CHAPTER – 1

INTRODUCTION AND HISTORICAL BACKGROUND

The topic has much importance because, it relates with Administration of the Country, the purity of the Administration determines the gradation of the Country among various countries in the universe.

If Public Servants become dishonest then the country will go down in terms of its progress because the enemies would be within the country. If good Public servants are disturbed or influenced adversely by the citizens or Political Superiors still the country will go in ruin.

Undoubtedly the Government run through its public servants. The efficiency displayed by the public servants give boost up to the progress of the Country because the public servants administer the Country, give justice to the citizens and protect rights of the Citizens. In this way the protection of public servants are necessary in the interest of the country. In I.P.C. there are some offences against public servants punishable by the code to protect the public servants.

On the other side the incidents take place where the public servants commit the offence against the citizens and the Country which are also punishable under I.P.C. in this way both sides have been ensured to be pure and protected so that the Country can progress in exemplary way.

Since the Country became independent, the Government of India have been making constant effort to deal with problem of corruption starting with Bakshi Tekchand Committee appointed in 1949 to revive the working of prevention of corruption act 1947 and the major success achieve by the Delhi Special Police establishment in combating Corruption, the Government have setup various committees from time to time to assess the extent of Corruption of public service. The appointment of Santhanam Committee in 1962 has been land mark in the crusade against corruption. After making exhatistive enquires the committee submitted a comprehensive report on all aspects of the problem and suggested various measures in several direction to effectively combat the evil of corruption. Most of the recommendations made by the committee have been accepted by the Government and they are being implemented.
Based on the recommendation of the Santhanem Committee the anti corruption law (Amendment) Act 1964 was enacted with a view to make the anti corruption more effective and to ensure speedy trial of cases.

With the Independence of our Country the responsibilities of the Service have become onerous. They may make or mark the efficiency of the machinery of administration, a machinery so vital for the peace and progress of the Country. A Country without an efficient public servants cannot progress. What ever democratic institution Exist, of experience has shown, that it is essential to protect the public service as for as possible from political and personal influence.

State wants to control over the offences but no fruitful result came out even then some corruption acts are found. There are some drawbacks in the rules framed by the Government. Who is responsible for the same either the Government or public servant or the public who is not much aware about their rights?

There can be many factors responsible for making the public servants as bad and they start to ruin the country and there can be adverse influence over the public servants either on the side of Ministers (i.e. Political Superiors) or the General Public which behaviour can detract the public servants from their right path. Here both aspects (i.e. BY and AGAINST) are to be focused.

In this present work all misdeeds are not the subject matter of the study rather only those misdeeds which amount to offences are to be studied. Section 21 of IPC defines Public Servants. The Section is discussed here in detail.  

1. **Who are Public Servants?**

This section does not define public servants, but describes them only by enumeration, which itself, is merely illustrative and by no means exhaustive. Speaking generally, a “public servant” must, *firstly*, be *servant*, and *secondly*, a *public servant*. It is not necessary that a servant should receive any salary or emoluments for his work since an honorary servant discharging a public duty is as much a servant as a stipendiary servant in the pay of the Government.\(^1\) It is well-settled that the expression “officer” is used in the sense of functionary and every functionary, however, humble in his station

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\(^1\) Permeshar Datt, I.L.R. 8 All. 201, followed in Ram Chandra Sahu, I.L.R. 12 Fat. 184. Mehendra Prasad, I.L.R. 9 Cal. 698; See also Arraji, I.L.R. Mad. 17 relled upon in Nizamuddin v. Queen-Empress, I.L.R., 28 Cal. 344.
(including even a peon), who is either in the service of the Government or pay of the Government, is a public servant within the meaning of Sec. 21 of the Indian Penal Code.\(^2\) Thus a peon who was remunerated by a fee on processes served by him in a Collector’s Court,\(^3\) or a candidate entertained without any pay in the tahsil office for learning work in the hope and expectation of eventually being taken on the staff,\(^4\) were both held to be public servants. An unpaid candidate at the request of one of the clerks was assisting one of them in some work connected with the duties of an arms clerk in the office of a Deputy Commissioner, held it will not be sufficient to make him a public servant.\(^5\) “It is essential that a public servant must be in charge of some public duty.”\(^6\) Public duty is nowhere defined in the Code, and no general definition of the word would be complete. It may however, be said that all persons having to discharge delegated functions of administration of State are public servants.\(^7\) The duty imposed upon such public servant may be ever so exalted or menial, but, as long as he is discharging the public duty, he is a public servant. It matters little that there is some flaw in his appointment, as long as he has in fact “taken the duties and responsibilities belonging to the position of a public servant and he performs those duties, and accepts those responsibilities, and is recognized as filling the position of a public servant.”\(^8\)

Public servants known to the law are either statutory or those mentioned in this section. The local or special laws have declared certain functionaries as public servants for the purpose of the Penal Code. As they own their status to some statute, they are designated statutory public servants and in their case, it is not necessary to refer to the section, though they must necessarily fulfil its requirements. But they have been so declared in order to place their status beyond contest. A person may be declared to be a public servant by a statute but such declaration would not necessarily make him a public servant within the meaning of this section, unless he possesses any of the qualifications

\(^3\) Ramkrishna, 7 B.L.R. 466: 16 W.R. (Cr.) 27; Ram Krishna Das, 7 Beng. L.R. 446: 16 W.R. (Cr.) 27; Nizamuddin, I.L.R. 28 Cal. 344; Ramajirao Jivaji, 12 B.H.C. 1 (Cr.).
\(^4\) Permeshar Datt, I.L.R. 8 All. 201: Subramanya v. Somasundaram, I.L.R. 21 Mad. 428, Mehendra Prasad, 9 I.C. 698 (Cal.).
\(^6\) Nizamundin, L.I.R. 28 Cal. 344.
\(^7\) Cf. 55 & 56 Vict., c. 61.
\(^8\) Per Straight, J. in Parmeshwar Dutt. I.L.R. 8 All 201 (vide) Expl. 2 to this section; see also Harbilas v. Crown, A.I.R. 1950, E.P. 167.
therein described, though he will, of course, be a public servant for other purposes in accordance with the provisions of the statute. Another important point to note is that a public servant need not necessarily be appointed by Government.9 This is obvious from the explanation and from the illustration10 in which a Municipal Commissioner is declared to be a public servant, though he is elected by the suffrage of his constituency subject only to the approval of or confirmation by the Government. The extra department Branch Postmaster agents may also be “public officers” within the meaning of Sec. 2(17) of CPC or public servants.”11

Under Sec. 200, Cr. P.C., when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a court or by a public servant acting or purporting to act in the discharge of his official duties.

It can be held that the conciliation officer was a public servant and was acting or purporting to act in the discharge of his official duties, as the complaint is in writing, there would be no illegality if he was not examined upon oath.12 Again, if a person who is a public servant is to be prosecuted for an offence committed by him while acting or purporting to act in the discharge of his official duty, prior sanction as required by the terms of Sec. 197 of the Code of Criminal Procedure is essential before a court can take cognizance of the offence.

Even if a person is in actual possession of the situation of a public servant, he is not a public servant unless he had a right to hold that situation. In determining his right to hold that situation, the legal defect, if any, is to be ignored. For instance, a person has been appointed as a public servant but before the appointment letter is issued to him, he might start doing the work of that post. In that case, the person would come within the meaning of “public servant” even though the actual appointment letter had not been issued. The incumbent had a right to hold the situation as he had already been appointed. But the legal defects lay in the fact that the actual appointment letter had been issued. An

9 Explanation 1.
10 Illustration to “eleventh” clause.
interloper in possession of public office is not a public servant.\textsuperscript{13}

The term “public servant” would embrace not only public servants properly so-called but also persons in the employment of the Government who carry defective appointments. The term is, therefore, meant to be used in a wide sense; and a public servant under suspension would not cease to be a “public servant” within the meaning of Sec. 21 of the Code.\textsuperscript{14}

By Secs. 2 and 3 of the Kerala Criminal Law (Amendment) Act, 1962. (Act 27 of 1962), Sec. 13 of the Indian Penal Code was amended and as a consequence of the above amendment effected in Sec. 161. I.P.C. (now Sec. 7 of Act 49 of 1988) the scope of the definition of the expression “public servant” has been substantially widened in respect of matter arising under Secs. 162 to 165 and 165-A, I.P.C. (now Secs. 8 to 12 of Act 49 of 1988), and various categories of officers who are not taken in by the definition contained in Secs. 21 are brought into the category of “public servants” and rendered liable to be proceeded against under Secs. 162 to 165 and 165A (now Secs. 8 to 12 of Act 49 of 1988): Amongst the category so brought in are included the officers and servants of co-operative societies.\textsuperscript{15}

The Chairman, Central Board of Film Censors, under Sec. 7-E of the Cinematograph Act must be deemed to be a public servant within the meaning of Sec. 21 of the Code.\textsuperscript{16}

Branch Manager or other employees of National Bank are not public servants’ for all practical purposes within the meaning of Sec. 21, I.P.C.\textsuperscript{17}

2. \textbf{Tests}.–The true test in order to determine whether a person is an officer of the Government, is (1) whether he is in the service or pay of the Government and (2) whether he is entrusted with the performance of any public duty.\textsuperscript{18} In determining whether a person is a public servant or not, the first thing to see is whether he is a servant. Then enquiry should turn to whether he is not a statutory public servant. It is only then that the

\begin{itemize}
  \item \textsuperscript{14} Dhanpal Singh v. State, A.I.R. 1970 Punj. 514 at p. 514.
  \item \textsuperscript{15} K.J Sahadevan v. State of Kerala 1977 Cr.L.J. 637 at pp. 638-39 (Ker.).
  \item \textsuperscript{16} Asha Paresh v. State of Bihar, 1977 Cr.L.J. 21 at p. 23 (Pat.).
  \item \textsuperscript{17} Ashoke Kumar Mitra v. State of West Bengal, 1994 Cr. L.J. 2682 at p. 2689 (Cal.)
\end{itemize}
section need be referred to and as the section is of last: resort, attention must be paid to its clauses, with a view to seeing if the case in point is covered by any of the twelve clauses here enumerated. On referring to them it will sometimes be found that a given case is covered by more than one clause which is quite possible, for the clauses are not Mutually exclusive and exhaustive, and only a causal reference to them is sufficient to show that a case might conceivably fall within two or more clauses at the same time. But the fact that a person is a public, servant within meaning of more than one clause does not affect his status, if it is once so established. But in order to apply the test here prescribed, it is necessary to grasp with precision the meaning of each clause, for the clauses are by no means free from difficulty.

As a matter of fact, payment of wages is not the test for determining whether a particular person or officer is or is not a public servant. It is the duty with which he is charged and which he is required to perform that actually determines whether he is a public servant or not.  

3. **Public servant demanding bribe**–If a public servant entrusted with the duty to carry out honest investigation, demands heavy bribe of Rs. 3,000 such conduct must be seriously deprecated and deserves no clemency.

4. **“In the service of” or “In the pay of”**–The expression “in the service of” implies a relationship of master and servant. The test whether or not there is a relationship or master and the servant is the existence of right of controlling the manner in which the other does the work. The mode of payment for service, the time for which the servant is engaged, the nature of those services or the power of dismissal may have some relevance. But the right of control as to the manner in which the other does the work is the conclusive test. The word “pay must be construed in the light of the context and would mean wages or money given for service. “In the pay of” construed in the light of the context of the whole clause would carry the meaning “in the employment of”.  

One may be a public servant within the meaning of the Indian Penal Code but from that it does not necessarily follow that he 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

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20 RPS Yadav vs. CBI, 2015(2), LH (SC), 1244.
a State within the contemplation of Art. 311 of the Constitution. Clause (12) of Sec. 21 of the Indian Penal Code has got nothing to do with the determination of the question, namely, whether a petitioner is a Government servant within the meaning of Art, 311 of the Constitution.

The pradhan of the Gram Sabha though a public servant, within the meaning of Sec. 21 of the Indian Penal Code by virtue of Sec, 28 of the Act, he is not a Subordinate of the Sub-divisional Officer or even of the State Government. The Act has conferred upon the State Government and its delegates, under Sec. 95, certain powers of control and supervision over the Gram Sabha and its office bears.

Referring to the power of suspension and removal envisaged by Sec. 95 (1) (g) the Supreme Court observed:

But that power is admittedly a power to punish. No specific power to suspend a pradhan pending enquiry into the charges levelled against him has been confer on the State Government. This much is conceded.”

It was argued before the Supreme Court that the relationship between the State Government and the pradhan was that of master and servant and the State Government was therefore, competent to preclude the pradhan from discharging functions under the Act during the pendency of the enquiry into the charges levelled against him, but the argument was repelled and it was held that the pradhan was an elected representative and cannot be considered as a servant of the Government and also that there is no contractual relationship between him and the Government much less the relationship of master and servant.

There is no manner of doubt that the pradhan of Gram Sabha is an officer within the meaning of the 12th clause of Sec. 21, I.P.C. A pradhan can be deemed to be an officer in the service of the local authority.

5 Statutory public servants.—A list of the statutes defining such servants has been given elsewhere. An illustrative enumeration may, perhaps, make the subject further clear. Bailiffs and appraisers of the Presidency Courts of Small Causes Census Officers, Coroners. of Presidency Towns, Emigration Officers Managers of Encumbered. Estates, Factory Inspectors, Forest Officers, Servants and Officers of the Indian Museums, certain

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officers appointed under the Merchant Shipping Act, 1860 officers executing warrants of Marine Court, Municipal Commissioners and servants, officers and servants of local and district boards, Canal Officers appointment under the Pegu and Sitting Canal Act, Embankment Officers, Delegates of Parsi Matrimonial Courts, Patwari and Kanungoes, Pound-keepers, Railway servants, Telegraph officer of the Private Company. Registering officers, Rangoon Port Commissioners, their officers and servants, Sanitary Inspector, special Judges under Jhansi Encumbered Estate Act, Judge and Assessors, of Court of Survey and Ship Surveyors. Heads of village for purpose’s of Madras Abkari Laws Amendment Act, Conciliation Officers Clerk appointed under the Broach Thakurs Relief Act, whose duty it was receive rents and execute revenue processes, are all statutory public servants and so declared by the several Acts relating to them.

A “Kotwal”: in the former Madhya Pradesh was a public servant within the meaning of cl. (8) of the section.

6. **Public servant–Prosecution in the absence of valid sanction.**— When the accused is prosecuted under Sec. 5 (2), [Sec. 13 (2), new] Prevention of Corruption Act, what is the point of time when the sanction is necessary, viz, the time when offences were actually committed or when the Court took cognizance of the said offences. An identical question Came up for consideration before the Supreme Court in the case of Venkatararman v. State. where the Court speaking through Imam, J., observed as follows:

“In our opinion in giving effect to the ordinary meaning of the words used in Sec. 6 of the Act, the conclusion is inevitable that at the time a Court is asked to take cognizance, not only the offence must have been committed by a public servant but the person accused is still a public savant removable from his office by a competent authority before the provisions of Sec. 6 can apply.”

This case was followed by the Supreme Court in the case of State of West Bengal v. Mannal Bhutoria, Where the previous decision was followed. In view of the decisions of the Supreme Court, referred to above, the matter is no longer res integra but

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25 Dina Nath Gangooly, 8 B.L.R. App. 58; 17 W.R. (Cr.) 12.
is concluded by the decisions of the Supreme Court, it follows, therefore, that the prosecution must prove that at the time when the cognizance of the offence was taken, the respondent ceased to be a public servant. In the above-noted case, the Special Judge appears to have taken cognizance on 19th June, 1969, at a time when the respondent continued to be a public servant having been reemployed and his services were terminated only on 1st April, 1968, but he continued to be a member of the Auxiliary. Air Force up to 15th June, 1970, that is to say, a long time after the cognizance of the offence was taken. The respondent filed a petition for dropping the proceedings against him on the ground that the Judge could not take any cognizance of the offences in the absence of any valid sanction from the appointing authority of the respondent. It was held that a perusal of the provisions of Sections 4, 9 and 12 of the Reserve and Auxiliary Air Forces Act. 1952 would clearly reveal that once the respondent was transferred to the Auxiliary Air Force, he retained his character as a public servant because he was required to undergo training and to be called up for service as and when required. It is true that these provisions do not expressly contain the nature of the emoluments that the respondent may receive but the general tenor and setting of the Act clearly show that a member of the Auxiliary Air Force is as much a public servant as an acting member of the Indian Air Force. The respondent continued to be a public servant within the meaning of Sec. 21 of the Indian Penal Code in as much as he remained a member of the Air Force Reserve, sanction was essential before prosecuting the respondent.

7. Officers of the Army, Navy and Air Force.—Commissioned officers of the Army, Navy and Air Force are those to whom commissions for command over officers and men of the regular forces have been duly issued. The words of the clause appear to include forces other than the regular forces, e.g. the auxiliary forces, the volunteers, volunteer forces and the militia.

The Soldiers’ Board is primarily a private organization though patronized by the Government. The Court was not satisfied as to under what specific portion of Cl. (9) to See. 21, I.P.C., the case of the employee-applicant exactly falls. Sentence under Sec. 161, I.P.C. (Sec. 7 of Act 49 of 1988), could not be maintained unless the accused has first

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30 Ibid. at pp. 523-245.
31 (1881) 44 & 45 Vict. c., 58, 177 (7).
been shown to be a public servant within the meaning of Sec. 21, I.P.C. 32

8. **Every Judge is a public servant** 33—A Judge is defined in Sec. 19, and it is then simple to see what persons fall into this category.

9. **Officers of a Court of Justice.**—Clause (4) for the first time introduces the term “officers” without defining it. It is again used in Cl. (8) to (10). It is omitted in Cl. (7) where the use of the term might have been equally apposite. But at the same time if close attention is paid to the several clauses, it will be perceived that the term has been used in a definite sense, and that it is not used as merely a substitute for the word “person”. A public servant means some person employed to exercise, to some extent and in certain circumstances a delegated function of Government. He is either armed with some authority of representative character, or his duties are immediately auxiliary to those of some person who is so armed.

If on the facts of a particular case the Court comes to the conclusion, that a person is performing a public duty, he has delegated to him the functions of the Government or is in any event performing duties immediately auxiliary to those of someone who is an officer of the Government and is a public servant within the meaning of Sec. 21. The appellant was thus, even on a narrow interpretation of the dicta of West J., in Reg. v. Ramajirao Jivaji, 34 an officer in service or pay of the Government performing as such a public duty entrusted to him by the Government. The appellant was, therefore, an officer within the meaning of Sec. 21 (9) and so a public Servant within the meaning of Sec. 21. The conviction and the sentence imposed on him were upheld as quite in order.

The decisions cited in the succeeding paragraphs, it may be noted, were given before the decision of the Supreme Court just set out in some detail and the term “officer” used in Cl. (4) and Cls. (9), (10) and (12) must receive the connotation given to that term by the Supreme Court. It may be noted that Cl. (8) above expressly Speaks of an “officer of the Government.”

The word “officer” means some person employed to exercise, to some extent, and in certain circumstances, a delegated function of Government. He is either himself armed

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34 12 B.H.C.R, 1.
with some authority of representative character, or his duties are immediately auxiliary to those of some one who is so armed.\(^{35}\) In this sense, it may include a person in the position of a peon.\(^{36}\) but not a carter,\(^{37}\) or the lessee of a village,\(^{38}\) Deshmukhs and Deshpandes would be sufficiently within the meaning of the term as they are appointed to perform for the State a portion of its functions, or to aid those who are its active representatives.\(^{39}\) Now, understanding the term “officer in this sense, the clause is intended to include all ministerial officers attached to the Courts of Justice, Clerks of Courts, are. as such, required to report on any matter of “law or fact” as whether a plaint, petition or memorandum of appeal is, or is not, within, time and whether it has been presented by a duly authorised person. A record-keeper\(^{40}\) is a person entrusted with the custody of records of disposed cases, while the sheristadar or peshkur is entrusted with the custody of pending proceedings. The Nazir is the custodian of Court exhibits and property in suit, while process-servers are entrusted with the duty of executing judicial processes.\(^{41}\) A Commissioner appointed by a court to divide the properties by metes and bounds in pursuance of a preliminary decree for partition, though he is not a permanent Government servant like an amin or a process-server or a clerk, is still an officer appointed specially by a Court of Justice to investigate and report on a question of fact and is. therefore, a public servant within the meaning of this clause.\(^{42}\)

Since one of the duties of mukddam under the C.P., Land Revenue Act is to report the commission of certain offences under the Penal Code he has been held to be a public


\(^{37}\) Nachimuthu, I.L.R. 7 Mad. 18.


\(^{39}\) Rarmajirao Jivaji, 12 B.H.C.R 1.

\(^{40}\) “It is questioned by one officer whether jawabnavises, gomashtas, and other servants of the class come under any of the descriptions in this clause so as to be subject to the provisions of Cl. 138 (now Sec. 161) : It seems to us that as servants whose duty it is to ‘make’ or ‘keep documents’ they fall under the 5th, 10th or 11th description according to the department in which they may be employed.”—Indian Commissioner's First Report, Sec. 79.

\(^{41}\) Bhagai Dafadar..2 B.L.R. 21, (F.B.) In which resistance was held to be criminally punishable and rightly so.

servant under this section,43 “Public servant” denotes a person whose duty it is to execute any judicial process and also any officer whose duty it is to take property. It was undoubtedly a part of the duty of Sales Officer of Co-operative Society to take property in execution of the decrees of the society. He would therefore conform to the definition of a public servant,44 Notaries Public, are as a rule, appointed to administer oaths, while officers variously described are entrusted with the duty of preserving order in Court. These are the persons ordinarily so employed, but the last clause widens the scope of the rule, for it confers on any persons specially authorised by a court to discharge any of the foregoing functions the status of a public servant.

Section 21 of the Indian Penal Code, has described the various categories of persons falling under the expression “public servant”. One of the categories, i.e. the tenth is of officers whose duty it is, as such officer, to take, receive keep or expend any property, to make any survey, or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district. It will appear from it that an officer whose duty it is as such officer to take, receive, keep or expend any property is a public servant. A qurq amin is charged with the duty in that capacity of his to attach properties of defaulters and to realise money. He is hence a public servant. The section does not contemplate in the case of officers who fall within the description included in the above category that they should further be in the employ of the State Government as such or their wages should be payable out of the revenues of State. As a matter of fact Explanation I in Sec. 21 has expressly provided that persons falling under any of the categories, first to eleventh, shall be public servants whether they are appointed by the Government or not. The section does not quality that persons who are in receipt of any fixed wage alone shall be public servants. As a matter of fact, payment of wag is not the test for determining whether a particular person or officer is or is not a public servant. It is the duty with which he is charged and winch he is required to perform that actually determines whether he is or is not a public servant.45

In view of the definition of “public servant” in Cl. (4) of Sec. 21 of the Indian Penal Code, a public servant is widely defined as anyone whose duty it is to execute any judicial process and also anyone whose duty it is to take property. This includes sales officers of cooperative societies. However, the last clause of Section 21 broadens this scope to include any person specially authorized by a court to discharge any of these functions, granting them the status of a public servant. Notaries Public, for example, are typically appointed to administer oaths, and various officers with different duties are entrusted with preserving order in court. These are the people ordinarily employed in these roles, yet the last clause widens the definition to apply to any person specifically authorized by a court.

Section 21 of the Indian Penal Code outlines the various categories of persons falling under the expression “public servant.” One of these categories includes officers whose duty it is, as such officers, to take, receive, keep or expend property; to make surveys, assessments, or levies for secular common purposes of villages, towns, or districts; or to make, authenticate, or keep documents for ascertaining the rights of people in any village, town, or district. It is clear from this section that officers whose duty it is as such officers to take, receive, keep, or expend any property are public servants. A quaq qamin, for instance, is charged with the duty in this capacity to attach properties of defaulters and realize money. He is thus a public servant.

The section does not require that officers falling within the described categories must be employed by the State Government or that their wages be paid out of state revenues. As a matter of fact, Explanation I to Section 21 expressly provides that individuals falling under any of the first ten categories shall be public servants regardless of their employment status. The section does not stipulate that persons who receive a fixed wage alone qualify as public servants. Payment of wages is not the determining factor; rather, it is the duty with which they are charged that actually determines whether they are or are not public servants.45

In view of the definition of “public servant” in Cl. (4) of Sec. 21 of the Indian Penal Code, descriptions are provided for various categories of public servants. These categories include officers who are required to take, receive, keep, or expend property, to make surveys, assessments, or levies for secular common purposes in villages, towns, or districts, or to make, authenticate, or keep documents for ascertaining the rights of people in any village, town, or district. These are the persons who are typically employed in these roles, but the last clause of Section 21 broadens this scope to include any person specially authorized by a court to discharge any of these functions, granting them the status of a public servant. Notaries Public, for example, are appointed to administer oaths, and various officers with different duties are entrusted with preserving order in court. These are the people ordinarily employed in these roles, yet the last clause widens the definition to apply to any person specifically authorized by a court.
Penal Code, a Receiver in insolvency is a public servant.\(^{46}\)

A court amin employed to prepare a plan, to inspect a site, or to effect a partition, would thus fall within the last provision, as a person specially authorised by a Court of Justice. A Commissioner appointed by Court to examine a witness would appear to share the same privilege.

10. **Policemen, Jailors** – A police officer is a public servant as defined in Sec. 21 of the Indian Penal Code. Therefore, when cognizance is taken on the report of a Police Officer the requirements of Sec. 11 of the Essential Commodities Act, 1955, are complied with.\(^{47}\)

The officer-in-charge of a Police Station comes within the definition of the term “public servant” as defined in Sec. 21 of the ‘Indian Penal Code.’\(^{48}\) Policemen are persons empowered to place any person in confinement while jailors are persons empowered to keep persons in confinement. They are both, therefore, public servants. The test under this head being that the persons should have the authority to take or keep another person in confinement, a person so empowered would be a public servant, though he may himself be in confinement. Where, for instance, a convict-warder is empowered to keep persons in confinement he becomes a public servant, though he is himself kept in confinement by another, who, again, is on that account a public servant.\(^{49}\) The authorisation here contemplated must, however, be legal; that is to say, the persons empowered to place and keep persons in confinement must have been so empowered by a competent authority, and as a part of his official duty. The authority must then be general, and not special or relating to any individual case. Where for instance, a Magistrate orders a person to arrest a runaway offender,\(^{50}\) that person does not thereby become a public servant, because the arrest made was not made by virtue of any office which he held. The power to arrest or detain arrested persons must be inherent in his office. It must be a part of his ordinary duties: But it need not be a power unqualified or unlimited. For no one possesses such a power. A Forest Officer detecting a person committing an offence


\(^{49}\) Kallachand, 7 W.R. (Cr.) 99; Muhammad, (1908) P.R. (Cr.) No. 22; Maula Baksh, A.I.R.1929 Lah. 621 : 30 Cr. L.J. 1103; Safin Rasul, 1924 Bom. 385.

\(^{50}\) E.g. under Sec. 44 (2) (SeC. 65, old) Cr. P.C.
against the Forest Act may take him into custody.\textsuperscript{51} He is, therefore, a public servant under this clause, though he is also declared to be a public servant under the Forest Act.\textsuperscript{52} The power may he conferred upon a person either generally by statute or rules and regulations made there under or it may be conferred by or implied in an appointment to an office duly made. A person so appointed would, then, become a public servant if, by virtue of his office, he has the power to confine any person. if he has the power otherwise than by virtue of his office; he is not a public servant. For example, any-private person may arrest any person who, in his view, commits a non-bailable and cognizable offence,\textsuperscript{53} but all persons are not public servants.

11. **Peace officers** – For the meaning of the term “officer” as pounded by the Supreme Court see para., 12.

Person holding office by virtue of which it is their duty (a) prevent offences, (b) to give information of offences, (c) to bring offenders to justice, or (d) to protect the public health, safety or convenience, are declared to b4- public servants. Policemen, village watchmen,\textsuperscript{54} revenue and police patel in Bombay,\textsuperscript{55} fall into this class, which, however, is large enough to include even Judges and Magistrates whose duty is as much to prevent offences\textsuperscript{56} as to punish for them. And the clause would include Forest Officers, Officers of the Salt, Excise or Opium departments, or indeed, of any department whose duty it is to protect the interests of their department by preventing the commission of offence against it.

Officers appointed to give information of offences may, again, be policemen, village chowkidars, or members of the Criminal Investigation Department, such as detectives or the like. Mere informers and secret agents are not, however, included in the term, because they are not “officers of Government whose duty it is as such officers” to give information of offences.

Officers appointed to bring offenders to justice are again policemen, Judges, Magistrates, Public Prosecutors and persons generally or specially charged with the duty

\begin{itemize}
  \item\textsuperscript{51} Section 51, Forest Act (V of 1882),
  \item\textsuperscript{52} Forest Act (V of 1882), Sec. 62.
  \item\textsuperscript{53} Section 59, (Sec. 43 new) Cr. P.C.
  \item\textsuperscript{54} Siddhut, I.L.R. 26 All. 542; Appaji. 1.L.R. 21 Bom. 517.
  \item\textsuperscript{55} Appaji, I.L.R. 21 Bom. 517.
  \item\textsuperscript{56} See (Secs. 106-124), Cr. P.C.
\end{itemize}
of conducting prosecutions. A person appointed by the Government Solicitor with the approval of Government and under an arrangement made by the Governor-General-in-Council to act as prosecutor in a police court is thus a public servant. Similarly, officers of the Society for the Prevention of Cruelty to Animals, appointed under the Police Act, are public servants, because their duty leads them to bring offenders under that Act to justice. Lastly, Health Officers, Sanitary Inspectors, Bazar Masters, Hackney Carriage Examiners, Engineers of the Public Works and Irrigation Departments, Postal officials, Street Overseers, and indeed, all persons having similar duties to perform by virtue of their office are public servants. In Shob Nath v. State it is not disputed that the applicant was entitled to receive the money as Postmaster of Branch Post Office, Koerauna and it was also not disputed that the applicant was under the service and pay of the Government, held that it is crystal clear that the applicant would be covered by the definition of the words “public servant” as envisaged in (9) of Sec. 21 of the Indian Penal Code. But inn-keepers and dak bungalow cooks are not persons engaged to protect public convenience, through their duties are subservient thereto.

12 Miscellaneous officers of Government – For the purpose of the last part of the Ninth Clause, as it stood before the amendment, the person an officer must hold some office. The holding of office implied charge a duty attached to that office. The person who was remunerated by fee commission must be an officer. Therefore, the use of the word “officer” read in the context of the words immediately preceding the last part would indicate that the remuneration contemplated was remuneration by the Government. A University Examiner cannot be considered to hold an office in the sense in which that word has been understood and employed in the Ninth Clause. It is clear from the provisions of the Gujarat University Act, 949, that there is no such condition that only that person can be appointed examiner who is the holder of an Office. There is no ordinance which the appointment of the examiner to persons in the service of the Government or holders of any particular office. Suppose, for instance, there a private individual who is not the regular employment or service of either the Government or any

57 Butto Kristo Doss, J.L.R. 3 Cal. 497.
58 Ad X1 of 1890.
59 Upendra Kuinhar Ghose, 3 C.L.J. 475; Nataraja, I.L.R. 46 Mad. 90
60 (1975) II Cr. L.J. 1122 at p. 1123 (All.)
public body or authority, he has the requisite academic qualifications and he is appointed an examiner in a particular subject in which he has attained high academic distinction. He cannot be holding any office when he is appointed for the purposes of certain answer books even though that may fall within the performance of a public duty. A University Examiner cannot be held to be an officer. Once that conclusion is reached, he cannot be covered by the Ninth Clause of Sec. 21 of the Penal Code.61

The concluding portion of Cl. (9) clearly indicates that every officer either in the service or pay of the Government, or remunerated by fees for the performance of any public duty, is defined to be a public servant within the meaning of Sec. 21.

The ninth clause is really the otta porida of the section, and it includes, within its comprehensive grasp a large mixed class of non-descript officers who could not be specially provided for Generally speaking, this class includes officers who receive or disburse money on behalf of Government, such as Treasurers, Cashiers, Opium and Stamp-vendor employed in the Government treasuries: But a stamp-vendor employed not under the Stamp Act, but under an agreement with the Collector, was held not to be a public servant.62

According to Cl. (9), Sec. 21 of the Indian Penal Code, every Officer in the service or pay of the Government is deemed to be a public servant.

As a person was employed by the Punjab Government and it, was the Punjab Government which paid her salary on account of her work as lady health visitor, she should be held to be a public servant employed in connexion with the affairs of the State. The mere fact that the Health Centre, where she works, is being run by the Municipal Committee, Yamuna Nagar, would not show that she is not working as a public servant or was not employed in connexion with the affairs of the State.63

By the definition under Sec. 21, Cl. (9), I.P.C., a person who is appointed to be a Public Prosecutor under Sec. 92 (Sec. 24, new) of the Code is an officer in the service of the Government and is also remunerated by fees for the performance of that public duty and therefore is a public servant for the purposes of the case in which he is appointed as a

62 Kalyanray, B.U.C.P. 36
Public Prosecutor.\textsuperscript{64}

Persons whose duty it is to make survey on behalf of Government are members of the Geological and Topographical Survey of India; officers connected with the State Railways, Canal and Irrigation Departments and the Department of Settlement and Agriculture. As belonging to this department may be mentioned patwaris,\textsuperscript{65} and other minor officials, who prepare maps and plans of rural areas for the purpose of assessment. A surveyor preparing a map of water-course of a khas mahal under the orders of the collector is a public servant, for “the Collector acting in the management of a khas mahal”, the property of the Government, is as much the Government within the meaning of Sec. 17 of the Indian Penal Code as when he is exercising any other of the duties of his official position.\textsuperscript{66}

Officers who make contracts on behalf of Government are those belonging to the Commissariat and Public Works Department. Officer-in-charge of Excise, Opium, Ganja and Salt have also to make contracts on behalf of Government for their sale, but as these officers are usually Civil Officers of the district, they fall not only into this, but also other clauses of the section.

Persons empowered to investigate or to report on any matter affecting the pecuniary interests of Government are scattered over almost every department of Government. AS such, they become public servants, though they may not be otherwise so qualified. Tax collectors and Tahsil officials are amongst those falling into this class. Persons who “make, authenticate or keep any document relating to the pecuniary interests of Government” similarly form a numerous class. Revenue Inspectors and patwaris stand on the lowest ring of the ladder amongst officials of the Department of survey and Settlements who make documents relating to the pecuniary interest of Government, namely, the land revenue. Revenue record-keepers and the like are persons who keep documents. Persons who prevent the infraction of any law, for the protection of the pecuniary interest of Government are men like customs officials, and those engaged to detect contraband trade against the monopoly of Government, Excise Inspectors are, for instance, employed to prevent the manufacture of illicit liquor ‘or the importation of

\textsuperscript{65} Mudsooddeen, (1870) 2 N.W.P. 148.
\textsuperscript{66} Bajoo Singh, I.L.R. 26 Cal. 158.
foreign opium or ganja. Consequently, they become public servant under the rule.\textsuperscript{67} Every officer in the service or pay of Government is, apart from other considerations, a public servant. But, of course an officer holding a mere sinecure cannot be called a public servant for there can then be no reason for applying to him the exceptional provisions specially enacted for them in the Code. The clause must, therefore, mean person. Who holds, an office to which some public duty is attached and which he may be called upon to perform, Consequently, an unpaid apprentice in the office of a Sub-Registrar in Bengal is not a public servant even though his services, be reimbursed by the Sub-Registrar out of his allowance.\textsuperscript{68} Such was also held to be a Quarter-master’s clerk.\textsuperscript{69} On the other hand a Police Sub-Inspector attached to the Finger Print Bureau as an expert and called as such is a public servant and a bribe offered to him would be punishable under Sec. 161.\textsuperscript{70}

The first part of this clause says that every officer whose duty it is, as such officer, to “keep” any property on behalf of Government, would be a public servant. The driver of a Roadways bus is responsible for proper care and maintenance of the vehicle in his charge. Thus his duty is, as a driver, not only to drive the bus but also to keep the vehicle under proper care and maintenance. While he is in charge of it. He is therefore a public servant under the provisions of first part of Cl.(9) of Sec, 21, I.P.C. In any case, he is covered by the second part of the Clause which says that “public servant” denotes every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty. He is in the pay of Government, in the service of Government and is also performing public duty of keeping the vehicle in his charge and maintaining the same: The Railway also earned profits and thus cannot but be said to be a commercial undertaking of the Union Government. The only difference is that it is a commercial undertaking of the Union Government while the roadways is commercial undertaking of the State Government. It cannot be said that merely because the petitioner is a Government employee in a commercial undertaking of the Government, he cannot be

\textsuperscript{67} So held in Fazal Rahman. A.I.R. 1937 Pesh. 52 : 38 Cr. L.J. 1042.
\textsuperscript{68} Mahendra, 9I.C. 698 (Cal); Bhagwati Sahai. I.L.R. 32 Cal:664 : but of Fula Bhana, (1888) Cr. R. No. 40 of (1888) : (1888) B.C. 38.
\textsuperscript{69} Abad Shah, (1918) P.R. (Cr.) 18 : 451.C. 150.
\textsuperscript{70} Karam Chand, 69I.C. 445 (Lab.).
regarded as a public servant.\textsuperscript{71}

**13 Public Servants** – Chapter IX of this Indian Penal Code now consists of Secs. 166 to 171 only and, it is for the purposes of these sections alone therefore that a railway servant can be called a public servant within the meaning of Sec. 21, Penal Code, and he cannot otherwise be called a public servant for the purposes of Penal Code. If, therefore, the prosecution case is that the petitioners committed offences under Sec. 408, Penal Code, only they cannot call the petitioners public servants.\textsuperscript{72}

The appellant was a Class III servant and was employed as a metal examiner known as Chaser in the Railway Carriage Workshop. He was working under the Works Manager who was certainly an officer of the Government and the duties which he performed were immediately auxiliary to those of the Works Manager who, beside being an officer of the Government was also armed with some authority of representative character qua the Government. The appellant was thus; an officer in the service or pay of the Government performing as such a public duty entrusted to him by the Government and was therefore, a public servant within the meaning of Sec. 21, Penal Code.\textsuperscript{73}

The Traffic Service Officer in railways is a public servant.\textsuperscript{74}

The Railway Works Manager is an officer of the Government, armed with some authority of representative character qua the Government. The person holding the post of Khalasi in the Railway Carriage Section, but actually allowed to deal with the preparation and issuance of railway passes in the office of the Works Manager, and as such, in fact performing public duties and discharging public functions auxiliary to those of the Works Manager and his office is in actual possession of the situation of a public servant. In view of Explanation, II to Sec. 21 of the Penal Code, he would be a “public servant” notwithstanding the defect in his right to hold that situation.\textsuperscript{75}

Before the amendment, of Sec. 137. Indian Railways ACE. roadway, servants


\textsuperscript{74} SATISH CHANDRA V. UNION OF INDIA, 1997 CR.L.J. 1210 AT P. 1212 (DELHI).

were treated as public servants only for the purposes of Chapter 9, Penal Code but now as the result of the amendment all railway servant have become public servants not only for the ‘limited purposes but also generally. In any event, they are public servants under the Prevention’ of Corruption Act.76

14 Officers of local bodies – For the meaning of the term “officer” as expounded by the Supreme Court, see para 4.

This clause compendiously states what is more elaborately slated the last preceding clause in respect of officers Government. Mutahs mutandis, similar officers; though in the service of Town or Urban Municipalities,77 Local Boards, District Councils, Sanitary Boards or other similar bodies are public servant. Persons who are in charge of religious distinguished from secular public benevolence are, however, not public servants.

In Sec. 21(10); the words “whose duty it is, as such officer, to take, receive, keep or expend” qualify the clause “for any secular common purpose of any village, town or district”, This clause governs the section and that it must be for a public purpose that the money was received or expended.78

The Chairman of the Managing Committee of a Municipality “public servant” as contemplated by Sec. 2 of the Prevention of Corruption Act for rule, 68 framed under the Bombay District Municipal Act, 1901 (Bombay Act :III of 1901) empower him to expend money of the Municipality on payment of bills for fixed recurring charges and therefore comes within the purview of the expression “public servant” defined in Cl. (10) of Sec. 21 of the Indian Penal Code power to make payment of fixed recurring charges such as pay bills imposes a duty on the Chairman to do so when necessary as the power is vested in the Chairman for the benefit of the persons entitled to receive those recurring charges.

The aforesaid power is conferred on the Chairman for the benefit the persons who have served the Municipality and have got the right to receive their pay or money for articles provided. There may arise circumstances when any delay in payment may affect those persons adversely the pay is due on the first day of the month and it may not be

77 Ezekiel, 6 Bom. L.R. 54 (under the City of Bombay Municipal Act, Bombay Act, III of 1884) Ramanswami I.L.R. 13 Mad. 131 (under the Madras District Municipalities Act).
convenient to fix a meeting of the committee at a date for early payment of the pay due. A meeting already fixed may have to be adjourned for want of a quorum. The passing of the pay bills, in the circumstances, is more or less a formal matter and therefore the rules empower the Chairman of the Managing Committee to order payment of the pay bills in anticipation of sanction by the Committee. The Chairman can exercise this power for the benefit of the employees voluntarily or when requested by those persons to exercise it. The mere fact that this power of the Chairman was to be exercised only with respect to fixed recurring charges and in anticipation of the committee passing the bills for those charges therefore does not affect the question in any way. Clause (10) of Sec. 21 of the Indian Penal Code merely that the person should have the duty to expend property for certain purposes. It is not restricted to such cases only, where there is no limitation on the exercise of that power of expending property. The Chairman of a Municipal Board constituted under the Rewa Municipality Act, 1946, is a public servant. The tax-collector is certainly a public servant within the meaning of Sec. 21 (Description tenth) I.P.C.

A Municipal water-rate collector is not a public servant: ed hoc genus omne.

The question whether a councillor who was also a member of the Taxing Committee of the Municipal Council concerned with expenditure and preparation of budget sponsoring proposals of financial character is a servant is a mixed question of law and fact. It requires evidence for determination.

Municipal Engineers who receive money from the Municipality and pay it out to contractors are, thus, within the definition though an Engineer who is merely empowered to sign a bill or cheque upon which a different official: pays the money Might be conceivably classed otherwise, on the ground that he does not “expend any property” of the Municipality. Municipal or Local Board overseers, octroi and cattle-
pound Moharrirs, cess collectors,\textsuperscript{86} goods clerks,\textsuperscript{87} or union karmans\textsuperscript{88} are persons who take or receive money for their Municipality or Local Boards as the case may be. They are, therefore public servants. But a Local Board Sircar who merely supervises road work is not a public servant.\textsuperscript{89} A Union Board bill collector falls within the terms of this clause and is therefore a public servant but when he attempts to enforce a warrant for an amount in excess of what could be recovered by distress he cannot be said to be engaged in the lawful discharge of his public duty.\textsuperscript{90} A Vice-Chairman of a Local Board is also a public servant.\textsuperscript{91}

A Municipal, Councillor was a public servant within the meaning of Sec. 21, Indian Penal Code, prior to the amendment of Sec. 45, Bombay District Municipality Act (3 of 1901) by Bombay Act 26 of 1930.\textsuperscript{92} The head clerk of a municipality had no authority, merely as head clerk, to prepare the electoral rolls, but the Chairman of the Municipality had appointed him to do so in exercise of the power given by rule 13(1). Municipal Election Rules. This was however, before government divided the Municipality into the sixteen wards for which the general election was to be held. There was no fresh appointment of the petitioner by the Chairman under rule 13(1) after the Government notification, and it has therefore been urged that the petitioner was not a public servant nor charged as such with the preparation of the rolls, that were delivered to the Chairman. There is, however, no dispute that these electoral rolls included two rolls Exs. 20 and 20/1, written by the petitioner himself. It is also clear that the petitioner wrote these rolls (even though he was not expressly appointed by the Chairman after the notification for the reason that his earlier appointment under the rule was taken to extend to the deferred election, and taken not by the petitioner alone, but by the Chairman as well. Explanation 2 to Sec. 21, Penal Code, provides that wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation. It was held that the absence of a formal appointment is immaterial; where

\textsuperscript{86} Babulal, I.L.R. 33 Born. 213.
\textsuperscript{87} Zakaria, 9 P.R. 1898.
\textsuperscript{88} Gupalasaminatha Aiyar, 1 Weir 128.
\textsuperscript{89} Addaita v. Kali Dass, 12 C.W.N. 96.
\textsuperscript{90} Ahmad Jaluddin, 1936 M.W.N. 638.
\textsuperscript{91} Anna Champat Rao Deshmukh v. Emperor. 38. Cr.L.J. 444 at p. 446: 167 LC. 752 : .19 N.L.I. 221
\textsuperscript{92} Suganchand v. Seth Naraindas, A.1.R. 1932 Sind 177 at p. 178 : 141 I.C.530
the petitioner was indubitably “in actual possession of the situation of a public servant” within Cl. 11 of Sec. 21 and the Explanation, Indian Penal Code.\textsuperscript{93}

It is, however, a moot point, whether the University is a local authority within the meaning of the first part of the Twelfth Clause before the amendment of Sec. 21: The expression “local authority” has a definite meaning. It has always been used in a statute with reference to such bodies as are connected with local: self-government, e.g., Municipalities, Municipal Corporations, Zila Parishads, etc. As a matter of fact Sec. 3 (31) of the General Clauses Act, 1897. defines “local authority” to mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by Government with the control or management of a municipal or local fund.\textsuperscript{94}

\textbf{15. Employees of statutory trading corporations and of Government companies—}

This clause, added, by the Criminal Law Amendment Act, 1958 (II of 1958), further enlarges the scope of the section: The employees of statutory trading corporations and of Government companies fall within the class of public servants as defined In Sec. 21. As a result of the clause, every officer in the Service or pay of (1) a local authority, or (2) a corporation, Which is engaged in any trade or industry whether established by a Central, Provincial or State Act, or (3) a Government company as defined in Sec. 617 of the Companies Act, 1956 (1 of 1956) is a public servant. As the expression “Local authority” is not, defined in the Penal Code, we must turn to its definition in the General Clauses Act, 1897 (X of 1897), Sec. 3 (31) which runs thus: “Local authority” shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with the control or management of a municipal or local fund”, “Government company” is defined is Sec. 617 of the Companies Act, 1956 (1 of 1956) as follows:

“For the purposes of Secs. 618, 619 and 620, Government company means any company in which not less than fifty-one percent of the share capital is held by the Central Government or by any state Government or Governments, or partly by the Central Government and partly by one or more State Governments”. By Explanation 4,

\textsuperscript{93} Brijbehari v. Emperor, A.I.R. 1941 Pat. 539 at pp. 541, 542: 32 P.L.T. 43.
also added by the same Amending Act, the expression “corporation engaged in any trade or Industry” used in Cl. (12), includes a banking, insurance or financial corporation, a river valley corporation and a Corporation for supplying power, light or water to the public Steel Authority, of India is a Government undertaking and its employee is a public servant within the meaning of Sec. 21. I.P.C.95

As Sec.; 4 of the Bombay Port Trust! Act, 1879; makes the Trustees of the Port of Bombay a body corporate, having perpetual succession and a common seal, a person in the service and pay of the trustees of the Port of Bombay is a public servant as defined in sub-clause (b) of the twelfth clause of Sec, 21 of the Indian Penal Code.96

What the Indian Airlines Corporation does under the terms of the Air Corporations Act, has all the essential attribute of trading activity, Section 7 of that Act prescribes that the main function of the Corporation is to provide safe, efficient, adequate, economical and properly co-ordinate air transport services, whether internal or international, or both with a view to developing the air transport services to the best advantage and in particular to ensure that the services are provided at reasonable charges. “Air Transport Service” is defined by Sec. 2 (iii) as a service for the transport by air of person, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or a series or flights.

Section 9 lays down that in carrying, out any of the duties vested in it by the Act, the Airlines Corporation Shall act so far as may be on business Principles. Section 15 (1) enjoins that the Corporation shall Maintain proper accounts and other relevant records and prepare an annual statement of accounts including the profit and loss account and the balance-sheet in form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. Sub-section, (2) of Sec, 15 makes provision for the annual audit of the accounts of the Corporation by the Comptroller and Auditor-General of India.

Thus the scheme of the Act makes it abundantly clear that the Indian Airlines Corporation is engaged in the trade of air transport service, and consequently, its employees are “public servants”.

In this context, it is worthy of note that by an Act of Parliament, which came into force, on the 19th December, 1964—the Anti Corruption Laws (Amendment) Act (No. 40 of 1964)—the definition of “public servant” in Sec. 21 of the Indian Penal Code has been enlarged so as to bring within its purview certain additional categories of Persons including all those, in the service or pay of a corporation, established by or under a Central, Provincial or State Act, by omitting the words, “engaged in any trade or industry” In the twelfth clause of Sec. 21 of the Code and by omitting Explanation 4 altogether; and the effect would be that for purposes of the anticorruption law, employees of all statutory corporations—Whether trading or non-trading would hence forth be treated as “public servant” with all the attendant disabilities. This shows which way the wind is blowing.

Members or Officers and other employees of the State Electricity Board is a public servant.97

The Officers and employees of the Life Insurance Corporation and General Insurance Corporation are public servants.98

In the recent case Apex Court has observed at Chairman/M.D. or Executive Director of Private Bank operating under licence issued by the RBI are covered under the definition of Public Servant.99

Perhaps the reason being that in view of the enlargement of the definition or public servant in Sec. 21 of the Penal Code express amendment of Sec. 2 of the Act was not necessary. By virtue of the amendment in Corruption Laws Amendment Act 1964, (Act 40 of 1964) Cl. 12th of Sec. 21, was substituted as follows:

“Twelfth—Every Person—

(a) in the service or pay of the Government or remunerated by fee or commission for the performance of any public duly by the Government.

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Sec. 617 of the Companies Act. 1956”.

99 CBI, Bank Securities and Fraud Cell vs Ramesh Gelli & others 20-16(1) LH(P&H) 646(SC).
It would thus appear that by virtue of these two amendments, the Parliament sought to enlarge the definition of “public servant” so as to include even an employee of the Government company or a corporation thereto by or under a Central, Provincial or State Act with the avowed object or stamping out corruption at various levels prevailing in the country. Applying the aforesaid test of interpretation the light of the object sought to be achieved by firstly, inserting Cl. 12th in the year 1958 and then amending Cl. 12th in 1964. Courts are of the view that the term “established” in clause Twelfth, of Sec. 21 of the Indian Penal Code connotes “created”. It does not mean “registered” or “incorporated”. A co-operative society registered under the U.P. Co-operative Societies Act: is not a corporation established by or under a Central, Provincial or State Act.100

The duties of the Kotwal certainly relate to bringing the offenders to justice, to protect the public health, safety and convenience. The post of Kotwal, therefore, would fall under Cl. 8 or 12 (a) of Sec. 21 of the Indian Penal Code and. it must be held that the Kotwal is a public servant the meaning of Sec. 21 I.P.C.101

A member of the Indian Administrative Service, whose services are placed at the disposal of an organisation which is neither a local authority nor a corporation established by or under a Central, Provincial or State Act, nor a Government company, by the Central Government or the Government of a State, cannot be treated to be a public servant within the meaning of Clause Twelfth of Sec. 21 of the Indian Penal Code for purposes of Sec. 197 of the Code of Criminal Procedure, 1973.102

16. **Illustration–Commissioner.**–The word “Commissioner” in this illustration has been used in the Sense of a municipal member or councilor and not in the sense of an officer in the employment of a municipality who is sometimes designated by that name.103

A learned single Judge of the Allahabad High Court held in the case of Bhairon Prasad v. Emperor,104 that, a member of the Municipal Board was covered by the definition of the public servant and sanction of the Local Government under See. 197, Cr.

P. C. was necessary for prosecuting him. Their Lordships of the Supreme Court also held in the case of Maharudrappa Danappa Kesarappavar v. State of Mysore,\(^\text{105}\) that the Chairman of a managing committee of the Municipal Board is a public servant within Cl. (101) of Sec. 21 I.P.C. Section 40 of the U.P. Municipalities Act provides that a member of the Municipal Board can be removed by the State Government only. There is no doubt that a member of the Municipal Board when he is entrusted with certain duties and he acts in discharge of those duties he does act a public servant.\(^\text{106}\)

17. **Explanation I**—By this explanation, persons holding Offices under local laws and performing duties within any of the descriptions set out in the clauses to the section, are public servants.

18. **Explanation II**—By virtue of this explanation a persons who is actually performing the duties of the office which brings him under one of the clauses of the section is a public servant even though there may, be some legal defect in his right to hold the office.\(^\text{107}\) The explanation however does not speak of technical defect : on the contrary it says whatever legal defect there may be in his right to hold that situation.\(^\text{108}\) In Brijbehari v. Emperor.\(^\text{109}\) It was held that “the absence of a formal Appointment is immaterial where the petitioner was indubitably “in actual Possession of the Situation of a public servant” within the clause and the explanation.”

19. **Mixed questions of law and fact**—In the instant case it was submitted that evidence will be to establish facts showing that the accused is public servant within the meaning of Sec. 21 of the Code and decision of this question at the stage when no evidence has at all been recorded, would be purely hypothetical and divorced from facts. Held that the question Involved is a mixed question of law and fact. It requires evidence for its determination. The High Court was, therefore, in error in deciding this question purely in the abstract without there being any evidence before II.\(^\text{110}\)

20. **Whether the subsequent amendment of sec. 21 after its incorporation in the Prevention of Corruption Act would have to be read into the Act or not?**—Having

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\(^{106}\) Prem Narain v. State of Uttar Pradesh. 1975 Cr.L.J. 17983 at p. 1784 (All.).

\(^{107}\) Ram Krishnadas, 16 W.R. (Cr.) 27 : 7 B.L.R. 446.


\(^{110}\) Thiru Thanigachalam v. State of Tamil Nadu. 1976 Cr.L.J. 1756 at p. 1757(S.C.)
regard to the preamble and the object of the Prevention of Corruption Act and the Penal Code there can be doubt that the Act was undoubtedly attitude supplemental to the Penal Code and that being the position any amendment in the definition of Sec. 21 of the Penal Code would have to be read into Sec. 2 of the Act, because once the definition of Sec. 21 of the Penal Code was incorporated in the Act had to be imported into the other Act and considered pari passu the Penal Code. The object of the Prevention of Corruption Act was to eradicate corruption from various levels either in (Government services or in services under the Corporations or Government companies. The Penal Code no doubt creates offences like those mentioned in Secs. 161 and 165 of the Code but they were not found sufficient to cope with the present situation and the expanding needs of the national. In these circumstances, it was considered necessary to evolve quick, expeditious and effective machinery to destroy the evil of corruption existing in any form. If, therefore, the Penal Code with the same object enlarged the definition of Secs., 21 by adding the twelfth clause by virtue of the Criminal Law (Amendment) Act, 1958 and the Anti-Corruption Laws (Amendment) Act, 1964 there is no reason why the extended meaning to the provision of Sec. 2 of the Act as borrowed from Sec. 21 of the Penal Code he not given to that section. The definition borrowed from the Penal Code must be read into Sec. 2 of the Act not only of the time when it was borrowed but even at the material date when the offence is committed. This being the position it is manifest that by virtue of the amendments referred to above in the Penal Code which inserted twelfth Clause to Sec. 21 of the Penal Code one employee of the Government company who is prosecuted under the Prevention of Corruption Act of 1917 clearly comes within the Meaning of “public servant.”

In Indian Penal Code, the test to determine whether a person is a public servant is based on:

(a) whether he is in the service or pay of the Government;

(b) whether he is entrusted with the performance of any public duty.\textsuperscript{112}

The illustration provided at the end of section relates to Clause 10. The word ‘Commissioner’ is used in the sense of a Municipal Councillor or member and not merely


an officer designated as ‘Commissioner’.\(^{113}\) According to Madhya Pradesh High Court every Councillor is a public servant under S. 352 of the M.P. Municipalities Act.\(^{114}\) Also the Allahabad High Court too has held that by virtue of S. 40 of the U.P. Municipalities Act, 1916 and Clause 10 of S. 21 of I.P.C., a member of the Municipal Board is a public servant.\(^{115}\)

Now it is settled law that an elected member of a municipality is not a public servant within the meaning of S. 21 of the Penal Code. Hence the Supreme Court has held that a public servant is an authority who must be appointed by the Government or Semi-Government body and should be in the pay or salary of the same. So a person like a Municipal Councillor who does not own his appointment to any Governmental authority is not a public servant. He is elected by the people and functions undeterred by the commands or edicts of a Governmental authority.\(^{116}\) M.L.A. is not a public servant within the meaning of any of the clauses of S. 21 of I.P.C., including clause twelfth because he gets pay and allowances by way of honorarium. He is not in the pay of the State Government because legislature of a state cannot be comprehended in the expression State Government.\(^{117}\) Similarly a lecturer in a Government College does not function as a public servant within the meaning of Clause 9 of S. 21, IPC, when he acts as an examiner of a University, for as an examiner appointed by the University he does not become an officer.\(^{118}\)

It is well settled that Minister is a public servant. It was held by the Supreme Court that a minister while discharging duties as chairman of a District Advisory Committee in accordance with a Government Circular, assaulted and used criminal force against him, such persons were prima facie, liable under Sec. 353 and 355 I.P.C.\(^{119}\) Chief Minister or a Minister is a public servant as he is in the pay of the Government, even if there is no relationship of master and servant between Minister and the Government. A reference to Article 164 and 167 of the Constitution too shows that a Minister or a Chief Minister is appointed by the Governor and he gets a salary for discharging a public duty

\(^{113}\) Banshilal Luhadia, A.I.R. 1962, Raj. 250.
\(^{115}\) Prem Narain v. State of U.P., 1975 Cr. L.J. 1783 (All.).
\(^{117}\) R.S. Nayak v. A.R. Antulay, 1984 Cr. L.J. 613 (S.C.)
and the said salary is paid to him from Government funds. Therefore, these facts, point to one conclusion that he is public servant within the meaning of clause 12 of S. 21, IPC.\textsuperscript{120}

The employees of a cooperative society under the U.P. Cooperative Societies Act are not public servants within the meaning of Clause 12 of S. 21, IPC, as a co-operative society is merely registered with the registered of a cooperative societies under the State Act and as such it is not a corporation established by or under a Central or State Act. Yet an employee of nationalised bank is a public servant as it is a Government Company under S. 617 of the Companies Act and it is also a body corporate established under a Central Act.\textsuperscript{121} A contrary view has been taken by a single bench of the Delhi High Court.\textsuperscript{122}

An I.A.S. officer working in deputation with a cooperative society, e.g., the Super Bazar, cannot be regarded as public servant while working as the Central Manager of the Super Bazar an hence no sanction under S. 197 Cr. P.C., is required to prosecute him, being at relevant time he was not; an officer in the service or pay of the Government.\textsuperscript{123}

Section 2(17) of Code of Civil Procedure enumerates the definition of ‘Public Officer’. This section defined to mean a person falling under any of the eight different descriptions given in clauses (a) to (h). Here no attempt was made to define ‘public officers’ rather merely describes them by enumeration. Fact that a person is a Public Officer does not necessarily entitle him to the benefit of Article 311 of the Constitution.\textsuperscript{124} The benefit of Article 311 is provided for the employee who are holding civil posts or are in civil service under the Union or States.

The definition of ‘Public Officer’ very nearly corresponds to that of a ‘Public Servant’ given in section 21 of the Indian Penal Code. But a person may be a public servant and not a public officer e.g., a Municipal Commissioner and Engineer.\textsuperscript{125}

\textsuperscript{122} Raghunath Rai Kumar v. B.N. Khanna, 1983. Cr. L.J. NOC 154 (Delhi).
\textsuperscript{124} AIR. 1957 Orissa 112.
Similarly, a ‘Sarpanch’ is not a public officer.\textsuperscript{126} It is only for the purpose of the Penal Code that the panch or every member of the village court or village panchayat is regarded as a public servant. Yet he is not regarded as a public servant for all purposes.\textsuperscript{127}

The Commissioner of Corporation of Calcutta would not fulfil the description or definition of a public officer.\textsuperscript{128} ‘There the officers of the corporation are in the service and pay of the corporation and are paid out of the funds of Corporation, the officers of the Corporation are not public officers within the meaning of the Sec. 80 of the code of Civil Procedure.\textsuperscript{129}

There are long line of cases which cover an employer’ in the definition of public officer. Following were held to be public officers: officer in Indian Army\textsuperscript{130} Inspector of Police\textsuperscript{131}, Government servant lent to private Institution\textsuperscript{132}, Minister of State,\textsuperscript{133} officer of Government functioning on deputation with State Electricity Board\textsuperscript{134} and Income Tax officer.\textsuperscript{135}


The persons mentioned in the five categories in Article 311 viz. (a) civil service of the union, (b) All India Service, (c) civil service of a state, (d) civil post under the union, (e) civil post under state are sometimes generally called as ‘‘civil servants’’. The true meaning of the term ‘civil post’ has been discussed by the Supreme Court in these cases\textsuperscript{136} viz. State of Assam v. Kanak Chandra and Dr. S.L. Aggarwal v. The G.M. Hindustan Steel Ltd.

In State of Assam v. Kanak Chandra, pointed out the meaning and scope of the phrase ‘‘Civil post’’ in Articles 310, 311. The Supreme Court observed:

\textsuperscript{127} Makimdarao Ganpatro Wakhle v. Durga Prasad Laxman Bhrrbhunia AIR. 1944 Nag. 130 at. p. 132.
\textsuperscript{128} Gowardhandas Rathi v. Corporation of Calcutta AIR 1970 Cal. 539 at p. 541.
\textsuperscript{129} Kamta Prasad Singh v. Regional Manager, Food Corporation of India, AIR 1974 Pat. 376 at p. 377.
\textsuperscript{130} 50 I.C. 683; AIR 1918 Bom 32.
\textsuperscript{131} AIR 1937 All. 90
\textsuperscript{132} AIR 1949 Nag. 362.
\textsuperscript{133} AIR 1953 S.C. 394; AIR 1968 J. and K. 98.
\textsuperscript{134} AIR I.L.R. (1965) 15 Raj. 1194.
\textsuperscript{135} (1970) 2 I.T.J. 562.
“There is no formal definition of “post” and “civil post”. The sense in which they are used in the service chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an All India Service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under the State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. There is relationship of master and servant between State and a person said to be holding a post under it. The existence of this relationship is indicated by the state’s right to select and appoint the holder of the 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 and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.”

Therefore the term used in Article 310 and Article 311 i.e. “civil service” means certain established civil services. All India Services are common to the Union and the States. Indian Administrative Services, Indian Police Services which are administered under Union and various States have their own civil services, for instances Haryana Civil Services, Punjab Civil services, etc.

Whereas “civil post”, in general term means government service, except to those services of Union or States which are formally constituted services (established civil services viz., IAS, IPS, HCS, PCS, etc.) Civil servant is appointed by, or on behalf of the President or Governor as the case may be, to hold a civil post, and to perform public duties and generally but not necessarily, he is paid out of the Consolidated Fund of India
or from State’s treasury. The members of the civil services hold civil post.\textsuperscript{137} All post hold by the public servants, other than the posts in the Defence Forces should be deemed to be civil posts.\textsuperscript{138} A public officer is a public servant, the persons who are called public officers are often called public servants in the Indian Penal Code.\textsuperscript{139}

Meaning of ‘civil post’ and civil service was also considered in two\textsuperscript{140} important cases viz., Mohan Singh v. Pepsu and Brojo Gopal v. Commissioner of Police.

A. Relationship of ‘Master and Servant’

There must be relation of master and servant between the Government and the employee in question for determination of civil post. Source of general law of ‘Master and Servant’ is English Common Law. Essentially, the relationship of master and servant is contractual. It comes into existence with mutual consent. As the master can not compel the servant to continue to serve him simultaneously a servant cannot force his services upon the master. This relation is determined on a consideration of all the relevant circumstances in each case.\textsuperscript{141} In general, selection by the employer, coupled with payment by him of remuneration or wages, the right to control the method of work, and power to suspend or remove from employment are inductive of the relation of master and servant.\textsuperscript{142} Ordinarily the right of an employer to control the method of doing the work, and the power of superintendence and control may be treated as strongly inductive of the relation which imports the power not only to direct the doing of some work but the power to direct the manner in which the work is to be done. If the employer has that power, prima facie, the relation is that of master and servant,\textsuperscript{143} as distinguished from that of an independent contractor\textsuperscript{144} (i.e. an employee under contract). ‘A person cannot be said to be in the service of the Government or to hold a post under the Government, unless there is relationship of master and servant between him and the Government’. In short, several factors may indicate the relationship of master and servant. None may be conclusive. Also

\textsuperscript{138} Ibid.
\textsuperscript{139} Ibid.
\textsuperscript{140} (a) Mohan Singh v. Pepsu, AIR 1954 Pepsu 136, (b) Brojo Gopal v. Commissioner of Police, AIR 1955, Cal. 556.
\textsuperscript{141} Pradyat v. Chief Justice, (1955) 2 S.C.R. 1331 (1350).
\textsuperscript{142} Ibid.
no single factor may be considered absolutely essential. These factors are:
(a) the right to appoint,
(b) the right to terminate the employment,
(c) the right to take other disciplinary action,
(d) the right to prescribe the conditions of service,
(e) the nature of the duties performed by the employee,
(f) the right to control the employee’s manner and method of work,
(g) the right to issue directions to the employee,
(h) the source of payment of salary.

The existence of the relation of master and servant may be established by the presence of all or some of the above factors in conjunction with other circumstances. Hence in each case it is a question of fact whether a relation between government and the employee is of Master and Servant.

The general law of Master and Servant stands modified by the cases which are covered by the Industrial Dispute Act. It was held by Federal Court that an Industrial Tribunal is not fettered like ordinary courts to enforce a contract and may create obligations or modify contracts in the interest of the workmen to protect and prevent the unfair practice of victimisation and these courts can direct reinstatement of dismissed employees because the discretion is not fettered in any way by the limitations which are applicable on regular courts to direct the reinstatement of dismissed employee.

Hence the general law of Master and Servant is that a servant is at the pleasure of the master subject to the extent to provisions of the Constitution or the Industrial Dispute Act as the case may be.

B. Panchayat Service

In State of Gujarat and others v. Raman Lal Keshav Lal Soni and Others,145 the Supreme Court held that having regard to sections 203 and 206 and other provisions of the panchayat Act as also Entry 41 of List II of the Seventh Schedule of the Constitution which suggests that there can be more than one State Public Service under the State. Merely because the Panchayats are declared to be body corporates. It cannot be said that

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any of the persons working under them cannot be considered as members of a civil
service under a State. The Panchayats constituted under the Panchayat Act derive their
authority from the statute and are under the control of the State Government, They form
part of the Local self Government organisation which the State government is under an
obligation to foster under Article 40 of the Constitution. The Local authorities are
included in the definition of the expression ‘State’ in Article 12 of the Constitution. The
Panchayats exercise many governmental functions which the State Government can
perform. In addition to the express powers granted to the Panchayats, the State
Government is also authorised under the Panchayat Act to delegate many of its functions
to them and to transfer many of its officers and servants to function under their
supervision and control as members of the Panchayat Service. Thus the Panchayat
Service constituted under Section 203 of the Panchayat Act has all the characteristics of a
Civil Service of the State. Under the Statute it may be open to the Panchayats to employ
servants for the purpose of administration of the Panchayats who may not be members of
the panchayat Service. But the above view does not necessarily lead to the conclusion
that every employee of a Local body who is not a member of the Panchayat Service
should be treated as member of the State Civil Service. It is a question of fact to be
decided in each case depend in on the circumstances of that case.

C. Other Instances of holder of ‘Civil Post’

Relying the test of master and servant, the following employees were held a
holder of ‘civil post’ under Article 311(1):

(a) Members of the police forces\textsuperscript{146}.
(b) The Manager of the Bank owned by a State\textsuperscript{147}.
(c) A General Manager of Court of Wards\textsuperscript{148}.
(d) Officers appointed by a High Court\textsuperscript{149}.
(e) Officers appointed by the Government to a Municipality which the Government
has taken over. Where, however, the Municipality is not superseded by the
Government, the mere fact that an employee of this Municipality is appointed by

\textsuperscript{147} Mohan v. Pepsu, A. 1954 Pepsu 136 (139).
the Government under statutory powers, does no make the Municipal employee a State employee.\textsuperscript{150}

(f) Extra Departmental Agents of the Postal Department.\textsuperscript{151}

D. Who do not Hold ‘Civil Post’ – Instances

a. Members of ‘Defence Services’

Members of Defence services hold office during pleasure of the President as envisaged by Article 310. But Article 311 does not provide protection because of not holding civil post.\textsuperscript{152}

Army Act or Rules having statutory basis, if violated, the writ of mandamus lie but nor-statutory rules and regulations which merely give instructions for the guidance of the authorities do not attract the writ of mandamus.\textsuperscript{153}

Civilians who are holding posts, connected with ‘defence’, do not hold ‘civil post’ under the Union irrespective of the fact of applicability of the Army Act over them.\textsuperscript{154} Yet Article 310 covers them, but Article 311 does not extend to them.\textsuperscript{155} Hence they cannot take protection of article and Central Civil Services (Classification, Control and Appeal) Rules.\textsuperscript{156}

It does not mean that they are having no remedy. They can seek relief by establishing the violation of the ‘Civilians in Defence Service rules, 1949’ which have a statutory force, being framed under Sec. 240 of the Government of India Act, 1949.\textsuperscript{157}

b. Employees of Companies

A company incorporated under the companies Act,\textsuperscript{158} which constitutes separate legal entity from the State,\textsuperscript{159} even if they may adopt the Fundamental Rules for

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\textsuperscript{153} Chittoor v. State of T.C., A. 1953 T.C. 140.  
\textsuperscript{154} Khurana v. Union of India, A. 1971 S.C. 2111.  
\textsuperscript{157} Ibid.  
\textsuperscript{158} Praga Tools Corpn. v. Imanual, (1969) 19 F.L.R. 140 (144) S.C.  
\end{flushright}
governing the employees\textsuperscript{160}, including a Government company\textsuperscript{161}, even though its management is responsible to the Government of India.\textsuperscript{162} Hence employees of such companies are not holder of civil post.

\textsuperscript{160} Debi Prasanna v. State, A. 1956 Cal. 56.
c. Employees of Statutory Authorities

Statutory authorities are juristic entities, therefore separate from the State.\textsuperscript{163} The employee of statutory authority do not hold civil post. Statutory ‘corporation, exercising statutory powers, may be State within the purview of Article 12\textsuperscript{164} but the questions under the two provisions (i.e. Article 11 and 12) are different.\textsuperscript{165} Being employee is contractual, so that writ of mandamus will not lie to interfere with an order of removal made by such authority,\textsuperscript{166} in the absence of breach of statutory duty.\textsuperscript{167} The regulations embodying the terms of contract of employment, only a suit for damages for wrongful dismissal will lie.\textsuperscript{168}

But even where Article 311(2) is not attracted, the rules of natural justice must be complied with before terminating the services of an employee of a statutory authority, including a charge and a reasonable opportunity to the employee of cross-examining the witnesses examined against him and to lead defence in support of his version.\textsuperscript{169}

The employees of a Government who have been transferred to a statutory corporation, with their pre-transfer rights unimpaired, the employees may have their relief against the corporation for violation of their rights under Article 311(1) (2).\textsuperscript{170} Panchayat Service, created by statute, has been held to be a civil service of the State even though the Panchayat itself is a body corporate.\textsuperscript{171} If the State or the Union controls a post under a statutory Corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union. Hence, in the absence of above circumstances, generally, the employees of Corporations do not hold civil post irrespective of the fact (i) that Union or the State holds the majority shares of the Corporations or (ii) controls its

\textsuperscript{165} Ranjit v. U.O.I., A. 1969 Cal. 95 (99).
\textsuperscript{166} Lekhraj v. Deputy Custodian, A. 1966 S.C. 334.
\textsuperscript{168} Ibid.
\textsuperscript{169} Ibid.
administration by policy directive or (iii) it adopts the Fundamental Rules to govern the service conditions of its employees reason being that a statutory corporation is a separate entity from the Union or states with its own property and its own funds.

The definition of “The State” has been provided in Article 12 which include ‘Local or other authorities’ also but this definition is applicable on Part III of the Constitution. The phrase “Local or other authorities” is not applicable on Part XIV of the Constitution which relates to services as held in Rama Rao v. State of A.P.

Universities’ have been held to be included in the phrase ‘other authority’ in Umesh v. V.N. Singh and hence, it is a State. In other words fundamental rights are enforceable against the universities.

The Supreme Court, in Electricity Board Rajasthan v. Mohan Lal clearly observed that the term ‘other authority’ will include all authorities created by the Constitution or statute and on whom powers are conferred by law. In this cases Electricity Board was held to be a State under the definition provided under Article 12. Therefore the criteria for inclusion of an institution under the phrase ‘other authority’ is, when it s created by the Constitution or statute empowering power to such an institution.

Universities do not come under the definition of ‘State’ so far as Part XIV is concerned because the Universities comes under the term ‘other authority’. Therefore, employees of the universities are not civil servants and are not entitled the protections provided under Article 311 as held by the Punjab and Haryana High Court in Sher Singh v. Panjab University. Hence, the doctrine of pleasure as embodied in Article 310 is not applicable upon employees of the universities.

Because university Is a creation of a Statute, under which the university is to exercise subordinate legislation in relation to higher education and research. Hence, the university exercises the Governmental or statutory powers.

The authority of state is behind the university. The university is to fulfil the requirement of Article 46 i.e. to promote educational interest, of the people which is a duty owed by State. But the ordinances, statutes or regulations framed by the university will have to conform to the Fundamental Rights.

**Distinction Among ‘Civil Servant’, ‘Public Servant’ and ‘Public Officer’**

Section 21 of I.P.C. covers a number of persons under the definition of ‘Public
Servant’. Simultaneously, Sec. 2 (17) of Code of Civil Procedure contains table of those who are termed as ‘Public officers’

After careful perusal of the above mentioned two provisions, at least this conclusion can be drawn that ‘public servant’ and ‘public officer’ which are more or less analogous means Government Servant and an employee of quasi-public institutions. The term ‘Public Servant’ is of wider amplitude. It is a general term and hence means all servants employed in public services. Accordingly, employees of defence establishment or defence services are public servants. Article 309 contains the expression ‘public service’ which indicates all servants employed in public services. Whereas the term ‘Civil Servant’ means a member of a service of the Union or a State or a person holding a civil post under the Union or a State.\(^{172}\)

According to Webster’s International Dictionary and Law Lexicon of British India written by Ram Nath Ayyar, ‘civil service’ means service rendered to and paid for by the State other than pertaining to ‘Naval or Military Service.’ Therefore, civil service differs from naval or military service. Persons occupying civil posts and are attached to the Defence and paid for by the Defence Estimates, it is said that they are not civil servants.\(^{173}\) Furthermore, it has been held that this position would not change even if a civilian is employed in Defence Services.\(^{174}\)

In short, Code of Civil Procedure, 1908 and Indian penal Code, 1860 are the general laws of the land, therefore section 2(17) of and section 21 of I.P.C. are applicable on defence as well as civil side of administration of the country and almost the terms ‘public officer’ and ‘public servant’ are synonyms in their meaning; whereas Article 311 of the Constitution is meant for providing protections to the employees of the civil side of administration i.e. civil servants only, excluding defence servants. But, only commissioned\(^{175}\) or gazatted\(^{176}\) officer in the military, naval or air force are included in the terms ‘Public Officer’ and ‘Public Servant’ and not every defence servant.

Secondly, section 2(17) of C.P.C. and section 21 of I.P.C. provide the list of persons who fall under the terms ‘Public Officer’ and ‘Public Servant whereas Article

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\(^{173}\) 59 Cal. W.N. 835; AIR 1955 Cal. 543.
\(^{175}\) See Section 2(17) of C.P.C. and Section 21 of I.P.C.
\(^{176}\) See Section 2(17) of C.P.C.
311 comprises the terms ‘civil service’, ‘civil post’, ‘All India Service’ and does not specifically provide the list of persons falling under the category of civil servants.

‘Public Officer’ and ‘Public Servant’ denote the meaning of ‘Government servant’ (defence as well as civil servants); Hence, civil servant under Article 311 covers only civil side portion of the government servants.

HISTORICAL BACKGROUND

During the Mauryan Era (313 BC), in the ancient India (200 BC - 1000 AD), the Civil Servants performed the role of Personal Servants; during the medieval period (1000-1600 AD), they were acting as State Servants, in the British period they became Public Servants, and the Civil Servants became a protected service. During the 58 years of Indian Independence, 1947-2005, the Indian Civil Service has more or less followed the British model, but the pressures emanating from within and outside are now forcing the Indian Civil Service to professionalize itself.

The first Public Service Commission was set up on 1st October 1926, and the Federal Public Service Commission was set up under the Government of India Act 1935. The provision for the formation of Public Service Commissions at the provincial level was also made under this Act for the first time. And with the promulgation of the new Constitution for Independent India on 26th January 1950, the Federal Public Service Commission was accorded a constitutional status as an autonomous entity and was given the title ‘Union Public Service Commission’ (U.P.S.C.).

The mission held by Civil Servants is a mixed bag of compliance, cooperation, policy-responsiveness, constitutional responsiveness, and guidance. Going with the terms of the configuration of Philip Morgan, the Indian Civil Service system acts as the principal agent of the State. In saying the above, it needs to be kept in mind that some of the characteristics of the patrimonial state still pervade the Country India and to that extent, also its civil service system.

The term civil service has two different meanings:

- A branch of governmental service in which individuals are employed on the basis of professional merit as proven by competitive examinations.
- The body of employees in any government agency other than the military.

A civil servant or public servant is a person in the public sector employed for a
government department or agency. The extent of civil servants of a state as part of the “Civil Service” varies from country to country. In the United Kingdom, for instance, only Crown employees are referred to as civil servants, county or city employees are not.

Many consider the study of civil service to be a part of the field of public administration. Workers in “non-departmental public bodies” (sometimes called “QUANGOs”) may also be classed as civil servants for the purpose of statistics and possibly for their terms and conditions. Collectively a state’s civil servants form its Civil Service or Public Service.

An international civil servant or international staff member is a civilian employee that is employed by an international organization.[1] These international civil servants do not resort under any national legislation (from which they have immunity of jurisdiction) but are governed by an internal staff regulation. All disputes related to international civil service are brought before special tribunals created by these international organizations such as, for instance, the Administrative Tribunal of the ILO.[2]

Specific referral can be made to the International Civil Service Commission (ICSC) of the United Nations, an independent expert body established by the United Nations General Assembly. Its mandate is to regulate and coordinate the conditions of service of staff in the United Nations common system, while promoting and maintaining high standards in the international civil service.

The UN General Assembly, in its Resolution 57/277, designated 23 June as Public Service Day. The UN Public Service Day intends to celebrate the value and virtue of public service to the community; highlight the contribution of public service in the development process; recognize the work of public servants, and encourage young people to pursue careers in the public sector. Since the first Awards Ceremony in 2003, the United Nations has received an increasing number of submissions from all around the world.

History

Early History

The Roman civil service in action. Mary and Joseph of Nazareth register for the census before Governor Quirinius.

Administrative institutions usually grow out of the personal servants of high
officials, as in the Roman Empire. This developed a complex administrative structure, which is outlined in the Notitia Dignitatum and the work of John Lydus, but as far as we know appointments to it were made entirely by inheritance or patronage and not on merit, and it was also possible for officers to employ other people to carry out their official tasks but continue to draw their salary themselves. There are obvious parallels here with the early bureaucratic structures in modern states, such as the Office of Works or the Navy in 18th century England, where again appointments depended on patronage and were often bought and sold.

**Modern Meritocratic Civil Service**

The origin of the modern meritocratic civil service can be traced back to Imperial examination founded in Imperial China. The Imperial exam based on merit was designed to select the best administrative officials for the state’s bureaucracy. This system had a huge influence on both society and culture in Imperial China and was directly responsible for the creation of a class of scholar-bureaucrats irrespective of their family pedigree.

From the time of the Han Dynasty (206 BC to AD 220) until the implementation of the imperial examination system, most appointments in the imperial bureaucracy were based on recommendations from prominent aristocrats and local officials whilst recommended individuals were predominantly of aristocratic rank. Emperor Wu of Han started an early form of the imperial examinations, transitioning from inheritance and patronage to merit, in which local officials would select candidates to take part in an examination of the Confucian classics. The system reached its apogee during the Song dynasty.

The Chinese civil-service system gave the Chinese empire stability for more than 2,000 years and provided one of the major outlets for social mobility in Chinese society.

179 http://www.hg.org/article.asp?id=7743
The modern examination system for selecting civil service staff also indirectly evolved from the imperial one.\textsuperscript{183} This system was admired and then borrowed by European countries from the 16th century onward,\textsuperscript{184} and is now the model for most countries around the world. The first European power to successfully implement the meritocratic civil service was the British Empire, in their administration of India: “company managers hired and promoted employees based on competitive examinations in order to prevent corruption and favoritism.”\textsuperscript{185} British colonial administrators in China advocated the spread of the system to the rest of the Commonwealth, the most prominent of which was Thomas Taylor Meadows, Britain’s consul in Guangzhou, China. Meadows successfully argued in his Desultory Notes on the Government and People of China, published in 1847, that “the long duration of the Chinese empire is solely and altogether owing to the good government which consists in the advancement of men of talent and merit only,” and that the British must reform their civil service by making the institution meritocratic.\textsuperscript{186} The report was influential. The British adopted a meritocratic civil service following the Northcote-Trevelyan Report in 1853, and the Americans did likewise in 1883, with the Pendleton Civil Service Reform Act.

**By Countries**

**Canada**

Canada’s federal public service comprises approximately 200 departments, agencies, commissions, boards, councils, and crown corporations. There are 423,781 active contributors to the federal public service, Royal Canadian Mounted Police, and Canadian Forces pension plans. This represents about 2.3 percent of the Canadian workforce of 18.7 million. Each provincial government also has its own public service. In 2010, all provincial governments’ public service were employing a total of more than 350,000 people.\textsuperscript{187}

**China**

Emperor Wen of Sui (r. 581-604), who established the first civil service

\textsuperscript{185} Kazin, Edwards, and Rothman (2010), 142.
\textsuperscript{187} http://etatscanadiens-canadiangovernments.enap.calenlnav.aspx?sortcode
examination system in China; a painting by the chancellor and artist Yan Liben (600-673).

One of the oldest examples of a civil service based on meritocracy is the Imperial bureaucracy of China, which can be traced as far back as the Qin Dynasty (221-207 BC). During the Han Dynasty (202 BC-220 AD) the xiaolian system of recommendation by superiors for appointments to office was established. In the areas of administration, especially the military, appointments were based solely on merit.

After the fall of the Han Dynasty, the Chinese bureaucracy regressed into a semi-merit system known as the Nine-rank system; in this system noble birthright became the most significant prerequisite for gaining access to more authoritative posts.

This system was reversed during the short-lived Sui Dynasty (581-618), which initiated a civil service bureaucracy recruited through written examinations and recommendation. The following Tang Dynasty (618-907) adopted the same measures for drafting officials, and decreasingly relied on aristocratic recommendations and more and more on promotion based on the results of written examinations.

However, the civil service examinations were practiced on a much smaller scale in comparison to the stronger, centralized bureaucracy of the Song Dynasty (960-1279). In response to the regional military rule of jiedushi and the loss of civil authority during the late Tang period and Five Dynasties (907-960), the Song emperors were eager to implement a system where civil officials would owe their social prestige to the central court and gain their salaries strictly from the central government. This ideal was not fully achieved since many scholar officials were affluent landowners and were engaged in many anonymous business affairs in an age of economic revolution in China. Nonetheless, gaining a degree through three levels of examination prefectural exams, provincial exams, and the prestigious palace exams - was a far more desirable goal in society than becoming a merchant. This was because the mercantile class was traditionally regarded with some disdain by the scholar official class. This class of state bureaucrats in the Long period were far or less aristocratic than their Tang predecessors. The examinations were carefully structured in order to ensure that people of lesser means than what was available to candidates born into wealthy, landowning families were given a greater chance to pass the exams and obtain an official degree. This included the
employment of a bureau of copyists who would rewrite all of the candidates’ exams in order to mask their handwriting and thus prevent favoritism by graders of the exams who might otherwise recognize a candidate’s handwriting. The advent of widespread printing in the Song period allowed many more examination candidates access to the Confucian texts whose mastery was required for passing the exams.

France

The civil service in France (fonction publique) is often considered to include government employees, as well as employees of public corporations.

Greece

Controversies about the institution of civil service in Greece are widespread. Typically, they concern the large numbers of public employees, the lack of adequate meritocracy in their employment, the strong ties that significant portions of public employees maintain with political parties and the clientist phenomena that this relationship incubates, internal inequalities of wages among public employees, and inequalities of the high income of public employees relevant to that of private sector workers. The amount of pay that they get is also under controversy given the conditions before the financial crisis that made being one of these servants a job to dream of.

India

In India, the Civil Service is defined as “appointive positions by the Government in connection with the affairs of the Union and includes a civilian in a Defence Service, except positions in the Indian Armed Forces.” The members of civil service serve at the pleasure of the President of India and Article 311 of the constitution protects them from politically motivated or vindictive action.

The Civil Services of India can be classified into two types –

- All India Services and
- Central Civil Services (Group A and B).

The recruits are university graduates (or above) selected through a rigorous system of examinations, called the Civil Services Examination (CSE) and its technical counterpart known as the Engineering Services Examination (ESE) both conducted by the Union Public Service Commission (UPSC).

The entry into the State Civil Services is through a competitive examination
conducted by every state public service commission. Close to 3.5 lakhs of candidates apply every year for the 400 to 500 vacancies that may arise.

Ireland

The civil service of Ireland includes the employees of the Department of State (excluded are government ministers and a small number of paid political advisors) as well as a small number of core state agencies such as the Office of the Revenue Commissioners, the Office of Public Works, and the Public Appointments Service. The organisation of the Irish Civil Service is very similar to the traditional organization of the British Home Civil Service, and indeed the grading system in the Irish Civil Service is nearly identical to the traditional grading system of its British counterpart. In Ireland, public sector employees such as teachers or members of the country’s police force, An Garda Síochána are not considered to be civil servants, but are rather described as “public servants” (and form the Public service of the Republic of Ireland).

Spain

The civil service in Spain (función pública) is usually considered to include all the employees at the different levels of the Spanish Public Administration: central government, autonomous communities, as well as municipalities. There are three main categories of Spanish public positions: Temporary political posts (“personal funcionario eventual”), which require a simple procedure for hire and dismiss and is associated to top level executives and advisors, statutory permanent posts (“funcionarios de carrera”), which require a formal procedure for access that usually involves a competition among candidates and whose tenants are subject to a special statutory relationship of work with their employers, and non statutory permanent posts (“personal laboral”), which also require a formal procedure for entry similar to the procedure required for the “funcionarios de carrera”, but whose tenants are subject to normal working conditions and laws.

As of 2011, there were 2.6 Million civil servants in Spain (22% work for the central state, 50% for the Autonomous communities, 4% for the Universities and 22% for local organization such as municipalities and provinces).188

In December 2011, the government of Rajoy announced that civil servants have to

188 http://politicai1paiscopolitica/2011/12/30/actualidadl325267082718015.html
serve a minimum 37.5 working hours per week regardless of their place or kind of service.\textsuperscript{189}

\textbf{United Kingdom}

The civil service in the United Kingdom only includes Crown employees; not those who are parliamentary employees. Public sector employees such as those in education and the NHS are not considered to be civil servants, civil servants in the devolved government in Northern Ireland are not part of the Home Civil Service, but constitute the separate Northern Ireland Civil Service nor are employees of the Foreign and Commonwealth Office.

\textbf{United States}

In the United States, the civil service was established in 1871. The Federal Civil Service is defined as “all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services.”. In the early 19th century, government jobs were held at the pleasure of the president a person could be fired at any time. The spoils system meant that jobs were used to support the political parties. This was changed in slow stages by the Pendleton Civil Service Reform Act of 1883 and subsequent laws. Under the Hatch Act of 1939, civil servants are not allowed to engage in political activities while performing their duties.

The U.S. civil service includes the Competitive service and the Excepted service. The majority of civil service appointments in the U.S. are made under the Competitive Service, but certain categories in the Diplomatic Service, the FBI, and other National Security positions are made under the Excepted Service.

U.S. state and local government entities often have competitive civil service systems that are modeled on the national system, in varying degrees.

As of January 2007, the Federal Government, excluding the Postal Service, employed about 1.8 million civilian workers. The Federal Government is the Nation’s single largest employer. Although most federal agencies are based in the Washington D.C. region, only about 16\% (or about 288,000) of the federal government workforce is

\textsuperscript{189} http://politica.elpais.com/political/2011/2/30/actualidad/1325267082_718015.html
employed in this region.\textsuperscript{190}

There are currently 15 federal executive branch agencies and hundreds of subagencies.\textsuperscript{191}

**European Union**

The European Civil Service is the civil service serving the institutions of the European Union, of which the largest employer is the European Commission, the executive branch of the European Union. It is the permanent bureaucracy that implements the decisions of the Union’s government.

Civil servants are recruited directly into the institutions after being selected by competitions set by EPSO, the official selection office. They are allocated to departments, known as Directorates-General (DGs), each covering one or more related policy areas.

**Other meanings**

Civil service also means a form of legal conscientious objection, for example the Swiss Civilian Service. More accurately, in this scope civil service is work performed in the public interest as a replacement for a military obligation to which one objects. The Finnish “siviilipalvelus”, French “service civil”, German “Zivildienst”, Italian “servizio civile” and Swedish “civiltjänst” all can be translated as “civil service” in this sense.

**India & England**

The Indian system of public administration is thought to be one of the world’s oldest, barring perhaps the Chinese. In 322 BC “Chandragupta ... established a complex bureaucracy to see to the operation of the state and a bureaucratic taxation system that financed public services”.\textsuperscript{192} Among the more recent advances in public services in India, the model of land revenue collection designed by Sher Shah Suri in the 1540s is acknowledged as a major milestone in systematic governance. The Sher Shah model was then adopted by the Mughals and later by their successor – the East India Company.

The East India Company was one of the world’s oldest joint-stock companies;

\textsuperscript{190} Section: Employment, Note: Because data on employment in certain agencies cannot be released to the public for national security reasons, this total does not include employment for the Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, and National Imagery and Mapping Agency.

\textsuperscript{191} http://www.lib.lsu.edu/gov/faq.html

hence a pioneer. Like any good modern private company, it had built its own set of rules and procedures by 1757 to ensure that business policies laid down by its Board of Directors were complied with across its entire trading business. But after Clive’s political triumph of 1757 at Plassey, the Company was faced with the entirely new challenge of governing vast numbers of people and extensive areas of land, initially only in Bengal. It became a private company that ‘ruled’ people: a unique combination. It had to quickly come up with policies to deal with this completely new role. The bureaucracy it invented in response to this challenge was perhaps the first modern bureaucracy in the world. This bureaucracy was not accountable to the whims of kings, but to a private company’s Board of Directors; it developed as a private sector bureaucracy.

The Company started by creating a Covenanted Civil Service (CCS) whose members signed ‘good behaviour covenants’ with the Company’s Court of Directors. With a view to keeping wage costs low, members of this service were paid relatively modestly but they could ply their own commercial business on the side and thus make commissions on their trading activities. As would be expected, this model led to serious conflicts of interest. Given the lucrative opportunities created by the political patronage of their commercial activities, corruption began to flourish in British Bengal. That Robert Clive was impeached (unsuccessfully) on this ground says something about the enormous possibilities of corruption at the confluence of India’s feudal culture and a modern joint stock company which did not have checks and balances for its new role as a government. The very concept of corruption being an impropriety was perhaps recognised for the first time in India at this stage. Officers had been expected to use their office to coerce villagers into submission in all previous monarchical regimes. The British officers’ corruption was quite customary for India till then; no one thought it was improper. Chanakya had noted such natural tendencies among officers in his Arthashastra 2,400 years ago (“The Mahamatras are like fish. Does one know, when the fish is drinking water?”).

However, the expectation from public officers was changing. The change started in England where the Magna Carta of 1215 instilled some discipline in the king’s officers. The king of England agreed through this charter that ‘No Constable nor other Bailiff of ours shall take the corn or other goods of any one, without instantly paying
money for them.’ This was revolutionary, as it created a new expectation that a public servant was only to live off his own salary.

Therefore the corruption in British Bengal was not commented upon adversely in India. It was in England that concerns were raised about it. The British Parliament took about a decade to make the Regulating Act of 1773. This Act created a Governor General for British India. A subsequent India Act, 1784 laid the specific principles of governance of India by the Company. We cannot blame the British Parliament for taking so long to do something about corruption in India (it at least took some action: India’s Parliament, on the other hand, actively encourages corruption!). The British Parliament was relatively weak at that stage, and also unrepresentative. It was only in 1688 that it had gained the authority to continue to assemble without long interruptions imposed by British kings.

The second Governor General of British India, Lord Cornwallis (1786-93) seems to have laid the foundations of the modern Indian public services. He split the Company bureaucracy into two parts: the political branch responsible for civil governance, and the commercial branch responsible for its commercial activities. On entry, an officer of the East India Company had to opt for one of these branches. Commercial officers retained access to commissions on their trading activities. Those who opted for the political branch were compensated by Cornwallis through a significant hike in salary. With this, corruption came to a grinding halt in the higher echelons of British India’s government. Till independence, these higher echelons would distinguish themselves by remaining spotlessly clean. Indeed, this continued well into the early years of independent India even as our politicians were starting to become super-corrupt.

The political branch attracted talented British middle-class youth with scholarly tastes and policy interests. Wonderful writers emerged from amongst them who penned elegant and largely accurate accounts of the lives of ordinary Indian peoples. In some cases, these civil servants proved pivotal in the development of local Indian dialects and languages. They compiled dictionaries; even created scripts. The role of the District Collector, perhaps found only in India, also further evolved and became the hub of British administration. This office was particularly important given the poor means of communication available in those days, with the attendant need to empower local officials to make decisions on the ground without waiting for prior approval.
To streamline the processes of administration, Cornwallis created a civil service manual as part of the Charter Act, 1793. Carrying on Cornwallis’s foundational work, Lord Wellesley set up the Fort William College in Madras in 1800 to induct new entrants to the CCS. This college was moved to England in 1805 and became the Haileybury College. (A tidbit: among the teachers at Haileybury was the famous Thomas Maithus who was its first professor of Political Economy and taught British India’s civil servants from 1805 till his death in 1834. They were also taught the latest economic and political thought, including Adam Smith.) The Lal Bahadur Shastri National Academy of Administration at Mussoorie continues the tradition established in 1800, imparting a two-year induction package to new recruits.

Given increasing concerns that appointments to the CCS by the board members of the Company were not made exclusively on merit, the Company threw the Indian civil service open to competition in 1853. This was a significant reform that even Britain would not implement in its own government for the next sixty years. In 1854, William Gladstone commissioned Northcote and Trevelyan to report on the future of the Civil Service in England.193 They studied the British East India Office as a model, and a few other government offices in England and recommended that civil servants in England should also be recruited through an open competitive examination, and that promotions should be made on merit, not on the basis of seniority. The frequently cited precepts of an apolitical permanent career service, being not only recruited without political patronage but whose members offer impartial advice to the political leadership, arose from this report. When Gladstone became Prime Minister in 1868 he implemented some of these recommendations. Competitive entry started in England only in 1914.

In the meantime, the British India civil service had kept up its lead in public service reform. The Indian Civil Service Act was made in 1861. Next, the recommendations of the Public Service Commission of 1886-1887 were implemented. Later, in the 1910s, in response to Indian nationalists, the British allowed Indians to take the entrance examination for which they had to travel to England. From 1922, India was made an examination centre. The number of Indians in the ICS began to steadily rise. At

193 Addendum: Those interested in history will note that Charles Edward Trevelyan married T.H. Macaulay’s sister and later became Governor of Madras, apart from holding senior positions in England. His son wrote the life and works of Macaulay.
the time of independence, in addition to the generalist civil service, the ICS, which provided high level governance functions, India had evolved nine other central services which managed specialist areas.

The Macaulay Committee which gave India its first modern civil service in 1854 recommended that the patronage based system of the East India Company should be replaced by a permanent civil service based on a merit based system through competitive entry examinations. As Macaulay’s Report said, “Henceforth, an appointment to the civil service of the Company will not be a matter of favour but a matter of right. He who obtains such an appointment will owe it solely to his own abilities and industry”. The Report made it clear that only the best and the brightest would do for the Indian Civil Service (ICS). The Report stated, “It is undoubtedly desirable that the civil servants of the Company should have received the best, the most finished education that the native country affords”. The Report insisted that the civil servants of the Company should have taken the first degree in arts at Oxford or Cambridge Universities.

After 1855, recruitment to the ICS came to be based totally on merit. The report of the Civil Service Commissioners pointed out that of those who entered the ICS between 1855 and 1878, more than two-thirds were university men, equipped with a liberal and finished education. Initially, the ICS sought its recruits from Oxford and Cambridge. It was thus an elite service. Subsequently, it opened its doors to Indians and from 1922 onwards the Indian Civil Service Examination began to be held in India.

**The Design of the Civil Service at Independence**

While designing a successor civil service, the Indian political leaders chose to retain elements of the British structure of a unified administrative system such as an open-entry system based on academic achievements, elaborate training arrangements, permanency of tenure, important posts at Union, State and district levels reserved for the civil service, a regular graduated scale of pay with pension and other benefits and a system of promotions and transfers based predominantly on seniority. The civil

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195 Macaulay Committee Report
services in India can be grouped into three broad categories. Services whose members serve both the Union and the State Governments are termed as All India Services. Services whose members serve only the Union Government are termed Central Civil Services. Apart from these, the State Governments have their own group of services – State Civil Services. The posts in the Union and the State Governments are hierarchically arranged into four Groups – Group A to Group D.

Article 312 of the Constitution empowers Parliament to create the All India Services (AIS) on the fulfillment of certain conditions. The Indian Administrative and Police Services are deemed to be services created by Parliament under this Article. Section 3 of the AIS Act, 1951 and the rules and regulations made by the government prescribe the selection process for the IAS. Similar provisions exist for the IPS and the IFoS. The key objectives of government in creating the AIS are:

(a) preserving national unity and integrity and uniform standards of administration
(b) neutrality and objectivity - non-political, secular and nonsectarian outlook
(c) competence, efficiency and professionalism - at entry by attracting the best and brightest and throughout the career
(d) integrity and
(e) idealism depicts the key features of the design of the AIS.¹⁹⁸

The First Administrative Reforms Commission

Since Independence, there have been about fifty Commissions and Committees at the Union Government level to look into what can be broadly characterized as administrative reforms.¹⁹⁹

The First Administrative Reforms Commission set up in January, 1966 was asked, in particular, to consider all aspects relating to the following subjects:

- The machinery of the Government of India and its procedures of work;
- The machinery for planning at all levels;
- Centre-State relationship;
- Financial administration;
- Personnel administration;

¹⁹⁸ Public Institutions in India, edited by Kapoor and Mehta, OUP, Paper written by K.P. Krishnan and T.V. Somnathan
¹⁹⁹ Department of Administrative Reforms and Public Grievances
Economic administration;
Administration at the state level;
District administration;
Agricultural administration; and
Problems of redress of citizens grievances.