INTRODUCTION
CHAPTER - I

INTRODUCTION

Constitutional Framework

With the adoption of a welfare state as envisaged in the preamble to the Constitution of India, the administration of the State has been entrusted with a variety of social services. The functioning of the whole administration in attaining and carrying out the goals of a welfare state, has been entrusted to the civil servants. Since the successful implementation of the policies and programmes of socio-economic development depends upon the civil servants, they have a crucial role to play in the nation building process.

The civil servants are considered to be the main instruments of socio-economic transformation. In other words, they are the flesh and blood of the governmental machinery. The efficiency of the civil service is of such importance, that it is essential to afford to civil servants adequate protection against any arbitrary action, in the form of security of tenure.
It is the civil servants that one depends upon to see that goals of development are realised in practice. Therefore, it has been said that a government without a civil service is like a centrepede without legs, unable to move and remaining powerless to accomplish the goals for whose attainment they are instituted.

In order that the civil servants are responsive to their duties and do not feel tormented at the possibility of any arbitrary exercise of power, sufficient safeguards have to be provided. The safeguards, considered indispensable for their fearless functioning have to be provided without sacrificing efficiency of public service. A proper balance has to be maintained, so that the government machinery is not paralysed or rendered defunct by irresponsible or inefficient civil servants, under the guise of security of tenure.

Since the state depends to a large extent upon an efficient civil service, the framers of the Constitution made special provisions guaranteeing security of tenure and other benefits, by incorporating valuable safeguards against arbitrary dismissal, removal or reduction in rank. The safeguards enshrined in Part XIV under Article 311(2) of the
Constitution was evidently embodied with a view to providing security of tenure and boost the moral of the civil servants. The protective umbrella has been to obtain affirmative, positive and vigorous services from the public servants for fearless and conscientious discharge of one's duties. The Constitution, therefore, seeks to inculcate in the civil service a sense of security and fair play, so that he may work and function efficiently to implement the policies and programmes, as laid down by the popular ministry. This is also evident from the debates of the Constituent Assembly. While participating in the discussion on Draft Act 282, Brijeswar Prasad observed:

An enlightened bureaucracy is the need of the hour. We must strengthen the foundations of our civil service and protect it from the onslaught of mobocrats who are, in the name of democracy, lying day in and day out to boss over and dictate over those who are their superiors in intellect and morals. Men of small stature riding on the crest of popular enthusiasm are placed in a position of power and authority. No civil servant will tolerate the antics and clownish performance of political upstarts.

But the Constitution itself provides only for certain matters of basic importance, leaving the rest to be provided by Acts of the appropriate legislatures, and the rules and regulations to be framed thereunder. Accordingly, various
service regulations of the union and the states have been framed providing for a number of safeguards to civil servants' tenure. However, these cannot afford any better protection than the provisions of the Constitution, for they would be **ultra vires**, if they are inconsistent with the constitutional provisions\(^5\).

**Definition and Conception**

Article 311 (1) of the Constitution refers to 'a member of a civil service' or 'holder of a civil post', but does not define who is a civil servant. For a proper definition of the term one has to refer to the various Acts and laws pertaining to civil servants. Rule 2(e) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 defines a government servant as a person, who is a member of civil service who holds a civil post under the Union. The Indian Penal Code, 1860, Public Servants (Inquires) Act, 1850 and the Prevention of Corruption Act, 1988 speak of public servants and define the expression for purposes of those Acts\(^6\). The purpose of the Act of 1850 is very narrow, in the sense that the Act confines itself with inquires into the behaviour of those public servants who cannot be removed without the sanction of the Government. But the Act does not
define the term public servant. The Indian Penal Code defines the term 'public servants' under section 21 to include personnel engaged in defence services also. The definition under the Prevention of Corruption Act is very wide, as it includes employees in the service or pay of the Government, local authority or an employee of a corporation establishment by the Government, as well as a judge, whether appointed by the Government or not.

Thus, the term 'civil servant' can be said to include a person who is a member of the civil services of the Central or State Government, or an All India Service or, a person who holds a civil post. The expression means an appointment or office on the civil side of the administration as distinguished from a post under the defence services.

Since there was no uniformly acceptable definition of the civil service or civil post, the same came in for interpretation before the apex court in State of Assam Vs. Kanak Chandra Deka. The court held that a civil post in Article 311 meant a post, not connected with defence which may be outside the regular civil services. There is a relationship of master and servant between the state and the person said to be holding a post under it.
A number of High Courts have also interpreted the term 'civil post' in Sher Sing vs State of Madhya Pradesh\textsuperscript{11}, the Madhya Pradesh High Court opined that civil post as used in Article 311 means 'a post or office on the civil side of the administration as distinguished from a post connected with defence.' Similarly, the Punjab High Court in Mangal Sein Vs. State of Punjab\textsuperscript{12} held that the term 'civil post' has been used under Article 311 of the Constitution in respect of a member of the civil service of the Union or an All India Service or a civil service of a State, in contradiction with a post under the Defence Services. Similar view has been expressed by the Calcutta High Court in Brajo Gopal Sankar Vs Commissioner of Police\textsuperscript{13}.

The apex court in a landmark judgement in P.L.Dhimgra Vs. Union of India\textsuperscript{14} has observed that a person holding a temporary post, or a probationer holding a permanent post or one officiating against a permanent post, also holds a civil post if other conditions are satisfied. Thus, for the first time while defining a 'civil post' the Supreme Court has also expended the coverage of persons holding a civil post, by bringing within its ambit temporary servants, probationers as well as those officiating against permanent posts.
The Supreme Court has also clarified the test to determine whether one is a holder of a 'civil post' or not. In *State of Assam Vs. Kanak Chandra Deka*\(^{15}\), the court has observed that if a post is under the administrative control of the Government, such a post is to be regarded as one under the State. The Government is said to have administrative control over a post if the State has the power to create, control, regulate and abolish the post.

Earlier, the Bombay High Court in *Chandra Bhan Vs. Amrit Rao*\(^{16}\) while considering the appointment of Patels appointed by the Maharashtra Zila Parishad, held them to be holders of civil posts, although they received only a fixed percentage of revenue, collected by them as commission. So it has been made clear that a person holding a 'civil post' may not receive any salary but be only entitled to commission. In fact, the real test to define a 'civil post' is to ascertain the control exercised by the employer on the employee. This may be through the power to create, regulate or abolish the post, or through the concept of master and servant.

**Master and servant**

The Supreme Court in *State of Assam Vs. Kanak Chandra*
Deka has observed that there is a relationship of master and servant between the State and the person said to be holding a post under it. But in Union of Indis Vs. Tulsi Ram Patel, the observation made by the Supreme Court is that civil servants, that is persons who are members of civil service occupy in law a special position. The ordinary law of master and servant does not apply to them.

The relationship of master and servant has been defined in Halsbury's laws of England in the following words: "whether or not in any given case the relationship of master and servant exists is question of fact, but in general the relationship imports the existence of power in the employer not only to direct what work the servant is to do, but also the manner in which the work is to be done."

If the test of administrative control and relationship of master and servant is established, the fact that the holder of the post does not enjoy a definite rate of pay but works on commission, or is a part time employee, does not exclude him from the category of holder of civil post under the Government.

The existence of the master and servant relationship is indicated by the States right to select and appoint the
holder of a post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances. It is a question of fact in each case to decide whether there is such a relationship between the State and the alleged holder of a post.  

The concept originated in status, but with the efflux of time and emergence of welfare concept, the relationship has been viewed differently. Such a relationship arises out of a contract, although in many cases, the rights and duties between the master and the servant are determined by status.

The Supreme Court held in Roshan lal Tandon Vs Union of India, that the hallmark of status is the attachment to a legal relationship of rights and duties imposed by public law and not by mere agreement between the parties.

Further, the Supreme Court in Raman lal Keshav lal Soni and ors Vs Mathura Das Kadia and ors, while declaring Panchayat employees to be Government servants, stated that several factors indicate the relationship of master and
servant. No single factor may be considered as absolutely essential and none may be conclusive. A host of circumstances may have to be considered to determine the existence of the relationship of master and servant. In coming to the above conclusion, the transfer of members of a State service to Panchayat Boards was considered sufficient, to declare such service to be regarded as Government employment.

The welfare concept adopted in the Constitution of India, has modified the contractual relationship of master and servant to that of status. The terms of contract of employment are subject to the rules, and action cannot be taken by the Government unless provided for by special terms of the contract of employment, or the rules governing the conditions of service.

Exclusion of Defence Personnel

The protection accorded under Article 311 of the Constitution extend only in respect of civil services to the exclusion of Defence service personnel. It is, therefore, essential to see why defence forces personnel have been excluded from the purview of Article 311 of the Constitution and considered as a separate unit, distinct from the ordinary civil organs of the Government.
It is said that public interests require that the pleasure of the President should not be subject to litigation in the case of Defence service personnel. The defence services are quite distinct from the civil services, by virtue of the nature of their duties. Provisions which are expressly limited to civil service or civil post in such services cannot be extended to Defence Services. Employees in Defence Services do not hold civil posts and are not civil servants of the State. They hold office at the pleasure of the President, as such, the safeguards under Article 311 of the Constitution are not attracted in their case.

All employees working in the Defence Services are not subject to the Army Act, 1950 or the Air Force Act, or the Navy Act. A person employed in the Military Engineering Service and holding the post of Superintendent first grade, but not holding an army rank, is not governed by the Army Act, 1950. He is a civilian in the defence service to whom Articles 309 and 310 apply, but not Article 311 of the Constitution. Hence, it is competent for Parliament to regulate the recruitment and conditions of service of such persons and till then, and subject to any such law made by
Parliament, it is competent for the President to frame rules regulating recruitment and conditions of services in relation to such services. The expression 'public services and posts in connection with the affairs of the Union and the States' include holders of both civil and military offices and posts, and is thus coextensive with the scope of Article 310(1), though defence personnel are excluded from the protection of Article 311 of the Constitution. However, the Defence service personnel are entitled to the protection of the rules of natural justice, as even a court martial proceeding has to adopt a procedure that of courts of law during trial, in giving findings and awarding sentences.

**Statutory Corporations**

Unlike the Armed Forces Personnel, in whose case the Constitution specifically excludes the safeguards as enshrined in Article 311, the Constitution is silent in respect of employees of statutory corporations, who constitute a significant segment of the work force in the organised sector. With the State embarking upon various developmental schemes, it has become essential to set up large corporations, to effectively manage the works of the Government. In fact, these corporations have become very much
essential for the progress and development of the nation. Since it is not possible for the civil servants to shoulder the multifarious responsibilities being undertaken by the State, statutory corporations have been set up, manned by employees at various levels. The employees to these statutory corporations are recruited and remunerated as per the terms and conditions determined by the corporations, but unlike the civil servants they are not entitled to the protection of Article 311 of the Constitution. This is because they are clothed with a separate legal entity. They have, therefore, to seek recourse under the Industrial Disputes Act, 1947 and other welfare legislation to seek redress of their services disputes. Being denied the constitutional protection, they have to depend upon various statutory legislation, even though at times the nature of duties are very much similar to those being performed by the civil servants. In certain cases it is found that service rules of government servants are adopted by these statutory corporations, yet the same do not clothe the employees under the category of civil servants. The Supreme Court in Ajoy Hasia Vs Khalid Mujib has observed:

It is also necessary to add that merely because a juristic entity may be an 'authority' and thereafter 'state' within the meaning of Article 12,
it may not be elevated to the position of a state for the purpose of Article 309, 310 and 311 which find a place in Part XIV. The definition of 'state' in Article 12 which includes an authority within the territory of India or under the control of the Government of India, is limited in its application only to Part III and by virtue of Article 36, to Part IV, it does not extend to the other provisions of the Constitution and hence a juristic entity which may be a 'State' for the purpose of Part III and IV would not be so for the purpose of Part XIV or any other provision of the Constitution.

It may be said that a statutory corporation has a separate legal entity and its employees do not hold employment under the Union or the State even if such a corporation adopts the service rules to govern their employees. In *Prafulla Kumar Vs Calcutta State Transport Corporation*, the Calcutta High Court has held that statutory corporations have a separate legal entity and it does not make any difference even if the Government holds a majority or all the shares in them.

Similarly, it has been held in *Ram Babu Vs. Divisional Manager, Life Insurance Corporation* that employees of Life Insurance Corporation are not civil servants. But the Madras High Court in *K.P.C Menon Vs Divisional Manager, Life Insurance Corporation* considered regulations governing conditions of service in public corporations as laws within the meaning of Art 311 of the Constitution. Subsequently,
Justice Bhagwati of the Supreme Court, speaking about statutory bodies acting in violation of mandatory provisions held that the employee of statutory corporations are entitled to ignore the termination order and ask for being treated as still in service.

The Supreme Court in *Sukdev Singh vs Bhagatram Sardar and ors* took the view that ONGC, FCI, LIC are authorities within Article 12 of the Constitution and that the rules and regulations framed by these statutory organisations have the force of law. It further held that employees of these corporations have a statutory status and are entitled to a declaration of their being in employment in the event of their removal or dismissal in contravention of statutory provisions. Soon thereafter, the apex Court considered the Scientific and Industrial Research not entitled to be an authority under Article 12 the Constitution, though wholly funded by the Government on the ground that it did not have any statutory character. As a consequence of the Supreme Court decisions, the employees of these bodies, whose numbers are legion, continue to be without any constitutional safeguards in the matter of major punishment, resulting in their demoralisation and discontentment.
In their case when recourse is taken to terminate their services in violation of any statutory provision, they are eligible to claim relief of a declaration that the order is null and void.

Public Sector Employees

As in the case of employees of statutory corporation, employees of public undertakings also do not come under the purview of the definition of civil servants. The word 'undertaking' which means a business unit or enterprise has been defined under section 2(v) of the Monopolies and Restrictive Trade Practices Act, 1969 as one engaged in the production, supply, distribution or control of goods of any description or the provisions of service of any kind. The undertakings which make their presence felt in various fields are the creation of statutes, including the Companies Act, 1956 and the Societies Registration Act, 1860, yet the employees in public undertakings as in statutory corporation are not regarded as government servants and hence are not entitled to safeguards under Article 311 of the Constitution. Therefore, their remedy lies in a claim for damages for wrongful dismissal or breach of contract.

The Supreme Court in Kalra Vs. P.E. Corporation has
stated that the distinction between Part XIV of the Constitution and the Fundamental Rights has no significance. The apex court has held that an employee of a public undertaking can obtain relief of reinstatement, in case it is found that his dismissal from service was wrong. Going a step further the apex court in Mathuradas Vs. Munshaw\(^43\) held Panchayat employees to be civil servants, in spite of Panchayat being a body corporate. The court introduced the concept of master and servant, since the state government was empowered to make orders regarding organisation and management of service and appointments made by a board constituted by the Government. Further, the Supreme Court\(^44\) held that where a Corporation or Company is an agency or instrumentality of the Government within the purview of Article 12 of the Constitution, the principles of fairness, non-arbitrariness and natural justice can be invoked by the employee. It has thus narrowed down the distinction between government and non-government employees under state agencies. This is significant, in view of the earlier decision of the apex court in Sabhajit Tewari Vs- Union of India and ors.\(^45\), where in the Council of Scientific and Industrial Research was held not to be an authority with in the meaning or Article 12 of the Constitution.
In spite of the endeavour of the court to extend the safeguards, the law has not been settled. The employees of public undertakings perform similar works with government employees, but for purported omission or commission, both classes of employees have been treated differently. Therefore, there is need to provide identical safeguards to employees of public sector undertakings, as is being extended to civil servants.

**Historical Background**

In order to discuss the constitutional safeguards extended to the civil services, it is essential to have a background of the status of the civil servant, as it existed prior to the framing of the Constitution of India. This is because the civil servants as we understand, existed prior to independence even during the British rule. The present civil service can be considered as evolved out of the East India Company’s service, which in its origin was commercial in character.

The company employed the term ‘civil servants’ to refer to their employees in order to distinguish them from other
persons engaged in the duties of military nature. Initially designated as a mercantile service, one was appointed as an apprentice by the Court of Directors and was obliged to sign a covenant—hence called covenanted civil service— which define his duties and condition of service. An apprentice became a writer, then a factor, junior merchant and senior merchant. It was only in 1674 that a regular service with fixed salaries and well defined conditions of employment was created, which received statutory recognition more then a century later in 1793. It laid down that a covenanted servant alone were to be appointed to civil post in India\textsuperscript{47}. Englishmen came to be appointed as supervisors in 1769 and from 1772 administration was placed in the hands of British officers, during the Governor Generalship of Warren Hastings. However, from the time of Lord Cornwallis the definite Europeanisation of the higher posts in the administration came about\textsuperscript{48}, and they worked at the 'pleasure of the Company'. Only in 1850 a provision was made for instituting a semi-judicial enquiry into the conduct of a servant of the Company, whenever an allegation was made against him, thereby providing a cause, through feebly, to prove his innocence\textsuperscript{49}.

The administrative duties gradually increased and with the prohibition imposed on commercial activities through the
Charter Act. of 1833, the servants came to be entrusted with administrative works. The Indian Civil Service Act, 1861 while reaffirming the provisions of the Charter of 1793, put the conditions of service of civil servants on a firm footing.

The modern civil service of India which emerged in the nineteenth century was based on the Macauly report of 1854. In 1853 Macauly had observed that the system of open competitive examination for recruitment to Indian Civil Service was the best means for the gradual admission of Indians to share in the highest offices of the Government. It was only on the recommendation of the Attichinson Commission of 1887, that the term covenanted civil service was removed, providing for the Indian civil service. This service was divided into the Imperial service, the Provincial services and the Subordinate service. In 1912 a further improved was effected by the Islington commission, which recommended incremental system instead of the graded system.

The Government of India Act, 1919 for the first time inculcated a sense of security among the civil servants. Under its provisions persons appointed by the Secretary of
State were guaranteed their existing right and could not be dismissed by any authority lower than the appointing authority. Further, the right to work was guaranteed. The Act for the first time provided for a public service commission.

Consequent upon enactment of the Government of India Act, 1935 certain changes were introduced, which provided for elaborate safeguards under sections 240 and 241 of the Act. Section 240 of the Government of India Act, 1935 provided that no civil servant could be dismissed by any authority subordinate to that by which he was appointed. Besides, a reasonable opportunity to show cause against any proposed action was also provided by the Act. Section 241 of the Act provided for recruitment and condition of service including a right of appeal, if any rule relating to one's conditions of service was altered or interpreted to his disadvantage. In fact, these two provisions have been incorporated in the Constitution of India, and provide an important basis of the safeguards extended to civil servants.

**Development of Civil Service**

The concept of civil service goes far beyond the British period. Although modern administrative system is considered
to be of recent origin, an advanced administrative system already existed some 4,000 years ago. Incised stone, baked clay tablets marked uniform character, hieroglyphs on temples walls and letter papyrus rolls, all of which were the stock in trade of the recorders of government activities have as if by miracle survived in abandon.5

The origin of the civil service goes for deep into the past. It is essentially oriental in character, as it had originated in the water works of the Nile, the Ganges, the Yangtse and the Euphrates. Where the civilisation grew first in point of time is not certain. As stated by Sardar Pannikar, "whether such civilisation grew up first in the river valley of India, Egypt, Sumeria or China, it is difficult to say for when our historical vision opened, in the middle of the third millennium organised states were seen existing in all these areas."52 " When Indian administration came into the light of authentic history, it was a fully organised bureaucracy."53

The civil service which we find today has often been termed as bureaucracy. Since the term has been often used to carry a derogatory meaning, it will be apposite to define the term. According to Prof. Friedrich there are six primary criteria of the term bureaucracy. These are differentiation
of functions, qualifications for office, hierarchical organisation and discipline, objectives of method, precision and consistency or continuity, involving adherence to rules, 'red tape' and the keeping of records and lastly, the exercise of discretion involving security in regard to certain aspects of government\textsuperscript{54}.

The bureaucracy in the ancient days represented the royal authority and enforced the royal will, at times against the popular will. This was because in those days there was a simple administrative machinery with the kings in India, and were assisted by a few officers in the civil and military administration. It was a formative stage, paving the way for a complex pattern later on. Some of the officials to assist the king were senani, gramani and the purohita\textsuperscript{55}.

The Mauryan rule during the first quarter of the 4th century B.C. from Chandra Gupta to Ashoka had officials like adaivarika, the antavva msika, the prasanti, samaharti, nayaka dandapalas etc. During this period the services were manned by counselors who deliberated on public affairs\textsuperscript{56}. The Guptas had a superior civil service known as Kumaramatyas who would appoint subordinates\textsuperscript{57}. During Harsha’s reign, he provided Inspector General of Records, known as Mahaksha
Kautilya the master diplomat, renowned not only as a king maker, but also as the greatest exponent of the art of government in ancient India, fixed a specific time limit for completion of works accompanied by penalties upon his officials who failed to perform their works. In case of misappropriation of funds, the government servants were answerable for the whole amount in question. There was an elaborate system of spies to look into the activities of the various departments.

There were three categories of public servants, namely Yukta (officer), upayuta (clerks), and tatpurusha (servants). It goes to show that the king maintained a hierarchy of officials entrusted with various functions for the moral and material advancement of their subjects.

In the Pala Dynasties, the officer-in-charge of rules and discipline was known as Vainayika, one in charge of Law as Vyavaharika and that of finance as Aupayika. The king exercised effective control over his officials, dismissing those whom he considered to be inefficient. Laws were enforced to curb favoritism in matters of recruitment to public service.
On the whole it seems that the administration was efficient. As the Chinese traveller Hiuen Tsang noted, the administration was founded on "benign principles" and the results of good government found reflection in the contentment of the people⁶¹. The endeavour of the officials was to prevent crimes and enforce the laws and they had to act on the command of the king and were accountable to him for their functions⁶². Officials were appointed on probation and after their going through period of apprenticeship were made permanent⁶³.

In the golden rule of the Guptas, the imperial grade was manned by Kumaramatyas, consisting of Vishavapatis, judicial officers, secretaries, heads of departments and ministers. The pattern of administration was followed till the middle ages, as the early muslim rulers could not develop an administrative set up of their own. The internal wars, coupled with a quick succession of dynasties, affected the growth of a sound administrative setup⁶⁴.

Mughal bureaucracy based on the mansal system borrowed by Akbar from Persia, was essentially military in character and had numerous gradations.⁶⁵ Posts of higher ranks were designated as Mansabdars which were termed as combined civil
and military service. The Mugal officers belonging to various nationalities were given responsible positions by Akbar and continued in royal service under his successors also. The bureaucracy was essentially urban in outlook and appointments and removal were made, by the king. Since a claim to heredity was denied, it was possible for even the lowest of the officials to be promoted. A significant aspect of the Mughal rule was the consolidation of territorial possessions in India, which provided for an uniform administrative pattern, until the advent of the East India Company, who from being a trading concern gradually began to acquire, expand and consolidate their territorial possessions.

**Early Bureaucratic Systems**

As has been stated earlier, an advanced administrative system existed some 4,000 years ago. Besides India, traces of it can be found in Egypt, Rome and China which were considered to have very developed civilisation in the ancient days.

Egypt, the country which is said to be the gift of the river Nile, had a very effective administrative system. All public officials worked at the pleasure of the Pharaoh, who administrated a very orderly and reliable government. The
king and the peasants alike needed the help of an effective civil service to maintain an irrigation system, and even before 4,000 B.C., the day to day administration fell in the shoulders of a professional civil service, which was as well organised as anything in the land. At the head of the entire service stood the Vizier, who received monthly written reports from the district officials. As Master of the Rolls, he was in charge of the immense public records. As Lord Chief Justice, he presided over a divisional court of professional judges, who heard appeals from country courts.

Later on, during the third millennium, there was a tendency for the chief officials to convert their posts into heredity possessions, which were terminated around 2,000 B.C. by a new line of pharaohs. In the first millennium, the Egyptians denigrated into priest ridden pacifist herd, who allowed successive invaders to work their will upon them, thus closing the history of Egypt as an independent country.

Similarly, the Romans were known in the ancient day for their administrative capabilities and hence, their civil service was considered as one of the best in those times. Emperor Augustus, upon whom devolved the task of reconstituting the civil administration never quite cast off
the spell of autocratic tradition, by following the policy of piece meal and reluctant reform, followed by his successors too, which resulted in a slow growth. But the new government officials won the field and by the second century, it developed into a very efficient administrative system, comprising of two secretariats, one for Latin and the other for Greek.\textsuperscript{72}

Another country to possess a highly developed civilisation was China. The classic example of entanched officialdom was the civil service of China, in which an elaborate system of examination for entrance and promotion in elite corps dated long before the Christian era\textsuperscript{73}. An advanced governmental system was in existence in the legandry period of the great Shan about 2200 B.C., Shun examined his officials at interval of three years. This exercise resulted in either promotion or termination of service of the paid officials. In fact, the present day selection and periodic assessment can thus be traced to the development of the idea in ancient China\textsuperscript{74}. Later on during the time of the Han Dynasty, between 206 B.C. to 220 A.D., the allocation of officers on merit was made a principle, in the scheme of recruitment of public officials.
Civil Services in the West

In most of the developed and the developing countries of the world, civil service constitute one of the largest homogeneous organisation of office workers, and probably consume a very high proportion of intelligent manpower. This is in response to the major burden of achieving all round progress of a nation, which has fallen on the shoulders of the civil service^76.

In the United Kingdom the civil service has grown from small, ill constructed and more or less independent government offices, into a vast and highly unified and organised machine^77. Modern civil service in the United Kingdom can be attributed to have begun around the year 1660, with the end of royal absolutism and the king acting through his Privy council, during the restoration in England. The famous civil service reform began with the Northcote-Trevelyan report of 1854, ^78 which provided for the appointment of a Civil Service Commission. Although the Civil Services Commission was appointed in 1855, its success was not immediate, as for sometime the system of presentation was combined with a qualifying examination^79 in the process of selection of permanent civil service staff.
Later on, in view of the mounting criticism of the working of the civil service, a committee was appointed in 1966 under Lord Foulton to examine and restructure the civil service. Consequent upon the recommendations, a civil service department was created in 1968 for personnel management in the civil service, providing for a uniform grading system with a view to reshape and modernise the service. The recommendations of the Committee converted the civil services in the United Kingdom into a professional body, capable of meeting the demands of the society.

After considering the developments mentioned above, it can be stated that the influence of the civil service in the United Kingdom is a comparatively recent phenomenon. This can be gauged from the fact that in the 18th century the country was managed by amateurs in the intervals of their occupation, as administrative posts were regarded as property.

Whitely council at the departmental and national levels, provide the forum where the conditions of work between the government and the workers are determined, and grievances redressed. Although the higher civil servants are politically neutral, the lower civil servants enjoy all political rights as other citizens of the country.
Despite absence of any fundamental laws relating to civil servants, successive governments have ensured security of tenure of civil servants, recruited generally on career basis and merit scheme, offering equal opportunity to all. The Whitley councils along with the courts have ensured that a proper procedure is adopted to protect the rights of the aggrieved civil servants.

In the American system, security of tenure is an important object of the civil service system. The spoils system was introduced in the United States in the year 1829. In some states, successful office seekers gave jobs to supporters and eliminated office holders of the defeated party, thereby affecting administrative efficiency. The evils of the spoils systems soon become apparent and administrative system become vitiated with "self above service" which ultimately led to the introduction of the merit system. Now, the security of faithful employee is provided for by giving him permanence of employment, at least for a period prescribed by law, and to free such employee from the fear of political and personal prejudicial reprisal. Stated otherwise, civil service laws are now intended as a protection for the public as well as the individual
employee. Stated otherwise, civil service was not established for the sole benefit of public employees.

It has been said that the primary purpose of installing civil service is to enable states, country and municipal governments to render more efficient services to the public, by enabling them to obtain efficient public servants.

Initially, selection and appointments were based on competition, but the development of the party system gave way to the spoils system. With the advent of Thomas Jefferson and passing of the Congressional Act, 1810 the spoils system flourished until the close of the civil war. By the sixties of the last century the demand for merit system arose, leading to the passing of the Pendleton Act in 1883.

The Pendleton Bill, as reported to the Senate, provided basically for the adoption of the British Civil Service system in the United States. The legislation provided for the merit system of civil service recruitment and organisation based on competitive examination, for security of tenure and political neutrality. The first civil service commission was appointed in pursuance of this Act. The classification Act, 1923 and the two Hatch Acts of 1939 and
1940, followed by the Ramspek Act, 1940 did go a long way to streamline public personnel administration. The civil service commission came to be reorganised in 1949 and in 1954.96

The fundamental purpose of the civil service laws was to establish a merit system, in which selection for appointment could be made to the public service, upon the basis of demonstrated fitness without regard to political consideration. It further provided for safeguards to employees against unjust charges of misconduct and inefficiency, and from discrimination on grounds of religious or political consideration or affiliations.97

An aggrieved employee could appeal to the civil service commission for redress, as it acts as a watch dog against possible transgression.98 Ultimately, one could approach the courts for redressal of grievances in respect of removal and other disciplinary action.

Compared to the civil services in the United States of America, French civil service is highly centralised. They are recruited by the Ecole National d' Administration. The civil servants can stand for political offices and during that period are entitled to seniority in service. Beside, leave with full pay is granted to official during electoral period.
Joint councils are set up to look into service disputes. In addition there are 'Councils of Discipline' with power to appeal to the Counsel d' État.  

**Constitutional Status**

The Constitution of India which provides for a welfare state has recognised the role of the civil service. As in case of other developed and developing countries, the civil services in independent India too, are expected to play a vital role in carrying out the policies and programmes of the government. The Constitution itself devotes a whole chapter on the civil services. Unlike other countries, where service conditions of employees are laid down through statutory legislation, India has incorporated the safeguards to the civil service in the Constitution itself, which indicates the importance attached to these services.

The present administrative set up is founded on the remnants of the erstwhile civil service under the British Crown, as is evident from Article 313 of the Constitution and section 240 of the Government of India Act, 1935.¹⁰⁰

Safeguards were included in the Government of India Act, 1935 providing for the procedure to be adopted if any major
punishment was contemplated by way of dismissal or removal. Responsibility on the Governor General and the respective Governors for the protection of the legitimate interests of the services was also provided.

Part XIV of the Constitution of India has provided for the status of civil servants. The part recognises the importance which the Constituent Assembly\textsuperscript{101} attached to it while framing the Constitution, by providing for the civil services, their condition of appointment, security of service etc. In providing for their safeguards against arbitrary dismissal, removal or reduction it rank, it seeks to maintain a balance by imposing certain restrictions on them in certain eventualities. Chapter II of part XIV of the Constitution is considered to be the cornerstone of the status of government servants.

The first draft relating to the services prepared by Sir B.N. Rao, the constitutional advisor was laid before the Constituent Assembly on 22-9-1947. It provided for recruitment and condition of services\textsuperscript{102}. The drafting committee considered these provisions in January and February, 1948 and felt that the provisions needed to be simplified and that detailed provisions should be regulated.
by Acts of the appropriate legislature. The provisions relating to the services were incorporated in the draft Constitution under Articles 281-283.103

Amendments to the draft Constitution were introduced in the Constituent Assembly on Sept. 7 and 8, 1949 proposing adoption of six Articles instead of the existing three. These included among others, provision for safeguards against arbitrary action in the matter of major punishment, laying down that reasonable opportunity be given to civil servants to show cause before imposing the major penalties 104.

A number of members of the Constituent Assembly were concerned with the provision laying down that reasonable opportunity need not be given if the penalty was to be imposed on the ground of conduct which led to conviction on a criminal charge, or that it was not reasonably practicable to give that person any such opportunity or in respect of security of State105. The need to protect the public services from personal or political influence was emphasised.

B.R. Ambedkar stated that in respect of the exceptions provided for the safeguards, where the Government had not given an officer the opportunity to show cause, he would have the right to go to the public service commission, contending
that he had been wrongly dismissed.\textsuperscript{106}

In Article 282 (1) of the draft Constitution, it was stipulated that subject to the provisions of clauses (2), 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 any State. The drafting committee was of the opinion that detailed provisions should not be included in the Constitution, but should be regulated by Acts of the appropriate legislature \textsuperscript{107}.

The draft Articles, were finally incorporated under Part XIV of the Constitution, being renumbered as Articles 308 to 314.

Article 282 of the draft Constitution, renumbered as Article 309 in the present Constitution, provides for recruitment and conditions of service of persons serving the Union or the State. The proviso to the Article makes it possible to make laws regulating the recruitment and conditions of service. Until provisions are so made, the President and the Governor would be competent to make rules regulating the recruitment and conditions of service of civil servants belonging to the Union and States respectively.
Article 310 of the Constitution provides for the tenure of office of persons serving the Union or a State Government. The tenure at pleasure incorporated in Article 310 is applicable to every person under the employment of the Union, whether in the civil services, all India service or defence service, and to persons in the civil services of the State. This tenure of pleasure of the State is however not unfettered, but subject to Article 311 of the Constitution.

The importance of the security of tenure is given constitutional recognition, thereby enabling the civil servants to discharge their duties without fear or favour. Article 311 of the Constitution provides for the security of tenure by putting restrictions upon the freedom of the authorities in taking disciplinary action against civil servants. Article 311 (2) of the Constitution, accordingly imposes a condition precedent for the exercise of pleasure of the President or the Governor under Article 310 of the Constitution.

The restrictions imposed in particular are in respect of the three major punishments of dismissal, removal or reduction in rank. It provides that reasonable opportunity of being heard has to be given in respect of those charges when
and action is proposed by way of punishment, subject to exceptions. These exceptions pertain to punishments in respect of conviction on criminal charge, impracticability of providing opportunity and on grounds of security of state.

It is significant that the provisions contained in Article 311 are not subject to any other provisions of the Constitution. The Supreme Court in Moti Ram Deka V. N.E.F.Railway,110 has held that the rule making power given by Article 309 of the Constitution cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Article 311(2), which is intended to afford a sense of security to public servants who are permanently appointed to substantive posts. Yet, the duty to frame certain rules of discipline for the civil servants arise. The service rules and regulations provide for disciplinary matters so as to ensure due discharge of duties and responsibilities by the civil servants. These service rules ensure that as long as one discharges his duties in good faith, no one can deprive him of his service at his absolute discretion. According to a noted author111, the Constitution of India strikes a balance between the policy of providing security of tenure, while conferring on the State, the power of regulating the conditions of service of government servants, and also
adversely affecting such tenure at its pleasure in exceptional and specified contingencies. Otherwise, it would be a luxury to retain an inept civil servant to the loss of millions of people, which indeed the country cannot afford.

Civil and Political Rights

The civil servants while enjoying constitutional safeguards are also bound by the service rules and regulations. It is, therefore, imperative to know whether they continue to exercise and enjoy the various constitutional rights and freedoms being enjoyed by the citizens of the country. The Constitution of India provides that the Fundamental Rights are available to all citizens. A government servant too is not excluded from his or her enjoying his or her Fundamental Rights. But certain restrictions might be invoked on few freedoms, and in such cases, the latter become subservient to the former.

State has the constitutional power to ensure that every public servant possesses honesty, impartiality, discipline, integrity, efficiency and dedication and to this end can impose certain restrictions on the actions of the Government servants. The Supreme Court in Jamuna Prasad Vs. Lachi Ram, has held that a right which has been created by a
statute may be exercised subject to the conditions imposed by that statute. An infringement of Fundamental Rights arises in such cases.

Government servants as a matter of practice and rules are citizens of the country, unless special appointments are made of skilled technical personnel, in which case non citizens may also be appointed. The Constitution does not exclude them as a class from the protection of the several rights under Part III of the Constitution, save in those cases where such persons are specifically named. The government servants constitutional guarantees are not waived by their entering into employment with the State. On the same grounds it cannot be contended that a government servant would be estopped from questioning the validity of any "rules" on the ground that they infringe Fundamental Rights, through at times the nature of their duties may necessarily involve certain restrictions in the enjoyment of their civil and political rights, such as political activities and attending public meetings.

The policy of the Government is to keep Government servants aloof from politics, without disenfranchising them or denuding them altogether of their rights as ordinary
citizens. The Supreme Court has held in *Rajkumar v. Bimal*\(^{119}\) that the government servants have the right to vote and that it is possible to canvass to government servants for their votes. Rule 5 of the Central Civil Servants (Conduct) Rules, 1964 prohibits government servants from associating with any political party or organisation which takes part in politics, or from subscribing in aid of or assisting in any other manner in any political movement or activity. Not only a government servant should refrain from such activities, but see that members of his family are not associated with any organisations which tend to be subversive to the government.\(^{120}\) Occasional attendance at public meetings is not prohibited\(^{121}\), but he or she is prohibited from taking active or prominent part in conducting the meetings. Frequent or regular attendance of any political party may create the impression that one is a sympathiser of such a meeting, and may be construed as assisting a political movement\(^{122}\).

**Constitutional Freedoms**

Freedom of association is one of the fundamental freedoms of a citizen, but reasonable restrictions are imposed on his freedom. The Supreme Court in *O.K. Ghose vs. E.X. Joseph*\(^{123}\) held Rule 43 of the Central Civil Services
(Conduct) Rules, 1955 to be bad, as it prohibited the government servants from joining any unrecognised service associations, since it considered to be an unreasonable restriction on the freedom of association. The apex court held that the right guaranteed by Article 19(i)(c) of the Constitution to form an association does not involve a guaranteed right to association. It is evident that civil servants can form associations, but cannot claim that such associations be recognised by the government.

Rule 6 of the Central Civil Services (Conduct) Rules, 1964 lays down the restrictions that may be imposed on government servants while joining associations. It restrains a government servant from joining or continuing to be a member of any association, if the object or activities of such association are prejudicial to the sovereignty or integrity, or public order or morality. In order to avoid arbitrary action, the Ministry of Home Affairs, department of Personnel and Administrative reforms has observed as follows:

It has been decided that action for alleged violation of rule 6 C.C.S(Conduct) Rules 1964 can be taken by a disciplinary authority only when an authority not below the level of a Head of Department has decided that the objects or activities of the association concerned are such as
would attract rule 6 .... Where the Head of Department is himself in doubt he shall seek the advice of Administrative Ministry/Department concerned before action for alleged violation of Rule 6 of C.C.S (Conduct/Rules, 1964, is initiated. Hence, the fundamental right under Article 19(I)(c) of the Constitution is subject to the above rule. Similarly, membership or association, engaged in subversive activities or having links with any organisation having foreign inspiration for similar purposes come under the restriction of Central Civil Services (Safety of National Security) Rules, 1968.

Rule 7 Central Civil Services (Conduct) Rules, 1964 restrains a Government servant from engaging in any demonstration, prejudicial to the interests of the sovereignty and integrity of India, friendly relations with foreign States etc. It further prohibits a government servant from resorting to or abetting in any form of strikes leading to coercion or physical duress. But it is the common experience that many of the service organisations often resort to various forms of demonstration, including strikes to get their demands met. On the other hand, government ban such strikes whenever they consider it to be unjustified. But a service rule cannot ban all types of demonstration. A rule which prohibits demonstration by government servants in any form, amounts to violation of Article 19(1) (a) and (b) of the Constitution. Such a rule which lays down a ban on every type of demonstration, however innocent, and incapable of
causing a breach of public tranquility results in violation of Article 19(1) (a) and (b)\textsuperscript{125} of the Constitution. In other words, restrictions can be imposed in respect of violent demonstration\textsuperscript{126}.

Freedom of expression is one of the fundamental freedoms enshrined in the Constitution under Article 19. The reasonable restrictions laid down therein, and the Conduct Rules, govern the civil servants during their service. Such Rules enable superior authorities to maintain discipline among their ranks and lead to proper discharge of their duties. The right to freedom of speech of the government servant must therefore, necessarily be a limited one, as some curtailment of their rights is necessary in the interests of its well being\textsuperscript{127} This is because the servants cannot be allowed to indulge in activities which tarnish the image of the government.

Under Rule 8 of Central Civil Services (Conduct) Rules, 1964 there is restriction on the civil servants from owning wholly or in part, or conducting or participating in the editing or management of any newspaper or other periodical publication. Previously, there was a blanket ban on the freedom of intellectual expression, as prior permission had to be
obtained to publish a book, or participate in radio broadcast. Now one may publish literary, artistic or works of scientific character through a publisher, without having to obtain prior sanction of the Government. Same is the position in respect of contributions to newspapers, journals and broadcast, but there cannot be any adverse criticism of government policy or action, capable of causing embarrassment to the government.

The Supreme Court in *Q.K.Ghosh Vs E.X.Joseph* has held that a restriction on the freedom of expression is bad in law and liable to be set aside if it constitutes pre-censorship, or goes in excess of the requirement or, affords a vague criteria to the administration to select individual employees for punishment or discriminatory treatment.

Having regard to democratic principles, it would have been appropriate to allow the government servants to express themselves freely in matters of public interest, other than those connected with ones own department. Recourse to such measures should enable the government to have feedback, thus allowing an opportunity for adopting remedial measures.
Research Design and Methodology

The formulation of the research design being an important stage of the investigation, the investigator has to select the problem and test its validity on the basis of a hypothesis. One needs to seek access to adequate data for one's investigation, and analyse the same on the basis of study of related literature.

The topic under investigation has been selected in view of the fact that the law relating to civil servants is one of most confusing branches of law applicable in this country. This is evident from the numerous amount of litigation lodged before various courts and service tribunals. The performance of a civil servant depends to a large extent on the nature of his conditions of service. If a civil servant is to perform fearlessly and with efficiency, he has to remain assured that he will be protected by the government in the bonafide exercise of his duties. The efficiency with which an official performs, depends to a large extent upon his security of tenure. It is, therefore, essential to afford them judicious, rationalised and adequate protection against arbitrary, administrative punitive actions.
Article 311 of the Constitution of India is considered unique in the sense that it provides for the rights of civil servants. Clause (2) of the said Article provide for mandatory procedural safeguards, against imposition of major penalties, subject to certain exceptions provided for by the provisos. The constitutional amendments made so far, and interpretations given by the Supreme Court have evolved certain principles of decisional law, having far reaching effect. Presently, the government can dispense with the services of a civil servant without holding any enquiry against him, on the ground of public policy and public good.

A critical investigation is being attempted at, in the light of the decisional laws, to find out the adequacy of the safeguards, based on rights, justice and fairness to the civil servant. For this purpose, the investigator has adopted the following hypothesis to be tested.

The existing safeguards provided for the security of tenure of civil servants have to be strengthened, as they constitute the steel frame of good and accountable administration.

While undertaking the present investigation, the investigator intends to take recourse to doctrinal method, as the study is based mainly on analysis of decisional laws. The
endeavour will be made through legal reasoning and rational deduction, keeping in view the social values and utility of laws, enshrined in service jurisprudence. Besides delving into decisional laws, previous investigation in the relevant field will also be profitably utilised.

In addressing the problem, the investigator proposes to address the aspect of security of tenure, delving into the recruitment procedures and nature of conditions of service. Emphasis will be laid on the doctrine of pleasure, right from the concept as introduced under the Government of India Act, 1919 along with relevant developments, leading to Article 310 of the Constitution.

Emphasis will be laid on the aspect of protection of civil servants as provided under Article 311 of the Constitution. Related aspects pertaining to the major punishments such as dismissal, removal and reduction in rank, besides the issue pertaining to reversion, will be investigated in the light of the decisions of the Supreme Court.

The analysis of the theme is undertaken in the relevant chapters of the present work. The concluding chapter will devote to an analysis of the findings, evaluation of the
hypothesis along with the recommendations made on the basis of the findings.

During the course of the critical study, the investigator proposes to consult the law journals and reports including All India Reporter, Supreme Court Cases, Services Law Reports, research publications in the area, major Acts and government publications, besides the Constituent Assembly Debates. The additional sources include authentic books, relevant publications, articles, features and unpublished thesis.
NOTES


8. Appendix A.


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16. AIR 1954, Bombay 34.

17. Supra n. 9.
18. AIR 1985, SC 1416

20. Supra n. 9


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26. AIR 1984, SC 2154


30. Union of India Vs. Ram Chandra Bali Ram, AIR 1955, Punjab 166

31. Lekhraj Vs. Union of India, AIR 1971, SC 2111

32. Union of India Vs. Subramaniam, AIR 1976, SC 2433 (paras 14, 20-21)

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86. State ex rel Kruse Vs Welster, 231 Minn 309 43 Now 2d 116.

87. Supra n. 85.

88. Birmingham Vs Lee, 254 Ala 237 48 50 2d 47.

89. Birmingham Vs Wilkinason, 239 Ala 199 194 50 548.

90. Appeal of Gagliardi 401 Pa 141 163 A2d 478.


96. Supra n. 85. p. 202

97. Supra n. 89.


100. Government of India Act, 1935

101. Constituent Assembly Debates Vol IX pp. 1084, 1085


103. ibid pp 577-579.

104. Supra n. 101 Vol IX pp

105. ibid

106. ibid

107. Supra n. 102 p625


109. ibid p14.

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113. 1995 SCR 608


115. Kameshwar Singh Vs. State of Bihar, AIR 1962, SC 1166


119. AIR 1954 SC 202(203)

120. Supra n. 118.

121. ibid.

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123. AIR 1963, SC 812.

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126. Supra n. 115 P 1116.


129. Supra n. 123.

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