for observance of the principles of natural justice, courts may read the requirement of natural justice for sustaining the law as constitutional.

(ii) Legislative Function.

Legislative action, plenary or subordinate is not subject to the rules of natural justice. This is so because there rules lay down a policy without reference to particular individual. A legislative action, for example, price fixing, is a direction of general character, not directed against a particular person or individual manufacturer or trader. There is no question of invoking principles of natural justice in such cases.

The establishment of Municipal Corporation is a legislative function and is neither executive nor administrative in character. As the principles of natural justice are not applicable to legislative function, the Government is not bound to hear the residence of the Municipal area before taking decision to establish a municipal Corporation.

(iii) Emergency:

In exceptional cases of urgency or emergency where prompt and preventive action is required the principal of natural justice need not be observed. According to Krishna Iyer J., if to condemn unheard is wrong except where it is overborne by dire social necessity. Thus where a dangerous building is required to be demolished to same human lives or where a Banking company is required to be wound up to protect the interest of depositors or where a person dangerous to peace is required to be external or detained or where

1 Union of India Vs J.N. Sinha AIR 1971 SC 40.
2 Gullapalli Nageshwar Rao Vs A.P. State Road Transport Corpn- AIR 1959 SC 1376
3 Union of India Cynaminde India Ltd. AIR 1987 SC 1802.
4 Union of India Cynamide India Ltd. AIR 1987 SC 1802
5 Sundarjas Kanhyaalal Banthigi Vs Collector Thane AIR 1990 SC 251
6 Mohinder Singh Gill Vs Chief Election Commissioner AIR 1978 SC 851
7 Nathwabhaal Vs Municipal Corporation AIR 1959 Bom 333
8 Josef VS Reserve Bank of India AIR 1962 SC 1371
9 Babulal VS State of Maharashtra AIR 1981 SC 884
a passport is required to be impounded in public interest or a trade dangerous, to society is to be prohibited some social necessity requires exclusion of the elaborate process of predecisional hearing. However immediately does not exclude duly to act fairly because, even an emergent situation, can co-exist with the canons of natural justice. Thus even in the case of emergency where precious rights of the people are effected, post decisional hearing has relevance to administrative fairness.

(iv) **Public Interest:**

The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, public health or public morality. In cases of pulling down property to extinguish fire, destruction of contagious plant or animal life, destruction of unwhole some food etc. action has to be taken without giving the opportunity of hearing. Nevertheless, hearing may be given us some of these situations after the action has been taken as a corrective measure to see whether mistake has been committed.

In *Maneka Gandhi Union of India*:

The supreme court conceded that a passport may be impounded in public interest without compliance the principles of natural justice but as soon as the order impounding the passport has been made an opportunity of post decisional hearing remedical in aim, should be given to the person concerned. In this case it has also been held that “Public interest” is a justiciable issue and the determination of the administrative authority about it is not final.

(v) **Impracticability:**

*Bihar School Examination Board Vs Subhath Chandra* –

In this case, the candidates at the secondary school examination of Board at one center included in mass copying. The Board cancelled the examination of all the subjects at the center concerned and permitted the examiner to re appear at a supplementary examination. The candidates challenged the order on the ground that no opportunity had been given to there to show cause before passing the order. The supreme Court held that

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1. Maneka Gandhi VS Union of India AIR 1978 SC 597
2. Coorerji VS excise Commissioner 1954 SCR 873
3. Maneka Gandhi VS Union of India AIR 1978 SC 597
4. Maneka Gandhi VS Union of India AIR 1978 SC 597
5. Bihar School Exam Board Vs Subhash Chandra AIR 1970 SC 1269
it was obvious from the results that the candidates concerned had indulged in mass copying. No particular candidate was charged for using unfair means. A vast majority of the examinees had used unfair means. As the examination as a whole had been vitiated by use of unfair means as a mass scale, it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had used unfair means.\(^1\)

R. Radha Krishnan Vs Osmania University :- \(^2\)

In this case the entire M.B.A. entrance examination was cancelled by the university because of mass copying, the court held that notice and hearing to all the candidates is not practicable is such situation.

(17) Breach of Natural Justice: Void or Voidable:

If any decision is rendered in violation of the principle of natural justice it is said to be void or voidable. A voidable order is an order which is legal and valid, unless it is quashed by a competent court, that is, it has legal effect up to the time until it is quashed. On the other hand a void order is no order in the eye of law. It is a still born order a nullity and void abilities. \(^3\)

Professor wade says that any decision which is rendered in violation of the rules of natural justice, is void. \(^4\) To Kelson, a norms is always valid and is never a nullity but it can be made ineffective. \(^5\) Accordingly any decision which is rendered inviolation of the principles of natural justice is voidable. A full scale examination of this question came in Ridge Vs Baldwin. \(^6\) According to the Majority, the decision of the watch committee which terminated the services of the constable was void because the rule of fair hearing had been violated. On the other hand, the minority considered that it was merely voidable. The privy council expressed the view that the denial of the principle of natural justice makes the decision voidable and not void.

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\(^1\) Bihar School Exam Board Vs Subhash Chandra AIR 1970 SC 1269
\(^2\) R. Radha Krishnan Vs Osmania University AIR 1974 A.P. 283
\(^4\) Wade, Administrative law 1 1967, P. 188
\(^5\) Rubinstein, in Jursdiction and illegality, quotes Prokelson view
\(^6\) Ridge Vs Baldwin 1964, AC 40
\(^7\) Privi Council: Durayappah Vs Femando (1967) 2A
In State of Kerla Vs M.K. Kunhikannan Nambier the Supreme Court laid down that mere use of the word “Void” is not determinative of its legal impact,. The word “Void” has a relative rather than an absolute meaning. It only connotes the idea that the order is invalid or illegal. It can be avoided A void order cannot be said to be non-existent in all cases and in all situations. Ordinarily such an order will, in fact, be effective inter partes until it is successfully avoided or challenged in a higher forum.

(18) Rule against bias : Effect of Violation.

According to Rubinstein a decision vitiated by bias is voidable because bias does not touch the jurisdiction. On the other hand, the view as expressed by wade is that a decision in violation of the rule against bias is void The principle laid down by the supreme court of India is that a decision in violation of the rules against bias is null and void A judgment which is the result of bias or want of impartiality is nullity and the trial “coram non judice”

(19) Audi Alteram Patem : Effect of Violation –

As we already observed, that in India, it is fairly well settled that whenever there is violation of the rule of fair hearing, the order is null and void. Thus where an order retiring a civil servant on the ground of reading Superannuation age was issued without giving opportunity to the employee, or where a passport of a journalist was impounded without giving notice or where liability was imposed by commission without giving an opportunity of being heard to the assessee the actions were held to be null and void.

A.R. Antulay Vs R.S. Nayak (4)

The decision of Supreme Court, in this case stands for the proposition that any action in violation of the principles of natural justice is nullity. On of the question posed for consideration before the supreme court was whether the Supreme court’s direction given suomotu directing

1 State of Kerla Vs M.K. Kunhikannam Nambier (1996) SSC 435
2 Rubinstein – Jurisdiction and illegality, 1985 P.82
3 Wade – Administrative law, 1967, P. 418
   A.K. Kraipak Vs Union of India AIR 1970 SC 150
   Ranjit Thakur Vs Union of India AIR 1987 SC 2386
5 A.K. Antulay Vs R.S. Nayak AIR 1988 SC 1531
6 State of Orisa Vs Binapani Dei AIR 1967 SC 1289
7 Maneka Gandhi Vs Union of India AIR 1978 SC 597
8 Shreeram Durga Prasad Vs Settlement Commission – AIR 1989 SC 1038
the withdrawal of a criminal case against Mr. Antulay Ex-chief Minister of the State of Maharashtra from special judge and transferring the same to High Court without giving an opportunity to him is void and as such liable to be quashed.Replying the poses in the affirmative, the supreme court ruled that an action is violation of natural justice is null and void.¹

Courts in India have consistently taken the view that whenever there is violation of any rule of natural justice, the order is nullity and void ab-initio.

(20) Application of the Principles of natural Justice to Administrative/executive and Disciplinary authorities :-

All most all the nations in the world apply the principle of Natural justice in legal and administrative proceedings. In India the principle is well applied in Administrative proceedings and also in the courts of law. Analytical findings of the court decision reveal that all the State actions are void if not followed the principles of natural justice in cases where the legal & constitutional rights of individuals are effected. Specially in department at Enquiry cases the Administrative and disciplinary authorities are expected to follow the rules against bias² and the rules of fair hearing under which notice³ hearing⁴ Viz-oral hearing,⁵ fair hearings⁶ cross examination⁷ legal representation⁸ right to know evidence,⁹ fair trial¹⁰ etc and included. The order passed by authorities in original¹¹ as well in appeal cases must be the speaking order giving reasons thereof. If the deliquent employee is suffering from financial incapacity, the state must bear his defence expenses¹² and afford legal aid.

¹ A.R. Antulay Vs R.S. Nayak A.I.R. 1988 SC 1531
² Ranjeet Thakur Vs Union of India (1987) 4 SCC 611
³ Municipal Board Pusway Vs State Transport Authority AIR 1965 SC 450
⁴ Maneka Gandhi Vs Union of India AIR 1978 SC 597
⁵ Travancora Rayons Vs Union of India AIR 1971 SC 862
⁶ Maneka Gandhi Vs Union of India AIR 1978 SC 597
⁷ Town Area Committee Vs Jagdish Irasad AIR 1978 SC 1407
⁸ Subramaniama Vs Collector of Customs AIR 1972 SC 2578
⁹ Kishanchand Chelaram Vs Income Tax Commissioner AIR 1980 SC 1217
¹⁰ Harbanchand Vs Commissioner Head quarter 135 works Engineer 1970 LDs IC 1448.
¹¹ Mannerghat Union Motor Services Ltd. Vs R.T.O. AIR 1953 Mard 59
is thus a compulsory necessity.

In India and in England there is a **democratic system having a parliamentary form of Government**. Effective control over the executive is exercised by the parliament. Ministers are responsible to the parliament. Criticising a minister’s policy is a matter of parliament. ¹

(3) **Judicial Review**

The power of judicial control is based on the fundamental principle that all the powers must be exercised within the ambit of law. In this sense the basis of judicial review is the doctrine of Intra Vires. In determining the validity of administrative action, and decision, courts exercise supervisory jurisdiction and **appellate jurisdiction** as well. The mechanism of judicial control of administrative action falls into three distinct groups:

(i) Special leave petition

(ii) Supervisory jurisdiction of High courts under Article 227 & 

(iii) Extraordinary remedies and ordinary remedies.

I. Special leave Petition:

The power of judicial review conferred on the supreme Court under Article 136 is special or extraordinary in nature. This power is in the nature of a residuary reserve power of judicial review. Article 136 lays down that the supreme Court may, in its discretion grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal, except any court Tribunal Constituted by or under any law relating to Armed Forces. Since the supreme Court has been invested with a plenary jurisdiction to hear appeals against the decisions of Administrative Tribunals and other adjudicating authorities it is now regarded as an important mode of judicial review of administrative adjudications. But this jurisdiction is special and exercisable outside the perview of ordinary law. The court entertains special leave only where the needs of justice demands its interference. ² Where a decision has been given arbitrarily and unfairly the Supreme Court would interfere ³The fundamental aspect of the

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¹ Lord Kilmuir in the House of Lords on Dec. 7, 1961
² Durgashankar Mehta Vs Raghuraj Singh AIR 1951 SC 520
³ Muir Mills company Ltd. Vs Intimity Mazdoor Union 1955 (1) SCR 991
jurisdiction of Article 136 are as under:-

**Exercise of Discretion :-**

Article 136 confers very broad discretionary power on the Supreme Court for entertaining leave petitions. The power of judicial review under Article 136 is a constitutional power which cannot be taken away by ordinary laws. It grants leave where grave injustice have been done. ¹

II. **Supervisory Jurisdiction :-**

The power of Judicial review which has been conferred on all High Courts under Article 227 is Supervisory in nature. Article 227 provides that every High Court shall have Superintendence over all courts and tribunals through out the territories in relation to which it exercises jurisdiction. This supervisory power is both judicial and administrative in nature. ² The Supervisory jurisdiction conferred on the High Courts under Article 227 is in addition to the power given under Article 226 to control inferior courts or tribunals. The Supervisory jurisdiction extends to keeping the Subordinate tribunals within limits of that authority and ensuring that they obey the law. ³ The Power under the Article can be exercised even in those cases in which no appeal or revision lies to the High Court. ⁴

**Principles for exercise of Supervisory Power :-**

The Power of Interference through superintendence under Article 227 is limited to seeing that the tribunal functions within the limits of its authority. ⁵ The main grands for interference are –

1. Want or exess of jurisdiction. ⁶
2. Failure to exercise jurisdiction. ⁷
3. Violation of the principles of natural justice. ⁸
4. Error of law apparent on the face of record. ⁹

¹ Pritam Singh Vs State AIR 1950 SC 169
² Ram Roop Vs Bishwa Nath AIR 1958 ALL 459
³ State of Gujrat Vs Vckhat Singhri Vajir Singh Jiveghela AIR 1968 5 C 14 '87
⁴ Jagir Singh Rambir Singh (1979) 1 SCC 560 AIR 1968 SC 1487
⁵ V. Nagendranath Boara Vs commr, Hills Division AIR 1958 SC 398.
⁶ Gulab Singh Vs Collector of Farrukhabad AIR 1953 ALL 595.
⁸ Narayandiru Vs labour Appellate Tribunal AIR 1957 Bom 142.
RANGE OF SUPERVISORY POWER:

There are no limits, letters, or restrictions placed on the power of superintendence in Article 227 and the underlying purpose seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice meted out fairly and properly by the bodies mentioned therein. The jurisdiction can not be limited or fettered by an Act, except by a constitutional amendment.

Alternative Remedy:

The supervisory power under Article 227 is extraordinary in nature. It can not be claimed as a matter of right by the party. It is a matter of discretion of the High court to exercise such power. However, in normal course when alternative remedy is available to the applicant the high court may refuse to exercise the power. But the existence of alternative remedy is not a constitutional bar to the exercise of the power under Article 227. When such an alternative remedy is not equally effective, convenient effective or speedy the High court may exercise powers under Article 227.

(III) Extraordinary Remedies and ordinary Remedies:

Judicial control over administrative action is exercised through the constitutional extraordinary remedies and statutory ordinary remedies as well. Provisions for extraordinary remedies have been made under Article 32 and 26 of the constitution. For controlling administrative action supreme court and High Court can issue the writs of Habeas corpus, certiorary, prohibition. In addition to this court provider ordinary remedies also under several statutes i.e. declaration injunction damager etc.

(4) Tribunal:

A tribunal is statutory body which is invested with judicial power on question of law or facts effecting the rights of citizens in judicial manner.

1 Jodhe Vs State AIR 1952 ALL 788 (792)
2 Union of India Vs Bhanudas AIR 1977 SC 1027 (1047)
   Jethabai Vs Sunderdas AIR 1988 SC 812
3 Manek Cust ji Vs Sarfraz All AIR 1976 SC 2446
4 Deccan Marchents Co. op. Bank Dwachand CA 358 of 1967 decided on 29.6.68 SC
An appeal may be preferred against the decisions of the Tribunals to the Supreme Court on the following grounds:

(i) Where the tribunal has acted in excess of the jurisdiction conferred on it under the law creating it or it has failed to exercise patent jurisdiction. ¹

(ii) Where the tribunal has acted illegally.

(iii) Where there is error of law.

(iv) Where the tribunal has erroneously applied the well accepted principles of jurisdiction. ²

(v) Where the order of the tribunal is erroneous. ³

(vi) Where the tribunal has acted against the principle of natural justice. ⁴

(5) Reasons for decisions by Tribunals –

Recording of reasons in support of decisions is considered to be part of natural justice and the court has spelled out of Article 136 an obligation on a tribunal to give reasons for its orders on the plea that the court cannot effectively exercise its appellate jurisdiction if a tribunal does not give reasons for its decision. Where Tribunals order is without reasons, it may be quashed or it may be directed that the matter be disposed of according to law. ⁵

(6) Tribunals – Its Kinds :-

The administrative and judicial control of the High Court is not only over courts strictly so called but also over tribunals which are not courts in strict sense of the term. What are to be considered as tribunals within the meaning of Article 227.

The term tribunal has been used in Article 136 also. It will not be unreasonable to suppose that the expression has the same meaning in both Articles. Under Article 136 a body dealing with the rights of citizens will be regarded as tribunal if it is under duty to act judicially and is invested with inherent judicial power of the state. The following authorities have been held tribunals for the purpose of Article 227.

1. Election Tribunal ⁶

¹ J.k. Iron and Steel Co. Vs Mozdoor Union AIR 1956 SC 231
² Ibid
³ Bhikhaji Keshoa Brijal Nandlal AIR 1955 SC 610.
⁴ Dhakeshwara cotton Mills Vs comr of Income tax AIR 1955 SC 55.
⁵ Harinagar Sugar Mills Vs Shyamsunder AIR 1961 SC 1669
⁶ Harivishnu Kamath Syed Ahamad Ishaque AIR 1955 SC 233
II. Industrial Tribunal.

III. Revenue Tribunal.

IV. Rent Control Authority.

V. Custodian of Evacuee property.

VI. Payment of wages Authority.

VII. Administrative Tribunal.

(7) Judicial Review of Decisions of Statutory Tribunals:

(1) A statutory Tribunal having been endowed by statute with the power to decide or to make any enquiry it will be subject to judicial control on all grounds upon which statutory power in general is subjected to judicial control. Viz.

(a) That the decision has been arrived at without any evidence at all.

(b) That the tribunal has reached a conclusion of fact, which no person acting judicially and properly instructed as to relevant law could have arrived at or in otherwords, the tribunal has decided on a view of the facts which could not be reasonably entertained or where its decision is perverse.

(c) That the tribunal in coming to its decision has failed to consider those matters which it has bound to consider according to the provisions of the Sate which conferred the power or taken into account matters which are irrelevant to what he has consider.

This principle is, in fact doctrine of ultravires as well as the duty of all statutory authorities to exercise the power reasonably.

(2) Besides the foregoing general grounds the decision of a statutory tribunal may be challenged before a court of law when it violates the obligations of a quasi judicial authority,

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1 D.N.Banerji Vs P.R. Mukharjee AIR 1953 SC 58.
2 State of Gujrat Vs Vakhat Singh Ji AIR 1968 SC 1481.
4 Indira sohanlal Vs Custodiam Evaance Property AFR 1956 77
5 Union of India Vs Triloki AIR 1961 Punj. 154.
6 Article 323 A, in part XVI-A of the constitution of India.
7 Ostreicher Vs Environment Secy (1978) 1 WLR 810 (815) C.A.
8 Cokes Vs Thanel (1982) 3 Aller 1135 (1138) H.L. viz
9 P.T. Services Vs S.I. Court IR 1963 SC 114.
10 -Ibid-
11 -ibid-
12 Kartar Singh Vs Union of India (1967) SC 18.
13 Bharat Bank Vs Employees AIR 1950 SC 188.
14 Ramana Vs I.A.A.I. AIR 1979 SC 1628.
which is authorised consequences upon them, on same additional grounds, e.g. -

(a) That the decision of the tribunal is vitiated by bias or procedural unfairness. ¹

(b) That the tribunal or authority has given a wrong interpretation to the words of the statutes, or has otherwise gone wrong on law, ² so as to have gone outside the power conferred by the Act. ³ In other words the decision is vitiated by an error (of law) apparent on the face of the record.

(c) That the tribunal has declined to exercise its jurisdiction by taking an erroneous view on a preliminary point, ⁴ e.g., upon question of res judicata or as to the applicability of an Act ⁵, or locus standi ⁶ or defect of parties or notice ⁷ which would give jurisdiction to the court, there is non exercise of jurisdiction. ⁷

(3) But subject to the foregoing grounds for judicial review the court has no jurisdiction to substitute as own opinion on merits, for the opinion of the authority upon when the power to decide the matter has been vested by statute. ⁸ The court can not sit in appeal to correct an erroneous decision of a Tribunal, within its jurisdiction, ⁹ where there is some evidence to support it. ¹⁰

(8) Judicial Review of quasi Judicial Decisions :-

It has

\ action a quasi-judicial decision is subjected to some other limitations, so there is scope for judicial review on the additional grounds also. These additional grounds, primarily are :-

1. Jurisdictional (comprising absence and excess of or refusal to exercise jurisdiction).
2. Erroneous Exercise of Jurisdiction on a point of law which is apparent on the face of the record.

1 ⁰Reilly Vs mackman AIR (1982) SC 3 ALL ER 1124.
2 Ashobridge Investment VS Union of Housing (1965)3 ALL ER 371.
3 Ashobridge Investment VS Union of Housing (1965)3 ALL ER 371.
4 Harish Vs Dy. L.A. Officer (1962) 1 SCR 676
5 Joychand Vs Kamalaksh AIR 1919 P.C. 239.
6 Bongar UDe vs Baldeo (1962) 3 W.LR. 330.
7 Jagannath Vs Dt. Magistrate AIR 1951 ALL 710
8 Hindustan Steel Vs Roy (1959) 3 SCC 513
9 Harivishnu Vs Ahamad (1955)1 SCR 1104
III. Contravention of the principles of natural Justice.

IV. General Ground of fraud.

V. Constitutional ground.

Absence and excess of jurisdiction and erroneous exercise of jurisdiction means the conditions on which the right or power of a tribunal to determine a matter depends. These conditions may be founded either on the character or condition of the tribunal or upon the subject matter of the enquiry or upon certain proceedings which have been made essential, preliminaries to enquiries. It follows therefore, that a tribunal may be acting without or in excess of jurisdiction of any of these conditions which are lacking and in any such case no agreement or consent of parties can give the tribunal jurisdiction. The remedies for abuse or excess of jurisdiction are the writs of prohibition and certiorary and a declaratory actions where a tribunal acts without or in excess of jurisdiction, its decision or order is nullity, so that its order can be quashed collaterally. But where having jurisdiction the tribunal makes an erroneous decision, the error can be corrected only by appeal and not by collaterally. The only exception to this principle is an error of law, which is apparent on the face of the record for which writ of certiorary is available. As we observed that extraordinary jurisdiction of our supreme court under Article 136 of the constitution, being appellate, it is open to the S.C. to quash the decision of a tribunal on the mere ground of erroneous.

Similarly, refusal to exercise a jurisdiction which an authority undoubtedly possesses has to be distinguished from absence or excess of jurisdiction. Mandamas is the proper remedy where a tribunal refuses to exercise a jurisdiction which has been vested in it by law.

(9) Error, Apparent on the Face of the Records –

It has been stated earlier that where an inferior tribunal acts within its jurisdiction but erroneously, whether on fact or on law, it may be corrected by appeal, but its decision can not be challenged collaterally, whether by way of proceedings for certiorary or an action for declaration or otherwise. The only exception to this general rule is that whether the decision
of an inferior tribunal, though it has acted within its jurisdiction is vitiated by – (a) an error of law ¹ (b) which is apparent on the face of the record. ² In such a case the remedy of certiorary is available to quash such decision. ³

(10) Judicial Review of Non-Statutory Administrative Action:

(i) Administrative Ground:
Where an administrative act is done, not is the purported exercise of a statutory power but in the exercise of the executive power of the State it is patent that the doctrine of ultravires is inapplicable to it. Thus it is an executive instruction to subordinate officers, it creates no legal right ⁴ and it is not enforceable in the courts of law ⁵ and courts have no supervision and control over such instructions though they may be binding on the subordinate officers departmentally. If therefore a subordinate authority acts in violation of such non-statutory order or instructions the aggrieved person can have no relief from a court of law. ⁶ The question is whether the courts can interfere with a non-statutory administrative order on the ground that it was unfair or arbitrary.

In Radheshyam VS State of M.P.⁷ was, C-1 observed that thought the rules of natural justice do not apply to a purely administrative action, it must not be unfair. ⁸

(ii) Arbitrariness and Malafide - But the decisions of any public authority would be vitiated by arbitrariness or malafide. ⁹

(iii) Constitutional ground:
Whether the administrative order is statutory or non-statutory it, is 'State action'. Hence in India as in the united States, there is an additional ground upon which the courts can interfere, namely that the order violates a fundamental rights or other mandatory provision of the constitution. Thus an order containing instructions for admission to

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¹ Nagendra Vs commr AIR 1958 SC 398
² Harivishnu Vs Ahamad (1955) SC 1104
³ R. Vs. Narthumberland Tribunal (1952) 1 All ER 122 C.A.
⁴ Rowther Vs S.T.A. Tribunal AIR 1959 SC 894
⁵ ibid-
⁶ Hasanji Vs State of M.P. AIR 1965 SC 470
⁷ Radheshyam Vs State of M.P. AIR 1959 SC 107
⁸ Radheshyam Vs State of M.P. AIR 1959 SC 107
educational institution may be invalid on the ground of violation of Article 29(1)\(^1\), (2)\(^2\) & 30(1)\(^3\)

(11) **Exclusion of Judicial Review :-**

Some times provisions are made for exclusion of judicial review by making administrative action final. The subject of administrative finality is extremely complicated with intricate ramifications because the courts very often shift their positions. Generally a clause is inserted in the statute by which the actions of administration are made final. Such a clause may be given various names e.g. finality clause, private clause, exclusion clause, ouster clauses conclusive clause etc.

(12) **Discretionary Power :**

In democratic countries, like India the establishment of a welfare state is one of the essential goal to be achieved for which sufficient provisions in the constitution are/were incorporated. The administrative authorities acquire vast discretionary powers and generally, the exercise of such powers is left to the subjective satisfaction of the administration without laying down any statutory guidelines, or imposing any conditions on it. This matter brings forth in an acute form the issue of control of discretionary powers so that there may be a “government of laws and not of men”.

(13) **Administrative Discretion – Definition –**

Discretion implies power to make a choice between alternative courses of action. Coke once said that discretion is a science or understanding to discern between falsity and truth, between right and wrong and not to do according to to, will and private affection.\(^4\) Discretion in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to the personal whims. Such exercise is not to be arbitrary, vague and fanciful but legal and regular.\(^5\) In the words of Mr. Justice Frankfurter \(^6\) “Discretion without a criterion of its exercise is authorisation of arbitrariness.”\(^7\)

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1 State of Bombay Vs Education Society (1955) 1 SCR 568  
2 State of Madras Vs Chandraprakash (1957) SCR 525.  
3 State of Bombay Vs Education Society (1955) 1 SCR 568.  
4 Rooke’s Case (1598) 5 Co Rep. 996.  
5 Sharp Vs Wakefield 1891 AC 175  
6 Brown Vs Allen 344 US 443 at 446 (1952)  
7 Brown Vs Allen, 344 US 443 at 446 (1952)
Administrative discretion may be denoted by such coined terms as “Public interest”, “Public purpose,” fair, fit, prejudical to public safety or security, satisfaction belief, efficient, reasonable, expedient, proper, sufficient or their opposite.

The best definition of “administrative discretion” is given by professor Freud.¹ That when we speak of administrative discretion we mean that a determination may be reached, in part at least, upon the basis of consideration not entirely susceptible of proof or disproof .... It may be practically convenienct to say that discretion includes the case in which the ascertainment of fact is legitimately left to administrative discretion.²

(14) Discretionary Power and Judicial control:

There are different types of discretionary powers conferred on the administration. They range from simple ministerial functions like maintenance of births and death register, regulation of business activity, acquiring proportion for a public purpose, investigation, seizure, confiscation, and destruction of property, externment or detention of person or subjective satisfaction of the administrative authority and the like.

Discretion is principal source of creativeness in government and in law. Wide discretion must be in all administrative activity,³ but at the same time it is necessary to confine structure and check discretion to uphold the principle of the rule of law in administration lest cases of manifest injustice go unheeded and unpunished.

(15) Extent of Review:

There are various ways to control discretionary powers of the administrative authorities. One is the application of procedural safeguard as embodied in natural justice. The other is the recognition and application of the doctrine of excessive delegation in relation to delegated legislation and third are through constitutional remedies, namely writs.

The extent of judicial review has been considered by the Supreme Court in Pratap Singh Vs State of Punjab,⁴ that the only question which could be considered by the court is whether the authority vested with the power has paid attention to or taken into account circumstances, events, or matters wholly extraneous to the purpose for which the power

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1 Administrative Powers over persons and property, 71 (1928)
2 Pro. Freund : Administrative power over persons & Proportion.
3 Courts and Administrative process (1949) 63 L.Q.R. 173
4 Pratap Singh Vs State of Punjab AIR 1964 SC 72, 83
was vested or whether proceeding have been initiated malafide for satisfying a private or personal grudge of the authority.

The Courts justify interference with discretionary powers exercised by the administration on the following grounds:

(i) Substantive ultravires.
(ii) Procedural ultravires
(iii) Constitutional grounds
(iv) Failure to exercise discretion
(v) Abuse of discretion.

(i) Substantive Ultravires:

If the authority upon whom the power is conferred acts beyond its power, such action is ultravires. The doctrine of ultravires applies even where the statute authorises the authority to act in his discretion or, upon his subjective satisfaction. The administrative authority must abide by the condition precedent laid down by the statute as to time occasion or circumstances. When the discretionary act may be done. It is open to the court to enquire whether circumstances upon which the executive formed its subjective satisfaction did exist, objectively, and to strike down the discretionary order if the court finds that such circumstances did not exist.

(ii) Procedural Ultravires:

If the statute which confers the discretionary power lay down any procedure as to how the power is to be exercise, the court would strike down, the discretionary action, if the procedural requirement is disregarded. Thus if the statues lays down factors which the authority has to take into consideration while exercising the power, the court would nullify the discretionary decision if it is actuated by extraneous considerations or malafides.

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1 Ram Krishna Vs Tendelkar AIR 1958 SC 538
2 State of Gujrat Vs Jamunadas AIR 1974 SC 2233
3 Cooper Vs Unionof India AIR 1970 SC 564.
4 Maneka Gandhi Vs Union of India 1978 SC 597.
5 Tamilnadu Service Asso Vs State of T>N. 1980 SC 379
Constitutional Grounds:

As in the case of all administrative action, so in the case of discretionary power vested by statute, the discretionary action will be invalid if it is arbitrary, or discriminatory and thus violets Article 14 or 19.

The Court may also interfere on the ground of violation of natural justice, where discretionary action involved civil consequences.

Failure to exercise discretion:

Discretion is conferred on the administration on the assumption that it will exercise the same to the facts and circumstances of the case in hand. Circumstances giving raise to such type of flaw are as under:-

(a) Acting Mechanically:

Statutory discretion can not be said to have been exercised by an authority when it passes an order mechanically without considering facts and circumstances of each case.

(b) Abdication of Function:

A Situation may happen that discretion has been conferred on an authority but leaves it to be exercised by the subordinates without acting itself. In such a fact of situation an order made by the subordinate is bad.

(c) Acting under dictation:

In Gell VS Teja Noora: The court held that order was bad as the commissioner had imposed fetters on his discretion by self. Imposed rules of policy and failed to consider in respect of each individual carriage whether it was bit for the conveyance of the public. Imposing fetters on the exercise discretion exercise the same after considering individual cases.

Sometimes, it so happens that an authority entrusted with discretion does not exercise the discretion but acts under a dictation by a superior authority. In law such a situation amounts to non-exercise of its discretion by the authority and is bad. Although the authority purports to act on its own but in effect the power is exercised by another. The

1 Ramana Vs IAAI : AIR 1979 SC 1628
2 Maneka Gandhi Vs Union of India AIR 1978 SC 597.
3 Maneka Gandhi Vs Union of India AIR 1975 SC 597
4 Assistant collector of Estate Duty Vs Prayagdas Agrawal. AIR 1981 SC 1263.
5 Manikchandra Vs State AIR 1973 Gau.1
6 Gell Vs Teja Noora (1907) 27 ILR 130 m 307
authority concerned does not apply its mind and take action on its own judgment, even-
thought it was so intended by the statute.

In Orient paper Mills Vs Union of India the relevant statute had empowered the
Deputy Superintendent to levy excise but he ordered levy of excise in accordance with the
direction issued by the collector. The Supreme Court quashed the order passed by the Dy.
Jurisdiction.

(d) Non-application of Mind:
Where an authority is given discretion, the said authority must exercise the same
after applying its mind to the facts and circumstances of the case in hand. If this requirement
is not satisfied, there is a clear case of non-application of mind on the part of authority
concerned.

In Jagannath Vs State of Orissa a preventive detention case, six grounds were
verbation reproduced from the relevant provision of the statute. Supporting the order, the
Home Minister filed affidavit stating that his personal satisfaction to detain the petitioner
was based on two grounds. The court ruled that the order was bad as the minister had not
applied his mind to all the grounds mentioned therein.

(16) Abuse of Discretion:
When discretionary power is conferred on an administrative authority, it is required
to be exercised according to law. But an Markose remarks – when the mode of exercising
a valid power is improper or unreasonable, then is abuse of power. There are various
forms of abuse of discretion. The circumstances from which abuse of discretion may be
inferred are as under:-

(a) Exceeding Jurisdiction:
An administrative authority is required to exercise discretionary power within the
limits of the statute an action or decision going beyond what is authorized by law is ultravires.

If under the relevant regulation the management is empowered to dismiss a teacher,
the said power can not be exercised to dismiss the principal.
(b) Irrelevant Considerations:

A discretionary power conferred on an administrative authority by a statute must be exercised on relevant and not irrelevant or extraneous considerations.

Thus in Ram Manohar Lohia Vs State of Bihar\(^1\) under the Defence of India Rules, the authority was empowered to detain a person to prevent subversion of "public order". The petitioner was detained with the view to prevent him from acting in a manner prejudicial to the maintenance of "Law & order". The court set aside the order of detention. In the opinion of the court, the concept of law and order was order than the concept of public order.

(c) Leaving out relevant Considerations:

If administrative authority fails to take into account relevant considerations the exercise of power would be bad. It is very difficult to prove that certain relevant factors have not been taken into consideration by the authority. However, it can be inferred from detailed reasons given in the impugned order. Some times the relevant considerations are prescribed by the statute itself e.g., "regard shall be had to" "must have" "regard to" etc.

In Nizamuddin Vs State of W.B.\(^2\) an order of detention was passed against internal security Act 1971 (Misa). The order was made on a solitary ground of theft in respect of which a criminal case was filed and subsequently dropped. This fact was not brought to the notice of the detaining authority. The supreme court observed that it would be most unfair to the person sought to be detained not to disclose the tendency of a criminal case against him to the district magistrate.

(d) Mixed Considerations:

Sometimes, it so happens that the order is not wholly based on irrelevant or extraneous considerations. It is founded partly on relevant and existent considerations and partly or irrelevant, or non-existent considerations. Judicial pronouncement do not depict a uniform approach on this point.

In Dhirajlal Vs Comm. of Income Tax\(^3\) there was a question before the supreme court whether the applicant was liable to assessment or not. The tribunal relying on relevant as well as irrelevant materials, held the appellant liable. The court quashed the order of

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1 Ram Manohar Lohia Vs State of Bihar AIR 1966 SC 740
2 Nizamuddin Vs State of W.B. AIR 1974 SC 2353
3 Dhirajlal Vs Commr of Income Tax AIR 1955 SC 271
assessment because of the use of inadmissible methods.

(e) Malafide:

In its popular sense, malafide means dishonest intention or corrupt motive: de Smith,\(^1\) states that in relation to the exercise of statutory power it may be said to comprise dishonesty (or fraud) and malice. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have conferred.

Thus in Pratap Singh Vs State of Punjab\(^2\) the applicant who was a civil surgeon had proceeded on leave preparatory to retirement. The leave which was initially granted was revoked subsequently. The applicant was suspended, a departmental inquiry was held against him and ultimately he was removed from service. The applicant alleged that proceedings had been initiated against him of the instance of the chief minister to wreak personal vengeance on him as he had refused to yield to the illegal demands of the former. The court concluded that the charge of malafide exercise of power was proved and accordingly quashed the governmental action.

(f) Improper Purpose: Collateral Purpose:

If statutory power is conferred for one purpose, but it is exercised for a different purpose, that is abuse of power, the action may be quashed. Improper purpose must be distinguished from malafide exercise of power. In the latter person ill-will or malice is present where as in the former it may not be so, and the action of the authority may be bonafide and honest, but it may be different from what is contemplated by the statute, so it may be set aside.

Thus, in Nalini Vs District Magistrate –\(^3\) under the relevant statute, power was conferred on the authority to rehabilitate persons displaced from Pakistan as a result of communal violence, but it was exercised to accommodate a person who had come from Pakistan on medical leave. The order was set aside.

(g) Colourable Exercise of Power:

Where the authority resorts to exercise power ostensibly for the authorized and but
in reality for some other purpose, it is called colourable exercise of power. Viewed in this light colourable exercise means that under the colour is or "guise" of legality, the authority seeks to do something which is not authorized by law in question. In this sense "Colourable exercise of power" would not appear to be a distinct ground of judicial review of administrative discretion but would be overshadowed by the grounds already mentioned viz improper purpose or irrelevant considerations. Thus in Somwanti Vs State of Punjab\(^1\) the supreme court said that whether in a particular case the purpose for which land is needed is a public purpose or not is for the state Government to be satisfied about .... Subject to one exception. The exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party .... If it appears that what Government is satisfied is not a public but private purpose or non purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be nullity." \(^2\)

(17) Reasonable Exercise of Power:

A discretionary power conferred on an administrative authority is required to be exercised reasonable. Where the power is exercised unreasonably there is abuse of power and the action of administrative authority will be ultra vires. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows, or ought to know. \(^3\)

Similarly the term unreasonable means more than one thing, it may include many things, e.g irrelevant of extraneous consideration, improper purpose or malafide it is frequently used as a general description of things that must not be done. \(^4\)

In the leading case of Roberts Vs Hopewood\(^5\) the local authority was empowered to pay "such wages as it may think fit". In exercise of this power, the wages were fixed at F4 per week to the lowest grade worker in 1921-22. the court ruled that thought the discretion was conferred it was not exercised reasonably and the action was bad.

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1 Somwanti Vs State of Punjab AIR 1963 SC 151
2 Somewants Vs State of Punjab AIR 1963 SC 151
3 Gujrat Water Supply Sewerage Board Vs Unique Erectors AIR 1989 SC 993
4 Associated Provincial Picture House Ltd. Vs Wrenbury Corpn (1948) 1 K.B. 223
5 Roberts Vs Hopewood (1925) AC 578
There is another dimension of judicial review of administrative discretion viz - administrative discrimination under Article 14 of the constitution. Article 14 illegalises and discrimination or arbitrary action in the actual exercise of any discretionary power. The Supreme Court has stated in E.P. Ropayaya Vs State of Tamilnadu¹ that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment for arbitrary action necessarily involves negation of equality. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 which requires that State action must be based on valid relevant principle applicable alike to all, similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would amount to denial of equality.

Even in cases where the government confers a benefit or largess, and does need the support of law, the court has required that it must act reasonably and fairly and without discrimination.

In R.D. Shetti Vs International Airport authority, S.C. held that it must, therefore be taken to be the law that where the Government is dealing with the people, whether by way of giving jobs or entering into contracts or issuing quotas, or licences or granting forms of largess the Government can not act arbitrarily at its, sweat will and the private individual, deal with any person, it pleased but its action must be in conformity with standard or norm, which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of granting largess including the award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational relevant and non discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the government would be liable to be struck down unless it can be shown by the government that the department was not arbitrary but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory"²

¹ E.P. Ropayaya Vs State of Tamilnadu AIR 1974 SC 555
² Raman Dayaram Shetty Vs International Airport authority – AIR 1979 SC 1628.
B. **Penal Proceedings and their Remedies**

Penal proceedings means disciplinary inquiries. The disciplinary inquiries are fact finding investigations by administrative authorities. In essence disciplinary enquiry is a quasi-judicial trial. The enquiry officer becomes a domestic Tribunal. The purpose of the quasi-judicial enquiry –cum-trial is to inflict a penalty on the employee, who if found guilty is alleged to have been committed a misconduct. If found innocent he is discharged of the charges levelled against him is. What does mean by misconduct. The term misconduct has been defined nowhere. But we shall observe it is the context of conduct Rules. Conduct and misconduct both are human behavior. In public services a government servant is expected to perform his duties remaining with in the four corner of discipline. Discipline may mean proper behavior in accordance to rules, and rules here mean Government Servant’s conduct Rules. For the purpose we may refer here the central civil services (conduct) Rules 1964. Now here we may very well indicate misconduct means violation of the conduct Rules, and it can be either commission or omission Commission means positive action by which an employee violates the conduct Rules act which a government servant is required to do as per the rules.

Here we are concerned with the Penal proceedings or disciplinary enquires against a government Servant after completion of which, either he is inflicted with the penalties or discharged of the charges against him.

The penalties which one inflicted against the employee have been provided in Rule 11 of part V of the central civil Service (classification, Control and appeal) rules, 1965 as under.

(1) **Rule 11 Penalties:**

The following penalties may for good and sufficient reasons and as hereafter provided be imposed as a Government Servant namely

**Minor Penalties:**

(i) Censure

(ii) With holding of his promotion.
(iii) Recovery from his pay of the whole or part of any pecuniary loss caused by
him is the Government by negligence or breach of orders.

(iii) Reduction to a lower stage in the time Scale of the pay for a period not
exceeding 3 years without cumulative effect and not adversely affecting his
pension.

(iv) With holding of increments of pay.

(2) **Major Penalties**

(v) Save as otherwise provided for the Clause (iii-a), reduction to a lower stage
in the time-scale of pay for a specified period, with further directions as to whether
or not the period, the Government Servant will earn increments of pay during the
period of Such reduction and whether on the expiry of such period the reduction will
or will not have the effect of postponing the further increments of his pay.

(vi) Reduction to a lower time-scale of pay, grade, post or Service which shall
ordinarily be a bar to the promotion of the Government Servant to the time Scale of
pay, grade, post or Service from which he was reduced with or without further
directions, regarding conditions of restoration to the grade or post or service from
which the Government Servant was reduced and his seniority and pay on such
restoration to that grade, post or Service.

(vii) Compulsory retirement-

(viii) Removal from service which shall nor be a disqualification for future
employment under the Government.

(ix) Dismissal from Service, which shall ordinarily be a disqualification for future
employment under the Government.

Provided that in every case in which the charge of acceptance from any person of
gratification, other than legal remuneration as a motive or reward for doing or forbearing to
do any official act is established the penalty mentioned in clause (viii) or clause (ix) shall be
imposed.
Provided further that in any exceptional case and for any special reasons recorded in writing, any other penalty may be imposed.

(3) **Explanation**-

The following shall not amount to a penalty within the meaning of this rule, namely-

(i) With holding of increments of pay of a Government servant for his failure to pass any departmental examination in accordance with the rules or orders governing the service to which he belongs or post which he holds or the terms of his appointment.

(ii) Stoppage of a Government Servant at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar.

(iii) Non-promotion of a Government Servant, whether in a substantive or officiating capacity, after consideration of his case, to a service, grade, or post for promotion to which he is eligible.

(iv) Reversion of a Government servant-officiating is a higher service, grade or post to a lower Service, grade or post, on the ground that he is considered to be unsuitable for such higher service, grade or post on any administration ground unconnected with his conduct.

(v) Reversion of government Servant-appointed on probation to any other service, grade or post, to his permanent service, grade or post during or at the end of the period of probation in accordance with the rules and orders governing such probation.

(vi) Replacement of the services of a Government Servant whose service had been borrowed from a state Government or any other authority under the control of a state Government, at the disposal of the State Government or the authority from which the Services of such Government Servant had been borrowed.

(vii) Compulsory retirement of Government Servant in accordance with the provisions relating to his superannuation or retirement.
(viii) Termination of the Services-

(a) of a Government servant appointed on probation, during or at the end or the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or

(b) of a temporary Government Servant in accordance with the probations of sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Ruler 1965, or

(c) Of a Government Servant, employed under a agreement in accordance with the terms of such agreement.

(4) Procedure For Imposing Penalties:

Rule 14 to 21 of Part VI of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 provide for procedure for imposing major and minor penalties against the delinquent Government Servant as under:-

Rule 14 Procedure for imposing major penalties.- (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government Servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into truth there of.

Explanation- Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government Servant under this Rule and Rule 15, disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge,
(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain:

(a) a statement of all relevant facts including or misbehaviour in support of each article of charge, which shall contain:

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defense and state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers if necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

(b) If no written statement of defence is submitted by the Government Servant the disciplinary authority may, itself, inquire into the articles of charge, or may, if it considers it necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order, appoint a Government Servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government Servant;
(ii) a statement of the imputations of misconduct or mis-behaviour in support of each article of charge, which shall contain:

(a) a statement of all relevant facts including or mis-behaviour in support of each article of charge, which shall contain:

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defense and state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15

(b) If no written statement of defence is submitted by the Government Servant the disciplinary authority may, itself, inquire into the articles of charge, or may, if it considers it necessary to do so, appoint under sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding any inquiry into such charge, it may, by an order, appoint a Government Servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority-

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government Servant;
(iii) a copy of the statements of witness, if any, referred to in sub-rule (3);
(iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government Servant; and
(v) a copy of the order appointing the "President Officer".

(7) The Government Servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by notice in writing, specify, in this behalf, or within such further time not exceeding ten days, as the inquiring authority may allow.

(8) (a) The Government Servant may take assistance of any other Government Servant posted in any office either at his headquarters or at the place where the inquiry is held, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiry authority having regard to the circumstances of the case and for reasons to be recorded in writing so permits.

(b) The Government Servant may also take the assistance of a retired Government Servant to present the case on his behalf, subject to such conditions as may be specified by the President from time to time general or special order in this behalf.

(9) If the Government Servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiring authority shall return a finding of guilty in respect of those articles of charge to which the Government Servant pleads guilty.

(11) The inquiring authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall, adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);

(ii) Submit a list of witnesses to be examined on his behalf.

Note. - If the Government Servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are, in the possession of Government but not mentioned in the list referred to in sub-rule (3).

Note. - The Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority, shall, on receipt of the notice for the discovery or production of documents, forward the same or copies there of to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in sub-rule (12), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority.
Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of documents.

(14) On the date fixed for the inquiry the oral documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

Note- New evidence shall not be permitted or called for or any witness not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence, which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded, and the Government Servant shall be required to sign the
record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case, and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiry authority may, after the completion of the production of evidence, hear the Presiding Officer, if any, appointed, and the Government Servant, or permit them to file written briefs of their respective case, if they do desire.

(20) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or dies not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 (but not competent to impose any of the penalties specified in clauses (v) to (ix) of Rule 11), has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government Servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witness and examine and cross-examine and re-examine the "witness" and may impose on the Government Servant such penalty as it may deem fit in accordance with these rules.
(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority so succeeding, may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiry authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government Servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and reasons therefore.

Explanation:- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(iii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-

(a) the report prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the Government Servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the President Officer or the Government Servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.
Rule 15  
Action on the inquiry report.- (1) The disciplinary authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions or Rule 14, as far as may be.¹

(1-A) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, to held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the enquiring authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen day, irrespective of whether the report is favourable or not to the Government servant.

(1-B) The disciplinary authority shall consider the representation, if any submitted by the Government servant before proceeding further in the manner specified in sub-rules (2) to (4).

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose.

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government Servant. (G.L., M.H.A., (Dept. of Personnel and A.R.) Noti. No. 11012/2/77-Ests. A, dated 16th August, 1978)

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the

¹. Ins. By G.S.R. 275, dated 3rd may, 1995 (w.e.f. 10.06.1995).
Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the commission, the record of the inquiry shall be forwarded by the disciplinary authority to the commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government Servant.

Rule 16  Procedure for imposing minor penalties.-(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (iv) of Rule 11 shall be made except after-

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 14, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

(d) recording a finding on each imputation of misconduct or misbehaviour, and

(e) consulting the Commission where such consultation is necessary.¹

(1-A) Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any made by the Government Servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of

increments is likely to affect adversely the amount of pension payable to the Government Servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an inquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government Servant any such penalty.

(2) The record of the proceedings in such cases shall include:

(i) a copy of the intimation to the Government Servant of the proposal to take action against him;

(ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him;

(iii) his representation, if any;

(iv) the evidence produced during the inquiry;

(v) the advice of the Commission, if any;

(vi) the findings on each imputation of misconduct or misbehaviour; and

(vii) the orders on the case together with the reasons therefore.  

Rule 17 Communication of Orders.- Orders made by the disciplinary authority shall be communicated to the Government Servant who shall also be supplied with a copy of its findings on each article of charge, or where the disciplinary authority is not the inquiring authority, a statement of the findings of the disciplinary authority together with brief reasons for its disagreement if any, with the finding of the inquiring authority and also a copy of the advice, if any, given by the commission, and where the disciplinary authority has not accepted the advice of the commission, a brief statement of the reasons of such non-acceptance.

Rule 18 Common proceedings.-(1) where two or more Government Servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government Servants may make an order directing action against all of them, may be taken in a common proceeding.

Note.- If the authorities competent to impose the penalty of dismissal on such Government Servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (4) 12, any order shall specify.-

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;

(ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding.

Rule 19 Special procedure in certain cases- Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.¹

Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i).

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule.

Rule 20 Provisions regarding officers lent to State Government etc.- (1) Where the services of a Government Servant are lent by one department to another department or to a State Government or an authority subordinate thereto or to a local or other authority (hereinafter in this rule referred to as "the borrowing authority"), the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government Servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceedings against him.

Provided that the borrowing authority shall forthwith inform the authority which lent the services of the Government Servant (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of suspension of such Government Servant or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government Servant.

(i) if the borrowing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on the Government Servant, it may after consultation with the lending authority, make such orders on the case as it deems necessary: provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government Servant shall be replaced at the disposal of the lending authority.

(ii) if the borrowing authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government Servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the disciplinary pass such orders
thereon as it may deem necessary or, if it is not the disciplinary authority, submit the case to the disciplinary authority which shall pass orders on the case as it may deem necessary.

provided that before passing any such order the disciplinary authority shall comply with the provisions of sub-rules (3) and (4) of Rule 15.

Explanation. - The disciplinary authority may make an order under this clause on the record of the inquiry transmitted to it by the borrowing authority or after holding such further inquiry as it may deem necessary, as far as may be, in accordance with Rule 14.

Rule 21 Provisions regarding officers borrowed from State Government etc.-

(1) Where an order of suspension is made or disciplinary proceeding is conducted against a Government Servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate there to or a local or other authority the authority lending his services (hereinafter in this Rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government Servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government Servant if the disciplinary authority is of opinion that any of the penalties specified in clauses (i) to (iv) of Rule 11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of Rule 15 and except in regard to a Government Servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case as it may deem necessary:

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority the services of the Government Servant shall be replaced at the disposal of the lending authority;
(ii) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule 11 should be imposed on the Government Servant it shall replace the service of such Government Servant at the disposal of the lending authority and transmit to it the proceedings of inquiry for such action as it may deem necessary.

Remedy Through Departmental Appeals, Revision and Review

A delinquent Government servant against whom order has been passed may seek remedy through departmental appeal, Revision & Review for which Rules have been made in Rule 22 to 32 under part-VII, VIII and IX of the Central Civil Services (classification, control and Appeal) Rules 1965: The said Rules are being reproduced as under:-

PART VII

(6) APPEALS

Rule 22 orders against which no appeal lies.- Notwithstanding anything contained in this Part, no appeal shall lie against:

(i) any order made by the President;

(ii) any order of an interlocutory nature or of the nature of a [step-in-aid of] the final disposal, of a disciplinary proceeding, other than an order of suspension;

(iii) any order passed by an inquiring authority in the course of an inquiry under Rule 14.

Rule 23 Orders against which appeal lies.- Subject to the provisions of Rule 22, a Government Servant may prefer an appeal against all or any of the following orders, namely,-

(i) an order of suspension made or deemed to have been made under Rule 10;

(ii) an order imposing any of the penalties specified in Rule 11 whether made by the disciplinary authority or by any appellate or 2

(iii) an order enhancing any penalty, imposed under Rule 11;

(iv) an order which-

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or

(b) interprets to his disadvantage the provision of any such rule or agreement;

1 Subs. By G.S.R. 17, dated 2nd January, 1996 (w.e.f. 20.1.1996)
(v) an order-

(a) stopping him at the efficiency bar in the time-scale of pay on the ground of his unfitness to cross the bar;

(b) reverting him while officiating in a higher service, grade or post, to a lower service, grade, or post, otherwise than as a penalty;

(c) reducing or withholding the pension or denying the maximum pension admissible to him under the rules;

(d) determining, the subsistence and other allowances to be paid to him for the period of suspension or for the period during which he is deemed to be under suspension or for any portion there of;

(e) determining his pay and allowances-

(i) for the period of suspension, or

(ii) for the period from the date of his dismissal, removal, or compulsory retirement from service, or from the date of his reduction to a lower service, grade, post, time-scale or stage in a time-scale of pay to the date of his reinstatement or restoration to his service, grade or post shall be treated as a period spent on duty for any purpose.

Explanation.- In this rule-

(i) the expression 'Government Servant' includes a person who has ceased to be in Government service;

(ii) the expression 'pension' includes additional pension, gratuity and any other retirement benefit.

Rule 24 Appellate Authorities.- Appellate authorities.- (1). A Government Servant, including a person who has ceased to be in Government service, may prefer an appeal against all or any of the orders specified in Rule 23 to the authority specified in this behalf either in the Schedule or by a general or special order of the President or, where no such authority is specified-
(i) Where such Government Servant is or was a member of a Central Service, Group A or Group B or holder of a Central Civil Post, Group A or Group B,-

(a) to the appointing authority, where the order appealed against is made by an authority subordinate to it, or

(b) to the appointing where such order is made by any other authority;

(ii) where such Government Servant is or was a member of a Central Civil Service, Group C or Group D or holder of a Central Civil Post, Group C or Group D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) Notwithstanding anything contained in sub-rule (1)-

(i) an appeal against order in a common proceeding held under Rule 18 shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately subordinate;¹

Provided that where such authority is subordinate to the President in respect of a Government Servant for whom President is the appellate authority in terms of sub-clause (b) of clause (i) of sub-rule (1), the appeal shall lie to the President.

(iii) where the person who made the order appealed against becomes, by virtue of his subsequent appointment of otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.²

(3) A Government Servant may prefer an appeal against an order imposing any of the penalties specified in Rule 11 to the President, where no such appeal lies to him under sub-rule (1) or sub-rule, (2), if such penalty is imposed by any authority other than the President, on such Government Servant in respect of his activities connected with his work as an office-bearer of an association, federation or union, participating in the Joint Consultation and Compulsory Arbitration Scheme.

Rule 25 Period of limitation of appeals.- No appeal preferred under this part shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to the appellant:

Provided that the appellate Authority may entertain the appeal after the expiry of the


said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

Rule 26  Form and contents of appeal.- (1) Every person preferring an appeal shall do so separately and in his own name.

(2) The appeal shall be presented to the authority to whom the appeal lies, a copy being forwarded by the appellant to the authority which made the order appealed against. It shall contain all material statements and arguments on which the appellant relies, shall not contain any disrespectful or improper language, and shall be complete in itself.

(3) The authority which made the order appealed against shall, on receipt of a copy of the appeal, forward the same with its comments thereon together with the relevant records to the Appellate Authority without any avoidable delay, and without waiting for any direction from the appellate Authority.

Rule 27  Consideration of appeal.- (1) In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate authority shall consider-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-
(i) confirming, enhancing, reducing, or setting aside the penalty; or
(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that-

(i) the commission shall be consulted in all cases where such consultation is necessary;
(ii) if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry.

Rule 28 Implementation of orders in appeal.- The authority which made the order appealed against shall give effect to the orders passed by the Appellate Authority.

PART VIII

(7) REVISION AND REVIEW

Rule 29 “Revision”.—(1) Notwithstanding anything contained in these rules:

(i) the President; or
(ii) the Comptroller and Auditor- General, in the case of a Government Servant serving in the Indian Audit and Accounts Department, or
(iii) the member (Personnel), Postal Services Board in the case of a Government Servant serving or under the Postal Services Board and Adviser, Human Resource Development, Department of Tele-communications Board in the case of Government Servant serving in or under the Telecommunications Board; or

(iv) the head of a department directly under the Central Government, in the case of a Government Servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such head of a department or

(v) the Appellate Authority, within six months of the date of the order proposed to be revised; or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on his or its own motion or otherwise, call for the records of any inquiry and revised any order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance, or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any [revising] authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under Rule 14 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 subject to the provisions of Rule 19, and except after consultation with the commission where such consultation in necessary:

Provided further that no power \[1\] [revision] shall be exercised by the Comptroller and Auditor-General, \[2\] Member (Personnel), Postal Services Board, Adviser, (Human Resource Development), Department of Telecommunications or the Head of Department, as the case may be, unless-

(i) the authority which made the order in appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for \[3\] [revision] shall be commenced until after-

(i) the expiry of the period of limitation for an appeal, or
(ii) the disposal of the appeal, where any such appeal has been preferred.

(3) An application for \[4\] [revision] shall be dealt within the same manner as if it were an appeal under these Rules. \[5\]

Rule 29-A Review. - The President may, at any time, either on his own motion or otherwise, revise any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice:

Provided that no order imposing or enhancing any penalty shall be made by the president unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in Rule 11 or be reviewed to any of the major penalties and if an enquiry under Rule 14 has not already been held in the case, no such penalty shall be imposed except after inquiring in the manner laid down in Rule 14, subject to the provisions of Rule 19 and except after consultation with the commission where such consultation is necessary.

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PART IX
MISCELLANEOUS

Rule 30 Service of orders, notices etc.- Every order, notice and other process made or issued under these rules shall be served in person on the Government Servant concerned or communicated to him by registered post.

Rule 31 Power to relax time-limit and to condone delay.- Save as otherwise expressly provided in these rules, the competent authority under these rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these rules for anything required to be done under these rules or condone any delay.

Rule 32 Supply of copy of Commission's advice.- Whenever the commission is consulted as provided in these rules, a copy of the advice by the Commission and where such advice has not been accepted also a brief in statement of the reasons for such non-acceptance, shall be furnished to the Government Servant concerned along with a copy of the order passed in the case, by the authority making the order.

(8) Remedy Through Writs:

The rights of an employee under Article 311 of the constitution is not the fundamental right therefore the remedy in this respect is not available to him under Article 32 of the constitution. But the court would interfere in service matters where the petitioners fundamental rights have been injured by some Act or rules or order, of the administration, particularly when the decision or scheme etc. is arbitrary, irrational perverse or malafide, e.g. the established principle of seniority that has been violated in the absence of any statutory rule to the contrary. Thus relief is available under Article 32 where the fundamental right of a Government undertaking or public corporation under Article 14, has been infringed, in the matter of appointment, pay, confirmation or any other conditions of service has been infringed, by a service rule, order etc. Article 14 may be violated if, in the matter of terminating the services of temporary employees, for instance, one employee is arbitrarily selected for termination or imposing a ban against reemployment.

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1 Narayan Vs State of U.P. AIR 1971 SC 1716
2 Nityananda Vs State of Orissa AIR 1991 SC 1133 para 13
3 F.C.I. Workers Vs F.C.I. AIR 1990 SC 2178 (para 18-25)
4 Khanzode Vs Reserve Bank of India AIR 1982 SC 917
5 Doval Vs Chief Secy. AIR 1984 SC 1527 (para 11-15)
6 Bhagbati VS SMDC (1990) 1 SCJ 433 Para 6
7 Bhagbati VS SMDC (1990) 1 SCJ 433 Para 6
8 Krishan Chander Vs C.T.O. AIR 1962 SC 602
Writs are issued by the Supreme Court under Article 32 and by the High Courts under Article 226 of the constitution. Moreover, under Article 227 High Courts exercise the power of supervision over Tribunals within their territory jurisdiction. Provisions for appeal from the decisions of the Administrative Tribunals has been made under Article 136. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings, for the enforcement of fundamental Rights conferred by part III of the constitution. Article 32(2) empowers the Supreme Court to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, Quo-Warrant and certiorari whichever may be appropriate for the enforcement of these fundamental rights. Article 226(1) empowered every High Court not withstanding any thing in Article 32, throughout the territories in relation to which it exercises jurisdiction to issue to any person, or authority, including in appropriate cases any government, within those territories, directions, orders or writs, including writs in the nature of habeas corpus, mandamus prohibition Quo warranto and certiorari or any of them for the enforcement of fundamental rights or for any other purpose.

Principles For Exercise of writ Jurisdiction

The writ jurisdiction exercised by the Supreme Court under Article 32 and by the High Court under Article 226 for the enforcement of fundamental rights is mandatory and not discretionary. However, the writ jurisdiction exercised by the High Court under Article 226 for any other purpose is discretionary. Some principles regulate the exercise of jurisdictions of these courts as under:

In general the court will not answer a hypothetical question, or question which does not arise form the us between the partier, or would unvolved a roving inquiry to establish his alleged right, nor the court will give relief where the pleading is rague or on a point which has not been specifically taken in the pleadings or where such relief will involve abuse of process of court.

1 Sanjeev Coke Vs Bharat Coking AIR 1983 SC 239 (para 11)
2 Hamsaveni Vs State of T.N. (1994)8 SCC 51 (para 5)
3 Panda Vs S.A.A. (1994) 5 S.C. 304
4 Arti Vs State of J&K 1981 SC 1009 (para 14)
5 Sharma Vs Union of India AIR 1981 SC 568 (para 6)
6 Ashok Vs D.D.A. (1994)6 SC C 97
(1) **Delay and Laches:**

In the exercise of writ jurisdiction the conduct of the petitioner will be taken into consideration. Inordinate delay in involving the jurisdiction may be a good ground for declining to issue writs. Although the writ issuing power of the supreme court under Article 32 and High Courts under Article 226 for enforcement of fundamentals rights is mandatory, yet the court may decline to grant relief if the petitioner is guilty of laches or lapse of time.

(2) **Misrepresentation:**

Where the petitioner makes a clear misrepresentation as to material facts, the court may dismiss the petition of any stage at any ground even revoking a Rule Nisi which may have been issued on the basis of the facts so stated by the petitioner. Similar would be the result of suppression of material facts.

(3) **Malicious:**

Apart from any other consideration, the court may dismiss a petition which is malicious or ill motivated.

(4) **Infractions:**

Petition under Article 32 is liable to be dismissed on the ground of its having become infractions.

(5) **Alternative Remedy:**

Ordinarily the court exercises writ jurisdiction on exhaustion of remedies. Availability of an adequate and efficacious alternative legal remedy is a ground for the court to decline to exercise its writ issuing power. However this principle is not to apply where the enforcement of fundamental rights either under Article 32 or 226 is involved.

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1 P.S. Sadasivswamy Vs State of T.N. (1925) 1 SCC 152
2 Ramjas Doundation Vs Union of India AIR 1993 SC 852
3 Moghe Vs Union of India AIR 1981 SC 1995 (para 23)
4 Welcome Hotel Vs State of A.P. AIR 1983 SC 1015 (para 7)
5 ibid.
6 Kini Vs Union of India AIR 1985 SC 893 (para 4)
7 K.K. Kochuni Vs State of Hadras AIR 1959 SC 725
8 Himmatlal Vs State of M.P. AIR 1954 SC 403.
(6) **Res Judicata:**

The doctrine of res-judicata which is founded on public policy applies in the area of writ jurisdiction as well if a writ petition has been considered and dismissed, the same petition on the same ground cannot be filed in the same court again. Thus if once a petition filed under Article 32 is dismissed by the Court, subsequent petition is barred. ¹

(7) **Anticipatory Relief:**

The jurisdiction conferred on the supreme court under Article 32 or the High Court under Article 226 is very vast and comprehensive. Such words as writs, orders, or directions used in Article 32 as well as 226 are not qualified in any way and, therefore the court is thus empowered to pass any order including a declaratory order. However courts have imposed certain self-limitions on the vastness of such power. One of such limitations is that a court can entertain a writ petition when the petitioner has already suffered a damage or inquiry or when there is a reasonable likelihood of injury being caused, ² but would not make any pronouncement merely on hypothetical questions.

(8) **High Court to be Approached First:**

The jurisdiction of High Court in dealing with writ petition under Article 226 is substantially similar as that of the supreme court under Article 32 and in this way the scope of writs under both the Articles is concurrent. However, there is a growing tendency to file petitions before the supreme court even where it could have been filed before the High Court. With the view to discourage this tendency the supreme court ruled in P.N. Kumar Vs Municipal Corporation of Delhi. ³ that in cases where writ can be filed before the High Court, parties should not approach the supreme court.

(9) **Remedial Measure:**

For the purpose of enforcing fundamental rights under Article 32 of the constitution the power of the supreme court is not only injunctive in ambit to prevent violation of fundamental rights but is also remedial in scope to provide relief in case of breach of such

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¹ Amalgamated Coal Fields Vs Janpad Sabha AIR 1964 SC 1013
² S.K. Agrawalla Vs State : AIR 1973 on 217
rights. Thus the court has implicit power to grant remedial assistance by way of compensation in cases involving the breach of the said right. 1 The law principle shall apply to High Courts also. 2

Prerogative Writs:

We are concerned here with the remedies for service matters only, yet a brief statement as to writs is necessary. If the fundamental rights of the Government Servants under Article 14 or 16 is violated, they may obtain relief under Article 32 from the Supreme Court. Hence a brief description of the Prerogative writs.

The Supreme Court and the High Court have power to issue prerogative writs in the nature of habeas corpus, Mandamus, prohibition, certiorari and quo warranto. The five writs specially mentioned in Article 32 and 226 are known in English law prerogative writs, for they had originated in the King's prerogative power of superintendence over the due observance of law by the officers and Tribunals. The prerogative writs are extraordinary remedies intended to be applied in exceptional cases in which ordinary legal remedies are not adequate. 3

Thus the Supreme Court and High Courts have power to grant the remedy of the nature obtainable in the court of kings Bench in England by means of the prerogative writs.

(i) Habeas corpus:

It is writ in the nature of an order calling upon the person who has detained another to produce the latter before the court, in order to let the court know on what ground he has been confined and to set him free if there is no legal jurisdiction for the imprisonment. 4 If the detention appears to be in violation of the procedure established by law, the court has no option to allow him to be detained on grounds such as security of the state or expediency, 5 except in the case of a foreigner liable to be departed. 6

In India, illegality includes a violation of the constitution by the order 7 of arrest or detention or by the law under which the order purports to have been made. 8

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1 M.C. Mehata Vs Union of India (1987) 1 SCC 395
2 M.C. Mehata Vs Union of India (1987) 1 SCC 395
3 Rashid Ahmad Vs Municipal Board AIR 1950 SC 163 (165)
4 State of Bihar Vs Kameshwar AIR 1956 SC 575 (577)
5 Sampa Wia Vs Dy Commr. (1970) II SC WR 325
6 Anwar Vs State of J&K (1970) II SCWR 276 (para 4, 8)
7 Madha Limaye, in re, AIR 1969 SC 1014 (1019)
8 Haribandhu Vs D.M. AIR 1969 SC 43 (48)
It is available for release from detention of an individual not only by the State but also by another private individual. ¹

It is the duty of the Court to issue this writ to safeguard the freedom of the citizen against arbitrary and illegal detention. ²

An application for habeas corpus may be made even by a stranger of a social worker. ³

Procedure :-

Every application for a writ of habeas corpus has to be made accompanied by an affidavit stating the nature and circumstances of the restraint. If the court is satisfied that a prima-facie case for granting the prayer has been made out, it issues a rule nisi calling upon the opposite party to show cause on a specialised day as to why the rule nisi should not be made out absolute. On the day so specified the court will consider the merits of the case on basis of the return showing cause for detention and will pass an appropriate order. If the court is of the opinion that the detention is unjustified, the court will issue writ for immediate release of the detained person. However, if the court finds that the detention was justified the rule nisi will be discharged. Where there is no return to the rule nisi, the prisoner is entitled to be released forthwith. ⁴

(ii) Mandamus :

Mandamus is a command issued to direct any person, corporation, inferior court or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. ⁵

In the words of Markose ⁶ - mandamus is a judicial remedy which is in the form of an order from a superior court (the supreme court or a High court) to any Government, court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of a public duty and in certain cases of a statutory duty.

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¹ Ikram Vs State of U.P. AIR (1964) SC 1625 (1630)
² Jageram Vs Hansraj AIR 1972 SC 1140 (para 7)
³ State of Bihar Vs Rameshwar Prasad AIR 1965 SC 575
⁴ State of Bihar Vs Rameshwar Prasad AIR 1965
⁵ State of Mysore Vs Chandrasekhar AIR 1965 SC 532 SI Syndicate Vs Union of India AIR 1975 SC 460
⁶ Markose - Judicial Control of Administrative Action in India 1956 P. 364
Mandamus demands some kind of activity on the part of the body or person to whom it is addressed. Thus when a body omits to decide a matter which it is bound to decide, it can be commended to decide the same. Where the government denies to itself a jurisdiction which it has under the law, or when an authority vested with a power, improperly refuses to exercise it, mandamus can be issued.

Functional Dimensions:
The purpose of mandamus is to keep public authorities within the ambit of their jurisdiction while exercising public functions. Mandamus can be issued to any authority in respect of any kind of function e.g. administrative, legislative, quasi-judicial, judicial. In a case where the telephone of the applicant was wrongly disconnected, although he had paid dues regularly the High Court issued direction to the telephone authorities to restore the connection within a week.

Conditions:
(a) Right: The foundation of Mandamus is the existence of the right: No one can claim a mandamus unless he has a legal right. There must be legally protected right before one suffering a legal grievance can claim a mandamus. Thus, when the petitioner contended that his juniors had been promoted whereas he had been left out, his petition was dismissed because he was not qualified for the post.

(b) Public Interest: Formerly, the position was that only a person having a specific legal right to the performance of the duty by the public authority had standing to ask for mandamus. This was very strict rule of standing which laid emphasis on individual right rather than public interest. But under the impact of public interest litigation the standing rule has now been very much liberalised and the emphasis has shifted from vindication of "Individual right" to "public interest". The principle has come to be that public authorities should be made to perform their duties, as a matter of public interest at the instance of any person genuinely interested subject always to the discretion of the court.

1 State of Mysore Vs Chandrasekhar A1R 1965 SC 532 SI Syndicate Vs Union of India A1R 1975 SC 460
2 E.A. Co-operative Society Vs State of Maharastra - AIR 1966 Mad. 365
3 Virendra Kumar Vs Union of India A1R 1983 Cal 273
4 Umashankar Vs State of Bihar 1973 SC 964.
5 Wade, Administrative law (1982), 640
(c) **Duty** Mandamus is used to enforce a duty, the performance of which is imperative and not optional or discretionary with the public authority. Thus where there was a duty cast upon the deputy commissioner to pay the money due to the applicant as a pension, the court held that the duty by means of a writ of mandamus.

(d) **Public duty**: Mandamus is employed to enforce the performance of public duties by public authorities. A duty will be of a public nature if it is created by the provisions of the constitution or of a statute or some rule of common law. Thus mandamus is issued to a municipality to discharge its public duty e.g. to provide for drains and sewers.

(e) **Demand and Refusal**:

The petition for writ of mandamus must be preceded by a demand of justice and such demand must have been met by a refusal.

**Grounds**:

Mandamus can be issued on all or any of the following grounds:

1. Error of jurisdiction.
2. Lack of Jurisdiction.
3. Excess of jurisdiction.
5. Violation of the principle of natural justice.
6. Error of law apparent on the face of record.
7. Abuse of jurisdiction.

**Mandamus in Service Matters**:

It there is a violation of the constitutional guarantee under Article 14 or 16 of the constitution a writ of mandamus would lie. In case of such violation, the petitioner may have a mandamus to direct the state to consider his application on the merit.

A mandamus will be issued where the employee has a statutory right to be reinstated, e.g. in case of retrenchment in contravention of the industrial disputers Act. So also an order of dismissal or an order intitilating disciplinary proceeding may be quashed by Mandamus where it is in contravention of a statutory rule or regulation having the force of

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2. Rashid Ahamad Vs Municipal Board 1950 SC 610
3. Commissioner of Police Vs Gordhandas AIR 1952 SC-1618
4. Rampal Vs State AIR 1981 Raj. 121
5. S.I. Syndicate Vs Union of India AIR 1975 SC 460
6. Dwarika Vs Board of Revenue AIR 1961 Pat. 328
7. Gazi; Dasaratja Vs State of A.P. (1951) 2 - SCR 931 (948)
8. Gazi; Dasaratja Vs State of A.P. (1951) 2 - SCR 931 (948)
9. State of Bombay Vs Hospital Mazdoor Sabha AIR 1960, SC 610
law\(^1\) which is mandatory\(^2\)

(iii) **Prohibition:**

Prohibition is a judicial writ, issuing out of a superior court, to an inferior court preventing the inferior court from usurping jurisdiction with which it is not legally vested, or in other words to correpel courts with judicial duties to keep within the limits of their jurisdiction\(^3\) or to prevent them from violating the rule of natural justice.\(^4\)

The prohibition is an order ... directed to ... an inferior court which forbids that court to continue proceedings therein in excess of its jurisdiction or in contravention of the law of the land.\(^5\)

**Grounds**

The writ of prohibition can be issued on the following grounds –

The writ of prohibition can be issued when the authority acts without or in excess of its jurisdiction, or acts in contravention of the principles of natural justice\(^6\) or acts under a law which is ultravires or acts in violation\(^7\) of fundamental rights\(^8\) or acts without jurisdiction.

**Prohibition in Service Matters:**

A Writ of prohibition would be to restrain the disciplinary proceedings –

(i) Where the charge or the Rule upon which the proceedings are founded is unconstitutional.\(^9\)

Unconstitutional proceedings may be quashed of any time before they result in any final order or punishment.\(^10\)

(ii) Where the order directing the inquiry was vitiated by malafides.\(^11\)

(iii) Where the impugned proceedings lacked initial jurisdiction.\(^12\)

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1. State of U.P. Vs Baburam AIR 1961 SC 751
4. Govinda Vs Union of India AIR 1967 SC 1274
5. East India Commercial Co. Vs Collector of Custom AIR 1962 SC 1893
6. Union of India Vs M.B. Pathak AIR 1981 SC 858
7. East India Commercial Co. Ltd. Vs Collector of customs AIR 1962 SC 1893
8. Bidi Supply Co. Vs Union of India AIR
9. Pratap Singh Vs State of Punjab AIR 1964 SC 72
10. Ghosh Vs Josheph AIR 1963 SC 812
11. Pratap Singh Vs State of Punjab AIR 1964 SC 72
12. Shantaram Vs Chudasama AIR 1954 Bom 381
(iv) Certiorari

"Certiorari" is a Latin word which means to certify. Essentially, it was a Royal demand for information. It required the "Judges of any inferior court of record to certify the record of any matter in that court with all things touching the same and to send it to the Kings court to be examined."¹

Certiorari may be defined as a judicial order issued by the Supreme Court under Article 32 or by a High Court under Article 226 of the constitution to an inferior court or any authority exercising judicial, quasi-judicial ² or administrative ³ functions to transmit to the court the records of proceedings pending therein for scrutiny and decide the legality and validity of the orders passed by them.⁴ If the decision is bad it is quashed. In other words, declared invalid. Consequently it is not binding on the person against whom it has been made.

The object of this writ is to keep the exercise of powers by inferior judicial and quasi-judicial tribunals within the limits of jurisdiction assigned to them by law and to restrain from acting in excess of their authority.⁵ by removing to the High Court the proceedings of the inferior court or tribunal for the purpose of quashing them.⁶

Functional Dimensions:

Certiorari is now regarded as a general remedy and can be issued even when the action is administrative. Thus in A.K. Kaipak Vs Union of India⁷ the writ of certiorari was issued to quash the administrative action of a selection Board.

Grounds:

A writ of certiorari may be issued on any of the following grounds –

(1) Error of Jurisdiction.⁸

(a) Lack of Jurisdiction⁹

(b) Excess of Jurisdiction ¹⁰

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¹ (1) R. Vs Northumber Land Comp. App. Tribunal (1952) 1 ALL ER 122
² (2) Proboth Verma Vs State of U.P. AIR 1985 SC 167 (185-190)
³ (3) A.K. Kraipak Vs Union of India AIR 1970 SC 150
⁴ (3) A.K. Kraipak Vs Union of India AIR 1970 SC 150
⁵ (4) Bharat Bank Vs Employees of Bharat Bank (1950) SCR 459 (518)
⁶ (1) Undit Vs Board of Revenue AIR 1963 SC 786 (288)
⁷ (2) A.K. Kraipak Vs Union of India AIR 1970 SC 150
⁸ (1) State of U.P. Vs Mohammad Nooh AIR 1958 SC 86
⁹ (2) Ratia Khan Vs State of U.P. AIR 1954 ALL 3
(2) Error of Law apparent on the face of record. ¹
(3) Violation of the Principle of Natural Justice. ²

Certiorari in Service Matters:

Since the decision of the Supreme Court in John Vs State of T.C. ³ it may be taken as settled that Article 311(2) requires a hearing which conforms to the principles of natural justice because it is quasi-judicial proceeding ⁴ and accordingly, certiorari lies for quashing the proceeding on the ground that it violates natural justice, ⁵ or denies reasonable opportunity.

Certiorari has also been granted where an appellate authority enhanced the punishment awarded by the competent authority, having no jurisdiction under the rules to enhance the punishment, ⁶ or the Rule upon which the disciplinary proceedings or the charges are founded, was unconstitutional ⁷ or no opportunity to show cause has been afforded for removal, ⁸ dismissal or reduction in rank. Certiorary would however be available only after a final order has been passed in the disciplinary proceedings. ⁹

(v). QUO Warranto:

Quo warranto means what is your authority. The writ of quo warranto is a judicial order against an occupier or usurper of an independent substantive public office or franchise or liberty to show "by what authority" he is in such office, franchise or liberty. If the answer of the usurper is not to the satisfaction of the court, the writ of quo warranto can be issued to oust him.

Quo warranto ¹⁰ is the remedy or proceeding whereby the judiciary inquires in to the legality of the claim which a party asserts to an office or franchise, ¹¹ to oust him from the enjoyment if the claim be not well founded. ¹²

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¹ Chetkar Jha Vs V.P. Verma AIR 1970 SC 1822.
² Board of Education Vs Rice (1911) A.C. 179.
³ John Vs State of T.C. AIR 1955 SC 160.
⁵ Mafatlal Vs Rathod (1966) 13 F.L.R. 77(79)
⁶ Union of India Vs Verma (1958) SCR 499 (507)
⁷ Poonamram Vs State of Rajasthan AIR 1960 Raj 56
⁸ Ghosh Vs Joseph AIR 1963 SC 812
⁹ State of M.P. Vs Audh Narain AIR 1965 SC 360
¹⁰ Amrivehan Vs State of Gujrat (1966) 3 FLR 45(43) Bom.
¹¹ Its literal Meaning is – Where is your warrant of appointmnt
¹² University of Mysore Vs Govinda AIR 1965 SC 491 (494)
It thus confers jurisdiction upon the judiciary to control executive action in making appointments to public offices and also protects the public from usurers of public offices, and a citizen from being deprived of a public office to which he may have a legal right.  

Conditions:

A writ of quo warranto will be issued in respect of an office only if the following conditions are satisfied:

(a) **Public office**:

A citizen can claim a writ of quo warranto if he satisfies the court that the office in question is a public office. The test of public office is whether the duties of the office are public in nature, in which public are interested.

Thus, in Anand Bihari Vs Ram Sahai it was held that the office of speaker of legislative Assembly is a public office. Again in G.D. Karkare Vs Shevade, it was held that the office of Advocate General is a public office. Similarly the office of the membous of Municipal Board Prime Minister, University official, Members of legislature, Vice Chancellor of a University, Minister are public offices.

The office must have been created by statute or by the constitution itself. Thus the writ of quo warranto will not be against the managing committee not created by any statute.

(b) **Public office to be substantive in nature**:

A substantive office is an office independent in title. The writ lies in respect of substantive character. The holder of such office must be one independent officeal and not merely a deputy of servant of others.

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1 University of Mysore Vs Govinda AIR 1965 SC 491 (494)
2 Ramchandra Vs Alligiriswami AIR 1961 mad 450 (455)
3 Anand Bihari Vs Ram Sahai AIR 1952 MB 31
4 G.D. Karkare Vs Shevade AIR 1952 Nag. 333
5 Shyam Sundar Vs Shevade AIR 1952 Nag. 333
6 U.N. Rao Vs Indira Gandhi AIR 1971 SC 1002
7 Rajendra Kumar Vs State of M.P. AIR 1957 M.P. 60
8 In Re Chakkarai AIR 1953 Mad 96
9 Chaturvedi Vs Chatterji AIR 1959 Raj. 260
10 Har Sharan Vs Chandra Bhan AIR 1962 All 301 (307)
11 Amarendra Vs Narendra AIR 1953 1953 cal 114.
12 University of Mysore Vs Govinda AIR 1965 SC 491 (494)
13 Satish Chandra Sharma Vs University of Rajsthan AIR 1970 Raj. 184
14 University of Mysore Vs Govinda AIR 1965 SC 491 (494)
(c) **Holder to be in occupation of office:**

The writ of quowarranto cannot be issued, unless the person is in actual possession of the office and asserted his right to claim it. Mere fact that a person is elected to an office or appointed to a particular post is not sufficient for the issue of the writ of Quo Warranto unless such person accepts such office.

**Who May apply:**

As the object of the writ of Quo Warranto is to prevent a person who has wrongfully usurped an office from continuing in that office, an application for the writ challenging the legality and validity of an appointment to a public office is maintainable at the instance of any private person even though he is not personally aggrieved or interested in the matter.

**When May be Refused:**

The issue of writ in the nature of Quowarranto is a matter of discretion of the court. No petitioner can claim this writ as of right. Accordingly the court may refuse to issue it when it is vexatious or would be futile or when there is adequate alternative remedy.

**Quo Warranto In Service Matters:**

Quo warranto lies to quesh an appointment which is illegal for instance because the appointee did not possess the requisite qualifications.

From the decisions of the Supreme Court Stated as above, we observe that the administrative and disciplinary authority misuses their power administrative and discriminatory both. They require periodical training and guidance in the light of supreme court decisions apart from the judicial control by court: Like wise disciplinary authorities are required to know all decisions of the supreme court regarding recruitment conditions of service and specially article 311 of the constitution. For this purpose the Government must prepare a yearly annexure showing the important decision of the supreme court relating to civil service matters for guidance of the authorities and employees. This annexure must form the part of Central Civil service Classification control and Appeal (Rule 1965)

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1 University of Mysore Vs Govinda AIR 1965 SC 491 (494)
2 Puranlal Vs P.C. Ghosh AIR 1970 Cal. 118
3 Bhiman Chandra Vs Govt. of W.B. AIR 1952 Cal 799.
4 University of Mysore Vs Govinda Rao AIR 1965 SC 491
5 Rameshwar Vs State of Punjab AIR 1961 SC 816.
6 Rameshwar Vs State of Punjab AIR 1961 SC 816.
7 Pundlik Vs Mahadeo AIR 1959 Bom : 2
8 Mudhol Vs Halgekar (1994) 1 SCJ 570 (para 7-8)