CHAPTER - 2

HISTORICAL EVOLUTION
OF CIVIL SERVICE
AND SAFEGUARDS
TO CIVIL SERVANTS
CHAPTER – II

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In the introduction chapter the research design covering review of literature, research problem, the methodology and the plan of study has been highlighted. In the present chapter discussed about the protection provided to the civil servants during the Mauryan period, Moghal period, during the East India Company, British period and the discussion in the Constituent Assembly of providing protection to civil servants.

The concept of civil service is not new or of recent origin. Governments, whether monarchial, dictorial or a republican, have to function and for carrying on administrative and varied functions of the Government, a large number of persons are required, whether they are constituted in the form of civil service or not. Every Kingdom and Country of the world throughout history had a group of persons who helped the ruler to administer the land, which according to the modern notion we may call that group as “Civil Service”, because it is not possible for one man by himself to rule and govern the land and look after and supervise all the details of the administration.27

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27 Girdhari Lal Wazir.; “Constitutional Safeguards to Civil Servants in India.” Akalanka’s publication 1992 Edn P 1
2.1 CIVIL SERVICES BEFORE EAST INDIA COMPANY

The legends of Aryans speak of evolution of the administrative apparatus. The origins of early Aryans administrative system may perhaps be traced to these legends.

A. Mauryan Period:

The King was fountain head of all governmental activities. India had a vast empire under the general authority of the Mauryan King. This naturally necessitated an efficient administrative set-up. It required a big staff of efficient servants for the purpose of administration. The Arthasastra points out that, the Mauryans had full-fledged and well developed secretariat. Further the Administration was divided into departments which were connected with each other.

Kautilya’s Arthasastra stipulates Seven basic elements of administrative apparatus. These elements are embedded in the doctrine of pakrits. They are as follows:

Swamin (the ruler), Amatya (the bureaucracy), Janapada (the territory), Durga (the fortified capital), Kosa (the treasury), Danda (the army) and Mitra (the ally).

The higher bureaucracy consists of Mantrins and Amatyas, while the Mantrins were the highest advisors to the King, the Amatyas were the civil servants. There were three kinds of Amityas, the highest, the intermediate and the lowest based on the qualification possessed by the civil servants.
The main important civil servant was the samahatra, who prepared the annual budget, keeps accounts and fixed the revenue to be collected. The other important servants were the samindhatr, who keeps records of taxes realized and was in- charge of the stores. The Amityas were almost like the Indian civil service during British period.

The civil servants during the Mauryan period held office at the will of the Monarch\textsuperscript{28}. The service of civil servants could be terminated at any time at the pleasure of the king without assigning any reasons and without providing any opportunity to defend them.\textsuperscript{29}

**B. Gupta Period:**

King continued to be the center of administrative powers. All civil officers were appointed by the King and were directly responsible to the king. The members of the superior civil service known as “Kumaramatyas” were more or less corresponding to the present Indian civil services.\textsuperscript{30} During this period, there was ample provision for the efficiency of the Government and for the continuous good behavior of its servants including the highest officials of the ministerial cadre, but no protections were provided to the servants and their services were terminable at the pleasure of the Monarch.\textsuperscript{31}

\textsuperscript{28}In a limited context similar to Doctrine of Pleasure
\textsuperscript{29}S.M.Mehta, “Civil Servants and Administration” p. 125(1988)
\textsuperscript{30}A.S.Altekar, State and Government in ancient India (1958) p 354
\textsuperscript{31}In a limited context similar to Doctrine of Pleasure
C. Mughal period:

The administrative system was centralized. No distinction was made between the civil and military administration. The Mughal administration in India, presented a combination of certain features of Arabic administrative system with certain classical Indian administrative practices\(^{32}\).

Therefore during the Mauryan, Gupta and during Mugal period though the civil service was established for the better administration, during those periods the administration was carried out strictly but there were no symbolic and significant protections to the civil servants traced.

The administration during those periods proved to be efficient but without assurance of the protection and were under the control of the King, the rights of the civil servants were not given prominent nor protected. The pleasure of the Kings was predominant over the civil servants, but the civil servants did not enjoy the powers or privileges independently. It is sometimes the civil servants were saved from the arbitrary actions of the kings in the Kingdom.

2.2 CIVIL SERVICE UNDER THE EAST INDIA COMPANY

The East India Company was registered as a trading Corporation for the purpose of trading with India during the region of Queen Elizabeth by

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\(^{32}\) The Mughal emperors directly control the administrative functions of the entire administration. All appointments to the civil posts were at the pleasure of the king and king had the power to remove or dismiss at his will.
Charter\textsuperscript{33}. The earliest organized civil service in British India was the ‘covenanted civil service’ which constituted a group of men who carried on trade of East India Company and were known as Civil servants. The servants of the company were purely commercial agents, known as ‘factors’ and were in-charge of the trading station which were established along with the sea costs. In strict sense they were neither statesmen nor administrators but had some knowledge of eastern trade.

In the year 1675, the East India Company established a regular gradation of posts’ wherein young men were recruited first as an ‘apprentice’ later become a ‘writer’, and after serving in a capacity as a writer for five years, could be promoted as a ‘factor’. The factors after putting three years of service could be promoted as ‘junior merchants’ who usually after three years of service could become ‘senior merchants’. Every writer had to enter into a covenant with the company containing many conditions vouching to be faithful, honest, diligent and careful service to keep and fulfill each and every order of the company and the court of directors. The relations between the East India Company and its officials in India were governing by the rules therein, in the absence of statutory provisions governing the relations between corporations and their officials.\textsuperscript{34}

Under the various Charters in relation to the East India Company, The East India Company sent to India its own servants and so did the Crown, from the earliest times. The Crown could at its pleasure remove any person

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\textsuperscript{33}Charter Act, 1600 \\
\textsuperscript{34}N. Narayanan Nair, ‘The servant under the law and the Constitution’ (1973) p. 88
\end{flushright}
holding office, whether civil or military under the East India Company. The Court of Directors of the Company had also the power to remove or dismiss any of its officers or servants not appointed by the Crown. Section 35 of the Act\textsuperscript{35} made it lawful to or for the Kings Majesty, his heirs and successors by any writing or instrument under his or their sign manual, countersigned by the president of the Board of the Commissioners for the affairs of the India, to remove or recall any person holding any office, employment or commission, civil or military under the East India Company. While Section 36 of the Act,\textsuperscript{36} provided that nothing contained in the Act would extend or be construed to extend, to preclude or take away the power of the court of directors of the East India Company from removing or recalling any of its officers or servants and that the court of directors shall and may at all times have full liberty to remove, recall or dismiss any of such officers or servants at their will or pleasure in the like manner as if the Act had not been passed. Similar provisions were incorporated in Section 74\textsuperscript{37} and Section 75\textsuperscript{38} of the Charter Act 1833.

Therefore the Charter Act 1793 and 1833 did not confer any new power on the Court of Directors of the Company but only reaffirmed the powers that already existed. The ultimate analysis of the various Charters shows that the

\textsuperscript{35} Charter Act 1793
\textsuperscript{36} Ibid
\textsuperscript{37} "For his Majesty by any writing under his sign manual, countersigned by the president of the Board of Commissioners to remove or dismiss any person holding any office, employment or commission, civil or military, under the said company in India, and to vacate any appointment or commission of any person to any such office or employment"
\textsuperscript{38} Nothing contained in the Act would take away the power of the court of directors to remove or dismiss any of the officers or the servants of the company but that the said court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure.
civil servants under the East India Company had no right against arbitrary dismissal or removal. No safeguards were available to the civil servants during the Company’s rule against the arbitrariness of their action. The reasons would be to exercise absolute control over the civil servants and civil servants have to work under the mercy of the East India Company.

2.3 CIVIL SERVICE UNDER BRITISH CROWN

The East India Company’s rule comes to an end in 1858 and on termination of Company’s government, the Indian Administration came directly under the control of Crown. The Government of India Act 1858, under which transfer of power from Company to the Crown took place. The Queen’s proclamation of 1st November 1858, dealt with the position of employees of the Company states as under;

“We do here by confirm in their several offices, Civil or Military, all the persons now employed in the service of the East India Company, subject to our feature pleasure and to such laws and regulations as may hereafter be enacted”39

Therefore the Queen’s proclamation clearly shows that the ‘pleasure’ as a Royal prerogative was asserted in the Royal proclamation.

The Macaulay Committee which gave India its first modern civil service in 1854 recommended that the patronage system of East India Company should be replaced by a permanent civil service based on merit system

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39 S.M. Mehta, The Civil Servants and Administration 1988 p 125
The appointments to the Indian Civil Services were made either in exchange for political support or to provide for family and friends. It was estimated that 23% of the nominations between 1809 and 1850 were made to the relatives of the directors of East India Company, while 55% were on the basis of friendship and other nomination during the same period included 4.69 percent for company’s service, 6.57% on recommendation of the Board of control, 1.64 percent for business contacts and 0.70% on political recommendations.\(^{40}\)

Macaulay’s report condemned the nepotism of the patronage system followed from 18\(^{th}\) century and recommended a merit system based on competitive entry examinations. The report states that:

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.\(^{41}\)

It is after 1855, the recruitment to the Indian Civil Services came to be based totally on merit. The report of the Indian civil services Commissioners pointed out that, of those who entered the Indian Civil Service between 1855 and 1878, more than two third were university men equipped with liberal and finished education.

Though the appointment to the Indian Civil Services were made on the basis of merit as recommend by the Macaulay Committee but with regard to the

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\(^{40}\) S. K. DAS., Civil Service reforms and structural Adjustment. Oxford University press 1998 p.117.

\(^{41}\)Macaulay Committee report on the civil service (Faulton Committee report) Vol 1.1975
safeguards to the civil servants are concerned, no remarkable development has been made to protect the interest of civil servants.

The Indian civil service received statutory recognition by the enactment of Indian Civil Service Act, 1861. The Crown through the secretary of State assumed power to dismiss any civil servant and gave no remedy even against arbitrary exercise of power of dismissal. The civil servant was neither provided him provision for making representation to the Government nor was the civil servant provided to approach the Court of law for seeking redressal of arbitrary dismissal or action.

The fact that the, English ‘*Doctrime of pleasure*’ has been adopted without any exceptions in India. This can be illustrated by the decision of High Court of Calcutta in **A.C.Voss V. The Secretary of State**,42 The plaintiff an Indian had been appointed as a clerk in the foreign office. The term of the employment was that the plaintiff should not be dismissed arbitrarily except for good cause and in accordance with the orders, rules and regulations of the Government. The service of the plaintiff was terminated and the plaintiff was refused to accept the termination of his service and showed he is ready and willing to serve. The Hon‘ble High Court of Calcutta upheld the preliminary objection of the Secretary of the State that a contract of service with the Crown was terminable at the will of the Crown.

42 (1906)33 ILR Cal. 669
Further in *Jehangir M Cursetji. V. Secretary of State*, the Hon’ble High Court of Bombay observed that;

Apart from any statutory provision, the power of sovereign to dismiss a public servant at will appears to be universal application of public law principles.

Thus from the above discussion and the decisions of the Hon’ble High Courts it clearly shows that, ‘*Doctrine of Pleasure*’ has been fully adopted without any exceptions or limitations. Therefore the power of the Crown to dismiss a civil servant was unfettered.

The need for some protection to civil servants, to explain his case before dismissal of a civil servant was realized in 1879, and thereafter the Government of India adopted a resolution on 29th July 1879. The 1879 resolution provides that;

> ...all cases of dismissal or removal of civil servants except where the punishment was to be inflicted as a result of decision of the Court, the charges should invariably be reduced in writing and that witnesses should, as far as possible, be examined in the presence of the delinquent official who should be given a right to examine them as well. The memorandum of evidence was to be made a part of the record. The decision taken on such matter was also be set down in writing.

Though the resolution confers protection upon the civil servants to discharge their duties without any fear or favour, but unfortunately the resolution was not implemented and the resolution has remained merely on book.

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43[(1903)27 ILR Bom 189](#)

44[In a limited context principles of natural justice i.e., :Audi Alterem partem”](#)

In support of the above proposition, the High Court of Calcutta, in *Ram Das Hazra V. The Secretary of the State*\(^{46}\), observed, that in the instant case plaintiff was acquitted by the High Court on several charges. The departmental action was taken against the plaintiff and the plaintiff was dismissed from the service based on material not produced before the court. No opportunity for defending himself was afforded. The Hon’ble High Court held that, no action against the Government for wrongful dismissal could be entertained since government could act independent of an enquiry and without assigning any reasons and it could not be questioned in any Court of law on the ground that the enquiry had not been satisfactory. Hon’ble Justice Mookeji observed that;

> ‘Except where it is otherwise provided by the statute all public officers and Servants of the Crown were subject to dismissal at any time without assigning any reasons.’

Further in *Denning V. the Secretary for the State for India*\(^{47}\), wherein it was observed that;

> An order of dismissal was passed without giving an opportunity of hearing and plaintiff suffered a grave injustice, but the Hon’ble Court expressed its opinion that, the court was powerless to give any relief to the plaintiff.

Thus by going through the various Judgments of the High Courts during British period, though there was a need for conferring protections to civil servants against the arbitrary and unfair dismissal, the various High Courts

\(^{46}\)AIR 1914 Cal 764.
\(^{47}\)(1920)37 ILR 138
opined and observed that in the absence of statute, imposing restrictions upon the ‘Doctrine of Pleasure’ no action can be taken against the orders passed while exercising power of pleasure.

2.4 CIVIL SERVICE AND PROTECTIONS TO CIVIL SERVANTS UNDER GOVERNMENT OF INDIA ACT 1919:

The Secretary of State in India issued the declaration on 20th August 1917, in the House of Commons, announcing the new policy of British Government relating to increasing association of Indians in every branch of administration, development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of British Empire. In 1918, Montague and Chelmsford, in their joint report on Constitutional changes expressed supplementing the recruitment to the civil services in England by fixing the definite percentage of recruits from India. The percentage was fixed at 33% for superior post with an annual increase of one and half percent.

The Government of India Act, 1919 on Constitutional Reforms recommended threefold classification of services into (a) All- India (b) Provincial and (c) Subordinate. All the imperial services functioning earlier on the provinces whether in the reserved or transferred department were designated as the All India Services.

As a result of transfer of power under the Government of India Act, 1919 it was thought expedient that some restrictions on doctrine of pleasure should
be put in with a view of infusing a sense of security in the minds of civil servants serving under the Crown in India.\textsuperscript{48}

The question of protection of civil servants was considered by the Britishers for the simple reason that they would establish an uninterrupted stronghold over the Country. The intention to provide protection to civil servants was stated in the report on Indian Constitutional Reforms, 1918. The object of providing protection to civil servants whatever the Government, under which he was employed, would be properly supported and protected in the legitimate exercise of his functions.

As a result of the recommendations the Government of India Act 1919, was passed by amending the earlier Government of India Act, 1915. The British Government introduced provision for safeguarding the security of service to civil servants in India. Therefore, the Government of India Act 1919 is an important piece of legislation providing safeguards to civil servants in the Constitutional History of India. The Government of India Act, 1919 provides special safeguards to the members of All-India services with regard to dismissal\textsuperscript{49}, salaries\textsuperscript{50}, pension\textsuperscript{51} and other rights.

\textsuperscript{48} Suranjan Chakravarthy, 'Law of wrongful dismissal', 7\textsuperscript{th} Edition The Law Book Company (P) Limited P, 20
\textsuperscript{49} Section 96- B(1): "Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during his Majesty’s pleasure, and may be employed in any manner required by a proper authority within the scope of his duty but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the secretary of state in Council may [except so far as he may provide by rules to the contrary] reinstate any person in that service who has been dismissed. If any such person appointed by the secretary of state in Council things himself wronged by an order of an official superior in a governor’s province and on due application made to that superior does not receive the redress to which he may be consider himself entitled, he may, without prejudice to any other right of redress, complain to governor of the province in order to obtain justice, and the Governor is hereby
Further the Government of India Act, 1919 provided provisions enabling the Secretary of the State to make rules for regulating the classification of the civil services in India, the method of their recruitment, their conditions of their services, pay and allowances and discipline and conduct etc. Further the Act provided such rules might, to such extent as might be prescribed, delegate the power of making rules to the Governor General in Council or to a local Government or authorized the Indian legislature or local legislature to make laws.

The Secretary of State in exercise of powers conferred under section 96-B of the Government of India Act 1919 framed the rule known as the civil services (Governor's provinces) classification rules 1920. The rule prescribed

50Section 96-B(2): "The Secretary of State in Council may makes rule for regulating the classification of the civil services in India, the method of their recruitment, their conditions of services, pay and allowances and discipline and conduct, such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-in- Council or to local governments, or authorise the Indian legislature or local legislature to make laws regulating the public services. Provided that every person appointed before the commencement of government of India Act 1919, by the Secretary of State in Council to the civil services of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of the State in Council may consider just and equitable.

51Section 96-B(3): The right to pension and the scale and conditions of pensions of all persons in the Civil services of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of passing of Government of India Act 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof Nothing in this section or in any rule thereunder shall prejudice the rights to which any pension may, or may have, become entitled under the provisions in relations to the pensions contained in the East India Annuity Funds Act, 1874.
a procedure for holding departmental enquiry in all cases of dismissal, removal or reduction in rank of any civil officer.52

The Civil Service (Governor's province) Classification Rules, 1920 was modified and was named as Civil Services (classification, control and Appeal) Rules 1930. These rules provided for punishment that could be inflected for good and sufficient reasons on civil servants. Further Rule53 provided provision for initiating disciplinary action against the servants. It provided that;

No order of dismissal, removal and reduction in rank could be passed against a member of civil services unless he had been informed in writing of the grounds on which it was proposed to take action and he had been offered an adequate opportunity of defending himself.

The security of the Civil Servants was further sought to be enhanced by statutory recognition of set of rules framed by the Secretary of State under the Government of India Act 1919. These set of rules were called as Fundamental rules, which were come in to force in the year 1922. These rules provided provisions regarding conditions of service, leave, pay etc., for all Government servants.

52 Rule 14 of Civil Services (Governor's provinces) classification Rules 1920; "In all cases in which the dismissal, removal or reduction in rank of any officer is ordered, the order, shall except when it is based on facts and conclusions established at a judicial trial, or when the officer concerned has absconded with the accusation hanging over him, be preceded by a properly recorded departmental enquiry. At such an enquiry a definite charge in writing shall be framed in respect of each offence and explained to the accused, the evidence in support of it and any evidence which he may adduce in his defense shall be taken down in writing. Each of the charges framed shall be discussed and a finding shall be recorded on each charge.

53 Rule 55 of civil services (classification, control and Appeal) Rules 1930
Therefore the Civil Service (Governor's province) Classification rules, 1920, Civil Services (classification, control and Appeal) Rules 1930 and Fundamental Rules are the some of the Rules framed under the power conferred under section 96-B of Government of India Act 1919.

The binding force of statutory protection provided under Section 96-B of Government of India Act 1919 and the rules framed thereunder came up for consideration in *Satish Chandra Das V. The Secretary of State*, the High Court of Calcutta, observed that

"...the provision of Rule XIV, which are manifestly for the protection and benefit of the officer, are inconsistent with importing into the contract of service, the term that the Crown may put an end to it at pleasure and therefore, before an officer may be dismissed the procedure laid down under Rule XIV must be followed."

In *J.R. Borani Vs. Secretary of state*, the Rangoon High Court laid down that,

"It is now well established law that apart from some special statutory safeguards, no action will lie against the Crown for the wrong dismissal of a civil servant of the Government. This rule of law is based on the public policy and a prerogative right of the Sovereign." It was further held that section 96-B red with rule XIV of the Civil Service Classification rules, restricted the unlimited power of Government to dismiss its servants and an action for damages could therefore, be brought against the secretary of the State, if a servant was dismissed without following the formalities prescribed in rule XIV of Civil Services (Governor's provinces) classification Rules. His lordship relied on the

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54AIR 1927 Cal 311.
55AIR 1929 Rang 207.
decision of Calcutta High Court56 and Privy Council decision57 and lay
down that formalities prescribed must be observed.

However the High Court of Calcutta in *Bimal Charan Batabyal V. Trustees for the Indian Museum*.58 J Costello expressed that;

> in my opinion Section 96-B is far from abrogating the prerogative of the Crown, with regard to dismissal of a person in the civil service, reiterates and emphasizes the fact that, the right of dismissal at pleasure still exists and enacts that the right is, only limited in so far as there are definite and special or particular rules and regulations, laying down the method by which or the circumstances in which the right is to be exercised.

It is clear from the above decision that though the pleasure doctrine is emphasized, the decision has in-fact, restricted the scope of doctrine as no distinction between statute and rules is made in this regard.

The crucial question that arose was, whether the Crowns prerogative of dismissing the civil servant could be restricted by a contract. *In Denning V. The Secretary of State for India in Council*,59 Lordship Mr. Justice Bailache in his considered judgment laid down that;

> ..the Crown’s servant against whom misconduct was alleged, was liable to be dismissed at the pleasure of the Crown without any notice, even if the agreement under which he had been engaged, that except in case of misconduct the employment could be terminated by issuing notice.

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56 Satish Chandra Das V. The Secretary of the State, AIR 1927 Cal 311
57 Gould V. Stuart, 1896 AC 575
58 AIR 1930 Cal 404.
59 (1920) 37 TLK 138.
Perusal of the above said Judgment made it clear that the Doctrine of Pleasure was applicable to civil servants in India and could be fettered by terms of contract. An analysis of the above decisions of the various High Courts clearly indicates that, the power of the Crown to dismiss at pleasure was not unqualified but was subject to the provisions of the rules applicable to the services. The rules framed and regulations issued could place a limitation upon the exercise of pleasure by the Crown.

But the contrary view which was expressed by the Privy Council in *R Venkata Rao V. Secretary of State for India*,\(^{60}\) and also in *Rangachari V. Secretary of State for India*.\(^{61}\) In Venkata rao’s case, the appellant was a reader of the Government press of Madras had been dismissed without affording him an opportunity as contemplated under rule XIV of Civil Services Classification Rules. Further it was contended that Section 96-B of the Government of India Act 1919 was violated. On facts, their lordship strongly criticized the action of the Executive Government for non-observance of statutory provisions of the rule and expressed their opinion that the Government should do justice, but on point of law, held that the pleasure asserted in the section was not and could not be modified by rules, though rules are framed under the power conferred by the section itself. The court further expressed in the following words:

> Section 96-B in expressed terms states that office is held during pleasure. There is therefore, no need for the implication of this term and room for its exclusion. The agreement for a limited and special kind of

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\(^{60}\)AR 1937 PC 31

\(^{61}\)AIR 1937 PC 27
employment during pleasure but with an added contractual term that, the rule are not to be observed is at once too artificial and too far reaching to command itself for acceptance.

The Privy Council observed that the Courts were powerless to provide redress in such cases, which in fact, were the responsibility of the Executive Government.

The decisions of the Privy Council in R Venkata Rao’s case stated supra clearly indicates that;

(a) Section 96-B of Government of India Act, 1919 expressly stated the tenure was at pleasure.

(b) The rules were manifold in number and most minute in particular and were all capable of change.

(c) Section 96-B of the Act made careful provision for redress of grievance by administrative process.

(d) The word “subject to rules” contained a statutory assurance that the tenure of office though at pleasure would not be subject to capricious or arbitrary action but would be regulated by rules.

Further in **Rangachari V. Secretary of State**, the fact in relation to this case was that the appellant was a Sub Inspector of the Police in the presidency of Madras. When the appellant was working as Police Sub Inspector, certain charges of irregular and improper conduct in execution of his duties were made against him. The departmental enquiry was held in accordance with rule XIV of Civil Service Classification Rules made under Section 96-B(2) of the Government of India Act 1919. The enquiry was

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62ibid
concluded in September 1927. In the meantime the pension was sanctioned after the appellant retired from service on health ground. On 28th February 1928, an order was passed purporting to remove the appellant from service on the basis of enquiry.

The action was challenged on the ground that appellant could not be removed from the service subsequent to his retirement. Further by the terms of section 96-B of Government of India Act, 1919 pension rules were made statutory and of the same force as if they were set out in the statute itself. Also by the terms of the said section, persons in Civil Service of the Crown in India held office not simply at pleasure but on the terms set out in the section and in all the rules made thereunder.

The Privy Council held that with regard to first argument relating to the effect of the Statute of 1919 and in particular whether it conferred a right of action to enforce the rules, held on the basis of decision in Venkata Rao’s case\(^{63}\), that it was not tenable. The next argument that Section 96-B has not been followed for the reasons that the order of dismissal passed by an official lower in rank than the appointing authority. The Privy Council was of the opinion that it was manifest that the stipulation or proviso as to dismissal was itself of statutory force and stood on the footing quite other than any in the matters of rules. It therefore held that it was necessary that this statutory safeguard was observed with the utmost care and that an order of dismissal was passed by an official lower in rank held bad and inoperative.

\(^{63}\)Supra Note 60
Therefore by going through the above two judgments of Privy Council, leads to the conclusion that where the limitation is imposed on the Doctrine of Pleasure under the Government of India Act, 1919 such limitations are effective where as any limitation imposed by rules and regulations issued under the Government of India Act have no binding force.

2.5 CIVIL SERVICE AND PROTECTIONS TO CIVIL SERVANTS UNDER GOVERNMENT OF INDIA ACT 1935:

The Government of India Act 1935 introduced provincial autonomy under the responsible Indian ministers. The rights and privileges of the members of the Civil Services were carefully protected.

The history of providing safeguards for tenure of the office of the Crown servants was considered and enlarged the scope of safeguards under the “Government of India Act 1935”. In this connection, the Judgment of Justice Kapoor in Union of India V. Ramchand⁶⁴ observed that, in the Government of India Act 1919, Section 96-B was added which gave certain statutory protections to Civil Services and that was because some element of control over some Government Department was introduced by that Act. Whereas as per 1935 Act, much greater control was given to the ministers and therefore the Parliament thought it necessary for the protection of Civil Servants to introduce a greater measure of protection and Section 240 was introduced which placed restrictions and limitations on the exercise of the pleasure of the Crown. Thus the Rule of English Law which had become the Rule of Indian law that the Civil Servants hold office during the pleasure of the

⁶⁴AIR 1955 Punj 166.
Crown becomes very much restricted. The Part X of Government of India Act 1935\textsuperscript{65}, provided provision relating to the services of the Crown in India and the Act contemplated different kinds of tenure and different classes of Civil Servants.

Chapter II of part X of the Act relates to civil services, and Section 240 of the Act dealt with "tenure of office of the civil servants" and Section 241 of the Act dealt with "conditions of services of civil servants."

Section 240 of the Government of India Act, 1935 reads as follows;

**Tenure of office of persons employed in civil capacities in India:**

(1) Except as expressly provided by this Act every person who is a member of civil service of the Crown in India, or holds any civil posts under the Crown in India, office during His Majesty’s pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub section shall not apply-

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

(b) Where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority

\textsuperscript{65}With effect from 1\textsuperscript{st} April 1937
in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) “Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty’s pleasure, any contract under which a person, not being a member of civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General or as the case may be, the Governor deems it necessary in order to secure a service of a person having special qualifications, provided for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.”

Whereas Sub-section (1) of section 241 deals with appointment and Section 241(2) (3) (4) and (5) of the Act empowers certain authorities to make rules regulating the conditions of services of the persons employed in civil capacities.

Section 241(2) (3) (4) and (5) reads as follows:-

Section 241-(2) except as expressly provided by this Act, the conditions of service of persons serving His Majesty in civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed-

(a) In case of persons serving in connection with the affairs of the Federation, by rule made by the Governor-General or by some person or persons authorized by the Governor-General to make rules for the purpose.
(b) In case of persons serving in connection with the affairs of the province, by rules made by the Governor of the province or by some person or persons authorized by the Governor to make rules for the purpose.

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extent to any matter which appears to the rule making authority to be a matter not suitable for regulation by rules in the case of that class.

(3) The said rules shall be so framed as to secure-

(a) That, in case of a person who before the commencement of part III of this Act was serving His Majesty in a civil capacity in India, no order which alter or interprets to His disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March nineteen hundred and twenty six or by some person empowered by the secretary of state to give directions in that respect.

(b) That every such person as aforesaid shall have the same right of appeal to the same authorities from any order which-

(i) Punishes or formally censures him; or

(ii) Alter or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) Terminates his appointments otherwise than upon the reaching the age fixed for superannuation.
As he would have had immediately before the commencement of part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the secretary of the state or by some person empowered by the secretary of state to give directions in that respect;

(c) That every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provisions of this Act, Acts of appropriate legislature in India may regulate the condition of service of persons serving His Majesty in a civil capacity in India, and any rule made under this section shall have effect subject to the provisions of any such Act;

Provided that nothing in any such Act shall have effect so as to deprive any person of any right required to be given to him by the provisions of the last preceding sub-section.

(5) No rule made under this section and no act of any legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

Section 243\textsuperscript{66} contained special provisions as to the conditions of service of subordinate police force. Therefore after going through the provisions of

\textsuperscript{66} "Notwithstanding anything in the foregoing provisions of this chapter, the conditions of the service of the subordinate rank of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively"
section 240 and section 241 of the Government of India Act, 1935 it shows that the tenure of the services of the Civil Servants of the Government coming within the description of persons contained in the section was that they worked under pleasure tenure, with a statutory guarantee that could not be dismissed without being provided with an opportunity of being heard.

Section 240 of the Government of India Act, 1935 was come up for interpretation before the Privy Council in the case of *High Commissioner for India v. I.M.Lat*[^67^]. The High Commissioner for India had filed appeal from an order of the Federal Court in India. The brief fact in relation to this case was that, the respondent was a member of Indian Civil service since 1922. The respondent was removed from service. The order of removal was based on departmental enquiry which was held against the respondent under rule 55 of the Civil Services (Classification Control and Appeal) Rules into his conduct in respect of charges of nepotism and corruption framed against the respondent.

The contention of the respondent was that the report on the basis of which an order of removal was passed was not shown to the respondent. Further contended that the provision of section 240(3) of the Government of India Act, 1935 were violated as no opportunity of showing cause was given to the respondent against the action proposed to be taken.

On the basis of all these contentions Privy Council formulated three important questions of constructions for decision, viz.,

[^67^]: AIR 1948 PC 121
(i) Is sub section (1) of section 240 qualified by sub section (3)

(ii) Is sub section (3) mandatory, or permissive and

(iii) What is the proper construction is of words in sub section (3) "the action proposed to be taken in regard to him?"

On the first two question Privy Council expressed that provisions as to reasonable opportunity of showing cause against the action proposed to be taken, is now put on the same footing as the provision now in sub section (2) of section 240, which was the subject matter of interpretation in Rangachari's case and that it is no longer resting on rules alterable from time to time, but is mandatory and necessarily qualifies the right of the Crown recognized in section 240(1). The provision of section 96-B(1) of the government of India Act, 1919, now reproduced as section 240(2) and 240(3) of Government of India Act, 1935 are prohibitory in form, and is inconsistent with their being merely permissive.

On the third question the Hon'ble Privy Council held that, under section 240(3) when the authority proposing to dismiss or reduce the rank of a civil servant, he would be so inform and that he would also be given an opportunity of putting forth his case against the proposed action. The section required not only the notification of the proposed action, but also of the grounds on which the authority was proposing that the proposed action should be taken and the person concerned must be given a reasonable time to make his representation against the proposed action and the grounds on which it was proposed to be taken.

68AIR 1937 PC 27
Thus the Privy Council concluded that section 240(3) is mandatory. The provisions of sub section (2) and (3) of section 240 are prohibitory in nature. The words “action proposed to be taken in regard to him” means that action can be taken only after a definite conclusion has been arrived on the charges and punishment to follow has been provisionally determined. Then section 240(3) gives the Civil Servant a protection of reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Section 240 of the Government of India Act, 1935 was came up for consideration before the federal Court in *Suraj Narayan Anand V. North West Frontier Province*\(^{69}\) The Honb’le Court held that a police officer is entitled to the protection under section 240 of the Act, because an order of dismissal related to tenure of office and was not a condition of service within a meaning of section 243 of the Act.

The decision of the Federal Court was challenged before the Privy Council in *North West Frontier Province V. Suraj Narayan Anand*\(^{70}\) the Hon’ble Privy Council did not affirm the proposition laid down in *High Commissioner for India V. I.M.La*\(^{71}\)

Therefore it is clear from the above discussion and the decisions rendered by Federal Court and the Privy Council that, Civil Servants under the Government of India Act, 1935 was pleasure tenure subject to limitations of the statute. The Doctrine of Pleasure was restrained in the 1935 Act in the form as it was enshrined in the Government of India Act 1919. The

\(^{69}\)AIR 1942 FC, 3
\(^{70}\)AIR 1949 PC, 112
\(^{71}\)Supra Note 67
important protection to Civil Servants under the Government of India Act, was provided was, no person in the service of His Majesty would be dismissed or reduced in rank until he was given reasonable opportunity of showing cause against the action proposed to be taken against him. Therefore it is evident that there was a substantial expansion of safeguards under the Government of India Act, 1935.

2.6 CIVIL SERVICE AND PROTECTIONS TO CIVIL SERVANTS UNDER INDIAN INDEPENDENCE ACT, 1947:

The political changes which came into force in India from 15th August, 1947, on the services of the persons recruited to the Secretary of State’s Services known as the “Indian Civil Servants” was that while previously the Secretary of State’s Services were under the Crown, means the ultimate authority and responsibility for these services was in the British Parliament and the British Government. From 15th August 1947, the authority and responsibility on Secretary of State’s Services completely vanished as envisaged in the Viceroy’s announcement of 30th April, 1947 as specifically affirmed in section 7(1)[a] of Indian Independence Act.72

The Indian Independence Act did not terminate the services of the civil servants under the former secretary of state for India. Section 10(2) of the Indian Independence Act, 1947 provides that:

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72Section 7(1)[a]; His Majesty’s Government in the United Kingdom have no responsibility as respects the government of any of the territories which immediately before that day, were included in British India.
(2) Every person who —(a) having been appointed by the Secretary of the State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the government or either of the new Dominions or of any provinces or part there of shall be entitled to receive from the Government of the Dominions and provinces or parts which he is from time to time serving, the same conditions of service as respecting remuneration, leave and pension, and the same rights as respecting disciplinary matters or as the case may be, as respecting the tenure of office, or the rights as similar there- to as changed circumstances may permit as that person was entitled to immediately before the appointed date.

In view of Section 9(1)(c) of the Act, the Indian (provisional Constitution) Order, 1947 was made, Section 7(1) states that:

Subject to any general or special orders or arrangements affecting his case, any person who immediately before the appointed day is holding any civil post under the Crown in connections with the affairs of the Governor-General or Governor-General in Council or of a Province other than Bengal or the Punjab shall as from that day be deemed to have been duly appointed to the corresponding post under the Crown in connections with the affairs of the Dominion of India, or as the case may be of the Province.

Some changes were also made in section 240 and Section 247 of the Government of India Act 1935, relating to conditions of service of the civil servants serving under the Government of India.

Section 240(2) of the Government of India Act, 1935 was amended by the order by inserting the following clause after the word “aforesaid” in section 240(2) who having been appointed by the Secretary of the State or the Secretary of State-in-Council continued after the establishment of the
Dominion to serve under the Crown in India, shall be dismissed from the service of His Majesty, by an authority subordinate to the Governor General or the Governor according as that person is serving in connection with the affairs of the Dominion or of a province.

Certain amendments were also made in regard to Conditions of Service of persons originally appointed by the Secretary of State" in Section 47 of the Government of India Act 1935. "The Conditions of Service of the persons who, having been appointed by the Secretary of the State or the Secretary of the State in Council to a civil service of the Crown in India, continues on and after the date of establishment of the Dominion to serve under the Government of the Dominion or any provinces, shall;

(a) As respects persons serving in connections with the affairs of the Dominion are such as may be prescribed by the rules made by the Governor General.

(b) As respects persons serving in connections with the affairs of a province:

(i) In regard to their pay, leave, pension, general rights such as medical attendance and any other matter which immediately before the establishment of the Dominion, was regulated by rules made by the Secretary of State, be such as may be prescribed by the rules made by the Governor General.

(ii) In regard to any other matters be such as may be prescribed by rules made by the Governor of the Province.

By Indian (Provisional Constitution Amendment) Order, 1948 a proviso was added to this Section to the following effect: No rule made under this section shall have effect so as to give to any persons aforesaid less favourable terms as respects remuneration, leave or pension or less rights as respects
disciplinary matters than were given to them by the rules in force immediately before the establishment of the Dominion of India.

2.7 CONSTITUENT ASSEMBLY AND PROTECTIONS TO CIVIL SERVANTS:

The Constituent Assembly which consist of galaxy of top ranking leaders of the Congress and the Muslim League, veteran Statesman, seasoned administrators, eminent jurists and in fact people drawn from all walks of life and all parts of the country.\textsuperscript{73}

The Constituent Assembly met on December 9\textsuperscript{th}, 1946 and began its deliberations. The first achievement of the Constituent Assembly was the adoption of Objective Resolution on 22\textsuperscript{nd} January, 1947 moved by Pandit Jawahar Lal Nehru. The resolution laid down the fundamental propositions on the basis of which a Constitution for free India had to be framed. It provided that it would guarantee and secure to the people of India justice, social, economic and political; equality of status, of opportunity and equality before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and morality.\textsuperscript{74}

It is clear from the deliberations of the Constituent Assembly that to establish a welfare State in India, for the purpose of establishment of welfare State it was obvious that administration would have to play a vital and constructive role in realizing the objectives of the welfare State. The Union Constitution Committee included the specific recommendation that there

\textsuperscript{73}Anup Chand Kapur, “Selected Constitution”(1979) p 79
\textsuperscript{74}I Constituent Assembly Debates
should be All India Services whose recruitment and conditions and service would be regulated by Federal law. The proposal of Union Constitution Committee was accepted and Shri, B.N.Rau., the Constitutional advisor, was entrusted with the task of laying down preliminary principles relating to the Constitution to be framed by the Assembly.

Shri, B.N.Rau., made a complete provision in his first draft for regulating recruitment and conditions of service of members of various public services. The provisions of the draft consist of two chapters, one dealing with defence services and other with civil services.

The chapter on Civil Services contained three clauses. The first clause enabled the President by order to create such All India Service as he might consider necessary. It also lay down that the recruitment and conditions of service of persons appointed to these services would be regulated by or under Acts of the federal Parliament and, till such Acts were passed, by the rules made by the President. The second clause dealt with recruitment and conditions of services of the other civil services. It provides that recruitment would be an executive responsibility and accordingly laid down that all appointments were to be made, in case of federal services and posts, by the President or by such person as he might direct and in the case of Provincial Services, by the Governor or by such person as he might direct. Similarly the conditions of services were to be regulated by rules made, in case of federal services and posts, by the President or by such person as he might authorise and in the case of Provincial Services, by the Governor or by such person as

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75B. Shiva Rao., The framing of the India’s Constitution; A Study. (1968) p 711
he might authorise. There was also a provision empowering the appropriate legislatures to make laws regulating conditions of service. Such laws could supersede the rules made by the President or the Governor.

**VII-(A) DRAFTING COMMITTEE PROPOSAL:**

The Constituent Assembly in the first reading of the draft provisions of the Constitution said nothing about Civil Servants or for their safeguards. The matter was, however, taken by the Drafting Committee, which was headed by Dr. B.R.Ambedkar. The drafting committee considered the Shri, B.N.Rau’s draft provisions and decided to omit the portion relating to defence services and simplify the provisions relating to the civil services.

The Draft Constitution as settled by the Drafting Committee contained the following Articles relating to Civil Servants:-

**Article 282(1):** Subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State.

(2) No person who is a member of a civil service or holds any civil posts in connection with the affairs of the Government of India or the Government of the State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided that this clause shall not apply:- (a) where a person is dismissed, removed or reduced his rank on the ground of conduct which has led to his conviction on criminal charge; or (b) Where an authority empowered to dismiss a person or remove him or reduce him
in rank is satisfied that for some reasons to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

Therefore, these draft Articles sought to establish the basic position that both the recruitment and conditions of service should not be within the executive jurisdiction of the Government, but should be made expressly subject to legislative control and the rules in force immediately before the commencement of the Constitution. They also protected the civil servants from arbitrary dismissal, removal or reduction in rank. Further, the major penalties could not be imposed except after they were given a reasonable opportunity of showing cause against the action proposed to be taken subject to two exceptions:

(i) Where dismissal, removal or reduction in rank was ordered on the ground of conduct which has led to his conviction on criminal charge.

(ii) Where it was not practicable to give Civil servant an opportunity to show cause.

The draft Constitution was settled by the Drafting Committee, it was circulated and comments of substance were received from the Judges of federal Courts and the Chief Justices of the High Courts and from the Ministry of Home Affairs. The Ministry of Home Affairs had several materials points to urge. These were sent to the Constituent Assembly by the Ministry on 15th October, 1948\textsuperscript{76} along with the proposal of the Ministry on services were forwarded together with draft clauses containing proposal for setting up

\textsuperscript{76}B. Shiva Rao, The framing of India’s Constitution Select Documents IV, P 333.
of the Indian Administrative Service and Indian Police Service as All India Services.

The then Deputy Prime Minister Sardar Vallabhbhai Patel emphasized the importance of the inclusion of the provisions relating to services in the Constitution. In a letter to the Prime Minister on April 27, 1948, he said, "I need hardly emphasize that an efficient, disciplined, and contented service, assured of its prospects as a result of diligent and honest work is a ‘sine qua non’ of sound administration under a democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations, either in its recruitment or in its discipline and control, are reduced to the minimum, if not eliminated altogether."

In his opinion “an efficient, disciplined and contended service, assured of its prospects as a result of diligent and honest work is, a ‘sine qua non’ of sound administration under a democratic regime even more than under an authoritarian rule. The service must be above party and we should ensure that political considerations either in its recruitment or in its discipline and control are reduced to the minimum if not eliminated altogether. It would be grave mistake to leave matters relating to recruitment, discipline and control etc., to be regulated either by central or provincial legislation. Constitutional guarantees and safeguards are the best medium of providing for these services and are likely to prove more lasting. On the other hand if we leave matters to be regulated by central or provincial legislation, the chances of

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77 B. K. Nehru (former Indian ambassador to the US) Article published in ‘India Star Review of Books’ entitled “The Civil Service in Transition”
interference with the service and seriously prejudicing their efficiency on account of interaction of central or provincial politics are closer.”

VII-(B) FINAL CONSIDERATION OF PROPOSALS OF DRAFTING COMMITTEE:

On 7th September 1949, Dr. B.R. Ambedkar proposed the following draft Articles in place of the former draft Article 282 for discussion:

(i) RECRUITMENT AND CONDITIONS OF SERVICE OF PERSONS SERVING THE UNION OR A STATE:
Subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State....Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State, in the case of services and posts in connection with the affairs of the appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article , and any rules so made shall have effect subject to the provisions of any such Act.

(ii) TENURE OF OFFICE OF PERSONS SERVING THE UNION OR THE STATE:
Except as expressly provided by this Constitution every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any

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78Ibid.
79 Article 282
civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Ruler of the State.\textsuperscript{80}

Notwithstanding that a person holding a civil post under the Union or State holds office during the pleasure of the President or, as the case may be, of the Governor or Ruler of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part, required to vacate that post.\textsuperscript{81}

(iii) **DISMISSAL, REMOVAL OR REDUCTION IN RANK OF PERSONS Employed in Civil Capacities under the Union or State:**

No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.\textsuperscript{82}

No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided that this clause shall not apply-

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

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\textsuperscript{80} Article 282 A (1)
\textsuperscript{81} Article 282 A (2)
\textsuperscript{82} Article 282 B (1)
(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

(c) Where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.\textsuperscript{83}

If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this Article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.\textsuperscript{84}

(iv) \textbf{ALL-INDIA SERVICES}

Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.\textsuperscript{85}

The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this Article.\textsuperscript{86}

By going through the provisions of proposal of Drafting Committee and the final consideration of proposals of Drafting Committee indicates that the

\textsuperscript{83} Article 282 B (2)
\textsuperscript{84} Article 282 B(3)
\textsuperscript{85} Article 282 C(1)
\textsuperscript{86} Article 282 C(2)
Doctrine of Pleasure was not in the proposal of the Committee, the pleasure doctrine has been introduced in final deliberation. Further the safeguard that no dismissal or removal of civil servant could take place by the order of an authority subordinate to the one by whom he was appointed and finally, the decision of the authority empowered to dismiss or remove a civil servant where it is not practicable to give him opportunity was final.

Since there was a considerable discussion on Article 282 relating to 'Recruitment and Conditions of Service of persons serving the Union or a State, Article 282A relating to Tenure of office of persons serving the Union or State, Article 282B relating to Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State and Article 282C relating to All- India services, several members of the Committee proposed number of amendments to the new draft Articles.

Therefore the researcher find it necessary to state the relevant discussion on the new draft articles relating to the civil service and safeguards to civil servant

**VII-C DISCUSSION ON ARTICLE - 282**

Shri Satish Chandra Samanta\(^\text{87}\); moved that, to the proposed Article 282, the following proviso be added:-

> Provided, further that no person shall be eligible for appointment to any of the superior public services and posts in connection with the affairs of

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\(^{87}\) Member of Constituent Assembly represented from State of West Bengal
the Union unless he is thoroughly conversant with any other regional language of India besides the National language of India.\textsuperscript{88}

Sir, in connection with the amendment that I have moved, I propose to refer to the report of the Universities Commission and to its recommendation, and also to one of the resolutions passed by the Language Convention held in Delhi in August last. The Universities Commission under the chairmanship of Dr. Sarvapalli Radhakrishnan has recommended that every university should teach its students one other regional language of India, besides the State language. And the language Convention has also passed a resolution that excepting the regional language in the province or State, everyone should be conversant with any other regional language of India. Sir, India is a country which has so many languages, so many divergent languages and in order to make India one, all Indians should know one common language, and thereby acquaint themselves with the common people and with one another. So long as we have no common language or our own we should learn one other regional language. Therefore I want that at least the superior officers of the Union should be conversant with any other regional language of India besides the official language of India so that they may freely mix and have contact with the common people. Sir, I know that against my amendment, it will be said that it will come under the rules and regulations, but considering the importance of the subject. I request that this amendment should be added to the Constitution. This is my request and I hope the House will accept my amendment.\textsuperscript{89}

\textsuperscript{88} Constituent Assembly Debates Volume IX, Reprinted by Lok Sabha Secretariat New Delhi 2003 p 1085
\textsuperscript{89} Ibid p 1086
Shri Brajeshwar\textsuperscript{90}; moved that,

\textit{in the proposed Article 282, for the words 'Acts of the appropriate Legislature may regulate,' the words 'the Union Public Service Commission as respects the All-India services and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the state services and also as respects other services and posts in connection with the affairs of the State shall make regulations on all matters relating to be substituted; and the proviso be deleted\textsuperscript{91}.}

\textbf{Sir,} I want our Commissions to be constituted on the lines of the Whitley Commission of England, and I want these Commissions to have exactly similar powers and functions. I have though over this matter very carefully. This amendment was tabled in 1948 and since then my views have undergone changes on this question. I am prepared to admit that the power of recruitment should be vested in the hands of Parliament, but in no case I am prepared to concede that this power should be given to the provincial legislatures. This power is vested in the hands of parliament it will strengthen the foundations of our State. I want to place before the House some reasons and some arguments why I am in favour of this proposition. It will generate a feeling of security in the minds of the public servants of the State. It will hamper the growth of communalism and provincialism and will thereby promote the cause of nationalism. If all the servants serving in different provincial government are governed by uniform rules of recruitment and conditions of service, the result will be the growth of a feeling of oneness

\textsuperscript{90} Member Constituent Assembly
\textsuperscript{91} Supra note 88 p 1086
amongst all ranks of officers India. The danger of discontent will be eliminated. A contented and officer bureaucracy will go a long way in solving the major problems that confront us. The trend of the modern world is towards bureaucratic rule. The managerial state is the next step in the course of our political evolution. An enlighten bureaucracy is the need of the hour. We must strengthen the foundations of our civil service and protect if from the onslaught of mobocrats who are, in the name of democracy, trying day in and day out to boss over and dictate over those who are their superiors in intellect and morals. Men of small status riding on the crest of popular enthusiasm are placed in positions of power and authority. No civil servant will tolerate the antics and clownish performances of political upstarts. If the evils of adult franchise in a community which is steeped in ignorance and poverty are to be avoided, the civil services must be placed outside the purview of provincial autonomy.\(^92\)

Shri Phool Singh\(^93\); moved that

\[\text{in the proposed Article 282, after the words 'affairs of the Union or any State the words and fix the minimum as well as the maximum amount of salary of a Government servant as also lay down the conditions to be fulfilled by a group of persons to be able to be included in the list of public servants be inserted.}^{94}\]

The first part of my amendment is an amplification of the principle already adopted by this House in Articles 34 and 31, namely, that of living wage and equal remuneration for equal amount of work. While 34 recommends a living wage for an agricultural, industrial or other sort of worker, there is no such

\(^{92}\) Ibid at p. 1087

\(^{93}\) Member Constituent Assembly, United Provinces, General

\(^{94}\) Supra note 88 at p.1087
suggestion regarding government servants. Not only that, the disparity between the pays of government servants is enormous. There are those who get Rs. 3 or Rs. 8 per month while there are those who get more than they deserve and also more than they need. It is also astonishing to know that in the case of government servants of higher ranks, even the contract of service is not adhered to. An I.C.S. even according to the contract is entitled to a maximum of Rs. 2,250. At present the Chief Commissioners get Rs. 3,500 and Commissioners Rs. 3,000; and who are these Commissioners and Chief Commissioners today? They are the Deputy Collectors and Collectors of yesterday. The existence of the Britishers from the services of India after independence has given easy lifts to these higher ranks—lifts which they neither contracted for nor ever dreamt of numerous devices have been invented to secure higher pays for these people by way of personal pays or some such things. It is but fair that we should fix the minimum as well as the maximum amount of salary that a government servant should get, so that there may be no harm done. As things are at present, the salaries do not very even according to responsibilities. Take the case of Secretaries of Departments who were formerly doing the work which the Ministers are now doing. After the introduction of this Government, the responsibilities of these Secretaries have surely decreased, but there has been no down-grading of pays in their case. They continue to enjoy the salaries they were enjoying before this Government was established.

So far as the second part is concerned, it will be interesting to note that those people who are called government servants are only a small minority of
those who are virtually government servants but have not been styled so. If a post is created even temporarily, the incumbent is called a government servant. But just think of those thousands of workers in the countryside in the P.W.D. and other departments, whose job is not at all temporary. In their case there is no prospect of their job being finished; still they are not called public servants. I had the opportunity to take up such cases with a provincial government and the answer given by people in the higher ranks of the service was that if these people are called government servants, they will slacken their efforts to work. If that is true, it should apply to all government servants and if it is false, then it will not be fair to punish these people under this pretext.

My submission is that it is better that we frame rules so that if any class of people who are working for the government fulfil those conditions, they should automatically be entitled to come under that list. Not only pay but all other considerations are also denied to these people. If a government servant in the higher rank is transferred, he gets not only single fare, not only fare for himself but for his family; while people at the lowest rung sometimes are denied any railway fare and in most cases even if they have families they are given only one single fare. Those in the higher ranks are given conveyances or touring allowances, but those on the lowest rungs even in cases where their circle covers an area of forty miles are not given even cycles.

Sir, if these people are included in the category of public servants I think it will save them a lot of heart burning and it will improve the lot of those who well deserve it and who are doing real service to the Motherland.
With few remarks, Sir, I submit that my amendments may be considered and accepted.\textsuperscript{95}

Prof. Shibban Lal Saksena,\textsuperscript{96} moved that,

\textit{In the proposed Article 282, for the words 'Acts of the appropriate Legislature" the words 'Acts of Parliament' be substituted. And for the proviso to the proposed Article 282, the following be substituted:}

\textit{Provided that Parliament may be law specify the public services in the States with regard to which Acts of appropriate Legislature may regulate the recruitment and conditions of services of persons appointed to them.}\textsuperscript{97}

Dr. Ambedkar's amendment provides that "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State." The object of my amendment is to bring about uniformity in regard to the recruitment to the important public services all over the country. At present the only services where there is a certain amount of uniformity is the Indian Administrative Service (which has replaced the Indian Civil Service) and the Indian Police Service. The object of my amendment is that this practice should be extended to the other important services as well.

Dr. P.S. Deshmukh\textsuperscript{98} moved that

\begin{footnotesize}
\textsuperscript{95} Supra note 88 at p. 1087-1088  
\textsuperscript{96} Member Constituent Assembly  
\textsuperscript{97} Supra note 88 at p 1088  
\textsuperscript{98} Member Constituent Assembly (C.P & Berar: General)
\end{footnotesize}
“In the proposed Article 282, for the word ‘may’, where it occurs for the first time, the word ‘shall’ be substituted.”

Sir, looking to the whole structure of the provisions of this Article, I think it is necessary that the provision in Article 282 should be made obligatory and not left in doubt as it has been done here. It may probably be said that ‘may’ has the force of ‘shall’. If that is our intention, why not use the word ‘shall’? I would, therefore, suggest that this amendment of mine may be accepted if it is found, as I hope it will be, that his change would be better suited to the whole position and carry out our intention better also.

Dr. Manomohan Das moved that

“At the end of the proposed Article 282, the following new proviso be added:-

Provided that, in order to be recruited for any of the posts in connection with the affairs of the Union, a candidate must be thoroughly conversant in the following languages:-

(i) The official language of the union.
(ii) The English language.
(iii) Any other regional language of the Union except the official language.

Sir, my amendment proposes that in order to be recruited as an officer under the Union Government a candidate must possess a fairly workable knowledge in three languages at least, namely, English, the official language of the Union and a regional language of India different from the official language of the country. In the amendment moved by Dr. B.R. Ambedkar,
Article 282, the President has been invested with power for framing rules and regulations regarding the recruitment of services under the Central Government. My amendment seeks to introduce some principles into these regulations so far as the question of language is concerned. These principles are of such importance that I feel they should not be left to the sweet will and pleasure of the President but they must find a place in the Constitution.

Sir, a fairly workable knowledge of English should be an essential requirement for any Government officer in the Centre because English has become practically the international language of the world today. In addition to this, it is through the medium of the English language that education in scientific and technical subjects has been imparted to the people of this country for more than 150 years. Moreover, the link between India and the outside world today, which is growing stronger and stronger every day is being maintained through the medium of the English language. Therefore, it will be disastrous on the part of our Government if the officers under the Central Government lack a fairly workable knowledge of the English language.

Secondly, our officers under the Central Government will be required to have a fairly workable knowledge in any regional language different from our official language of the Union.

Thirdly, our officers under the Central Government will be required to have a fairly workable knowledge in any language different from our official language. Sir, the Indian Union consists of so many States having different languages and the Central Government should be always in intimate touch
with the provinces and States. So it is essential and necessary that our officers under the Central Government should have at least some knowledge of the regional languages of the States that comprise the Indian Union today. This knowledge of the regional languages of the States of India is also necessary from another point of view. This is for maintaining a common standard for educational qualifications, especially linguistic qualifications among the members of our Central services.

Sir, this Assembly has not yet selected the official language of this country. We have deferred this issue up till now to avoid unpleasant consequences that a controversy on this subject may give rise to. But the time has come when we shall be able no longer to defer this issue and we must have to take some decision one way or the other without delay. Sir, a section of the population, whose mother tongue will be accepted by this House as the official language of the country, will have an undue and unjustified and inherent advantage over the sections whose mother tongue will not coincide with this official language of India. In order to do away with this difference.103

Dr. P.S. Deshmukh;104 moved that,

That in the proviso to the proposed Article 282, the words ‘and rules so made shall have effect subject to the provisions of any such Act’ be deleted.105

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103 Supra note 88 at p 1089-1090
104 Member Constituent Assembly (C.P & Berar: General)
105 Supra note 88 at p 1090
My purpose is simple because the previous wording says that "it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and the posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature." In view of these concluding words it appears that there is no necessity of adding a clause to this effect by which the rules are to have effect subject to the provision of any such Act. So long as the words "until provision in that behalf.....etc." are there, the rules made by the above-named authorities would be operative, only till the appropriate Legislature deals with the matter by an Act.

The Honourable Dr. B.R. Ambedkar, the Chairman of the Drafting Committee negatived the Amendments sought by the members of the Drafting Committee and finally motion was adopted and Article 282 was added to the Constitution.

VII-D - DISCUSSION ON ARTICLE 282-B:

Since there was considerable discussion on Article 282-B, which laid down the procedure for imposing a Civil Servant the penalties of dismissal, removal or reduction in rank and required that before imposing any of the penalties, a reasonable opportunity should be given to the Civil Servant to show cause against the action. Several members of the Committee concerned

106 Supra note 88 at p 1090
107 Constituent Assembly Debates, Volume IX Reprinted by Lok Sabha Secretariat, New Delhi 2003 at p 1101
with the proviso which laid down that such opportunity need not be given if
the penalty was being imposed on the ground of conduct which led to
conviction on criminal charge.

Shri Brajeshwar Prasad\textsuperscript{108}: moved that

\begin{quote}
In Article 282-B clause (1). The last line of that clause is 'by an
authority subordinate to that by which he was appointed'. I want to
substitute the words by 'except by an order of the Union Public Service
Commission, or, as the case may be, by the State Public Service
Commission be substituted''\textsuperscript{109}
\end{quote}

The purpose of my amendment is obvious. The power of dismissal, removal
or reduction in rank of persons employed in several capacities under the
Union or State should be in the hands of the Public Service Commission. I
want that disciplinary matters should not rest in the hands of the Ministers,
either Central or Provincial. Sir, I am not in any way suggesting a course of
action which has got no precedent in any part of the world. In Great Britain,
in Canada, in Australia and in South Africa in all these countries the public
servants are not under the Ministers, and there has been no conflict or no
confusion of authority. In the circumstances in which we are placed to-day, I
am quite clear in my own mind that if the foundations of our civil service are
to be laid on sound and scientific basis they must be removed from the
control of the Ministers. The independence of the bureaucracy from the
control of the Ministers is as important, if not more, than the independence
of the judiciary from executive interference. The role of the public servants,
according to my humble judgment, is more important than that of Ministers.

\textsuperscript{108} Member Constituent Assembly
\textsuperscript{109} Supra note 107 at p 1101
"Men may come and men may go, but I go on forever", The Public servants remain, though Ministers may come in and go out of the cabinet with bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some Godforsaken districts. It creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of opinion that all the civil servants should be brought tinder the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the State Public Service Commissions. I stand for the proposition that the civil servants of India, whether central or provincial, should be under the Central Public Service Commission. We are passing through a very difficult period, Sir. The whole of our society is passing through a period of decadence and decay and if we want that the birth-pangs of the new social order should not be prolonged, we should lay the foundations of our civil services on safe and secure basis.

Further “in paragraph (b) of the proviso to clause (3), for the words 'where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'if the Union Public Service Commission, or, as the case may be, the State Public Service Commission' be substituted."

I have got only one word to say about this amendment. In this proviso the authority to dismiss, remove or reduce in rank has been vested in the hands
of three authorities, Superior Officers, Governor and the President. Sir, I am opposed to this procedure. I am convinced that there should be some authority in the State to dismiss a public servant if a civil servant is found guilty, if the authority is convinced that he is a fifth columnist and that it is not desirable to keep him in service. But there should not be so many authorities vested with this power. I feel that the President alone should be empowered with this power. It is not right vesting this power in the hands of a large number of officers. If you do so, it will give no security to officers.\textsuperscript{110}

Shri Jaspat Roy Kapoor\textsuperscript{111} moved that;

\textit{That in the proposed Article 282B, sub-clause (b) of clause (2) thereof be deleted, and clause (3) also of the said Article be deleted, and thereafter sub-clause (c) be lettered as sub-clause (b)}\textsuperscript{112}.

Clause (2) of the proposed Article 282-B reads thus

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

And to this substantial portion of clause (2) there are three provisos, of which proviso (b) reads thus:-

where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;" and it is this sub-clause (b) that I seek to delete. And then the other clause which I seek to delete is clause (3) which reads thus-

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this

\textsuperscript{110} Supra note 107 at p 1101-1102

\textsuperscript{111} Member Constituent Assembly

\textsuperscript{112} Supra note 107 at p 1102
Article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

It will be clear that deletion of clause (3) is consequential and is necessary in the event of sub-clause (b) of clause (2) being deleted.

Sir, the object of Article 282-B is obviously to give security and protection to Government servants so that these government servants may feel that they shall not be punished in any way whatsoever, unless and until a reasonable opportunity has been given to them to show cause why any order punishing them in any way whatsoever may not be passed. But, Sir, while the object of this Article is to give this sense of security and protection to these government servants, unfortunately this Article is so worded that what is provided in the substantive portion of clause (2) is being taken away by the subsequent long and detailed provisos which follow. So, what has been conceded in the substantive portion of this clause is being taken away by the provisos which follow. This Article has been framed on the model of section 240 of the old Government of India Act. In fact, that section 240 of the Government of India Act has been bodily taken over from there and incorporated here, but with two additions both of which go against the interests of the Government servants. The two portions of this proposed Article which have been added to section 240 of the Government of India Act are sub-clause (c) of clause (2) and clause (3) of this Article. My submission is that it is the inherent, fundamental and elementary right of every person not to be condemned unheard. We should not take away this inherent and fundamental right in the case of government servants. It is true that this
right has been recognised, in this Article, but as I have submitted, merely to recognise the right at one place and take it away substantially, though not altogether, in another, by providing various provisos that have been mentioned herein, does not appear to be fair.

Let us see what these provisos are. The first proviso say's

Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge". No opportunity need be given to the government servant to show cause why an order of dismissal or removal or reduction should not be passed against him. This sub-clause (a) of clause (2) as it stands is much too wide. It says that if a person is convicted of any offence, howsoever trivial it may be (for that is the natural implication), he may be dismissed, etc., and he need not be given an opportunity to show cause why such an order may not be passed against him. This is much too wide and it is, therefore, necessary, I think, that some clause may be added to the effect that the criminal charge of which the person is convicted is one which involves moral turpitude.

It may be said that even if the sub-clause is not there, no superior officer is going to act in such a foolish and stupid manner as to dismiss or reduce a government servant for any trifling offence of which he may have been convicted. True, this clause was there in its present form in the old Government of India Act and it may be said that government servants never felt that because of this clause being there, they were unduly harassed or punished in a manner the hardship of which was felt by them. But when we are going to start on a clean slate, when we are going to have a fresh
constitution there seems to be no reason why these lacunae need not be provided for......

The second proviso for the deletion of which I have moved my amendment reads:

Where an authority empowered to dismiss or remove a person or to reduce him rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

In that case no such opportunity need be given to the person concerned. I cannot conceive of any circumstances under which it cannot be reasonably practicable to give such an opportunity to any government servant. If a person is how will it be possible for such a person to be given an opportunity, it may be asked. My simple answer is that the notice may be served at the place where he last resided or at the place the address of which he had given to his employer. That would certainly be considered as the man having been given a reasonable opportunity. Such a thing always happens in a court of law or under the company law. If a shareholder is served with a notice at the registered place of his residence it is supposed 'to be enough. So I submit that I cannot possibly conceive of any difficulty in regard to the government servant being served with a notice if an adverse order is to be passed against him.

Clause (3) which I seek to delete must necessarily be deleted if my amendment seeking deletion of proviso (b) is accepted. Besides, clause (3) is very drastic, for it seeks to make final the decision of the authority dismissing or otherwise punishing a government servant; on the question as
to whether it is reasonably practicable or not to give notice. There is to be no appeal even against this decision. This makes the implications of sub-clause (b) of clause, (2) worse still.

One word more with regard to proviso (c). The implication of this is that whenever the President, the Governor or the Ruler is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity, no such opportunity need be given. Even in the case of political offenders, where a person is deprived of his liberty, the Government, as we know very well by our own experience, does inform the person who is being detained as to under what circumstances and for what reason he is detained. An opportunity is given to him to show cause why such an order should not be passed or confirmed. But under this sub-clause, if a government servant is dismissed, removed or reduced no such opportunity need be given to him. I do not see any reason why the government servant should be deprived of this elementary right of his. If we want our government servants to work efficiently, if we want our government servants to remain happy and contented, if we want them to work with a sense of security, it is absolutely necessary that we must provide that no order will be passed against them unless a reasonable opportunity has been given to them to show cause why they should not be punished or Penalised.113

Pandit Thakur Das Bhargava114: moved that;

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113 Supra not 107 at p 1103-1104
114 Member Constituent Assembly East Punjab: General
That in sub-clause (a) of the proviso to clause (2) of the proposed new Article 282B, after the word 'conduct' the words 'involving moral turpitude' be inserted or alternatively.

That in sub-clause (a) of the proviso to clause (2) of the proposed new Article 282B, after the word 'charge' the words 'involving moral turpitude' be inserted."

Further moved: That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new Article 282B, for the word 'practicable' the word 'possible' be substituted.

That in sub-clause (c) of the proviso to clause (2) of the proposed new Article 282B, for the words 'is satisfied' the word certifies' be substituted.\footnote{Supra note 107 p 1104}

As regards this amendment it is obvious that there are many cases in which convictions take place in courts which do not afford sufficient ground for the removal of such persons. If the clause stands as it is, and unless the words I suggest are inserted, every conviction will earn a dismissal or removal of a public servant, and that is not satisfactory. I know that there are cases of persons who are convicted on the basis of conscientious objections, for instance if they do not resort to vaccination. There are cases of negligence. There are many cases in which there is no question of moral turpitude involved. The public conscience will be shocked if on a mere conviction a public servant will be discharged or dismissed. My humble submission is that in regard to these cases, the cases may be decided on merits. I hold that even an acquittal order may be tantamount in a particular case to conviction. A man may be acquitted on a technical ground but on matters of fact the judgment may be one of conviction. Again if it is an order of
conviction on technical grounds but as a matter of fact one of acquittal, it is but meet that the person should not be subjected to dismissal or removal. In these circumstances I beg the House to accept my amendment so that honest persons may be saved and dishonest persons may be punished as the occasion arises.116

Mr. Naziruddin Ahmad117: moved;

That in the proviso to clause (2) of the proposed new Article 282-B, ---

   in sub-clause (a), for the words "on the ground of conduct which has led to his conviction on a criminal charge" the words "on the ground that he has been convicted of an offence involving moral turpitude" be substituted; and sub-clause (c) be deleted.118

Sir, I submit that this Article is very important and it affects the welfare of a large number of government servants. As regards higher government servants I submit that they are more than well protected. They are influential, and they can take care of themselves and any injustice to them will be rare and may be rectified. But with respect to a large number of middle class public servants rotting in the districts and in the sub-divisions, in out of the way places and also in higher places, the injustice to them might be very great. So, I submit that the House should carefully consider the provisions which would affect them and which may result in serious injustice to them.

Clause (2) of this Article says that no officer shall be removed or reduced or dismissed until an opportunity has been given to him to show cause against any proposed order. Then comes the proviso. The proviso, I submit, takes

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116 Supra note 107 at p 1105
117 Member Constituent Assembly Represented from West Bengal
118 Supra note 107 p 1106
away literally all the safeguards which are purported to have been given in the body of clause (2). The first proviso is that no opportunity need be given to show cause if the man has been discharged or dismissed on account of a criminal conviction. My honourable Friend Pandit Thakur Das Bhargava has already clearly explained that the conviction should be a conviction for an offence involving moral turpitude. There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

This proviso is extremely important. With regard to proviso (a) the condition is that the officer or public servant need not be given any opportunity to show cause if he is removed, discharged or reduced in rank on account of a conviction in a criminal case. But a conviction in a criminal case does not necessarily involve moral turpitude. There is many an important man, who would assault people on provocation; on almost a justifiable cause, but he may be convicted; that does not in the least affect his moral or intellectual qualities or in the least make him unfit for Government service. In a case where he is convicted of an offence involving moral turpitude, of course the usual safeguard of giving him an opportunity need not be provided. But I wish to restrict myself to the proviso (a) dispensing with the necessity of giving opportunity to show cause to be confined to offences involving moral turpitude where the conviction will be conclusive and no explanation need be taken.
Mr. Jaspat Roy Kapoor has clearly explained why opportunities should always be given. What is the meaning of the expression, "it is not reasonably practicable to give" him notice? In fact, a man in office can easily be available for serving the notice. If he runs away, he would be dismissed on that ground alone. If he is on leave, he has a notified address and the notice can be sent to that address. All that I want is that an opportunity should be given. An opportunity is a great thing and sometimes an explanation might reveal strong points in the delinquent’s case and might help him. To refuse to give an opportunity is to refuse justice.

Then, Sir, my amendment which is not already covered by other amendments is the deletion of clause (c) of this proviso. This I consider to be very important. Clause (c) runs thus:--

Where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

The expression "security of the State" which is so dear to the heart of everyone is a much exploited expression and has been needlessly over-emphasized in proviso (c). I quite concede the need for ensuring the security of the State. But I utterly fail to see how, when a Government officer is reduced or dismissed, any opportunity given to him to show cause why he should not be dismissed or otherwise dealt with is really going to affect the "security of the State". All that I want is that he should be given an opportunity. If an officer is very undesirable and undermines the security of the State if his activities are dangerously undesirable in this respect the may be kept in detention; even then it cannot affect the security of the State to
give him an opportunity to explain; if his conduct is otherwise bad and affects the security of the State, there are ample powers to deal with him, but that could be no justifiable or reasonable cause for refusing to give him an opportunity to explain. I think, Sir, the expression "security of the State" is fantastically out of the question in a matter like this. Security of the State can never be affected by giving anyone an opportunity. If the man is in detention you can send him a notice in the prison and he can send the explanation and no harm would be caused in considering the explanation. What is the harm in doing him justice? He may be dangerous to the security of the State for that adequate provisions have been made and he can be adequately dealt with. But we are concerned with the security of the services. We are considering whether opportunity should be given to them. If we say that it is the opinion of the Governor or the President that the man is so dangerous that he should be dismissed on that ground, it is a different matter. But when he is being dismissed or reduced in rank not on the ground that he is a danger to the security of the State, then the security of the State is attempted to be made a ground for refusing to give him an opportunity to explain his alleged misconduct or shortcoming.

I think no purpose will be gained by introducing this imposing expression "security of the State". At this expression everyone will jump up and cry out--"security of State, security of State, security of State". I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India; India must be dangerously insecure if her security is based
upon a refusal to give an opportunity to an humble officer. What happens in such cases is that men are dismissed by higher officers on insufficient cause, sometimes on bias and not always with a sense of impartiality. We hear of these things; these things are not published in the Press nor are they subject matters of Council questions, but these things happen, in fact they are very widespread. An opportunity to show cause would place on record the delinquent's version; nothing will be lost but much will be gained by allowing him to put on record his reason. An officer who dismissed him may be biased, but a superior officer may read his explanation and do him justice. It is provided that the decision of the officer dismissing him would be final. Nothing could be more improper than giving the higher officer an arbitrary power. In fact, the officer himself is the complainant, he is the judge and he is the final appellate authority. There is no point in questioning his authority. Clauses (a) and (b) of this proviso were taken from the proviso to section 240 of the Government of India Act, 1935. In those settings this was highly proper; there was the imperialistic Government, they would dismiss anyone they liked and any opportunity to explain would be refused. But we are living in a free India. We must take care to safeguard the rights and liberties of our poor, humble officers; they are the middle classes and they require protection. So, whatever may be the justification for retaining these clauses (a) and (b) in the Government of India Act, in free India there cannot be any such a thing. We should be more open to conviction, we should give more opportunities to show cause we are bound to give them an
opportunity to show cause. If reasonable opportunity is not given, I think there is no sense of security.

Sir, these amendments should be taken into consideration carefully as they will affect these officers who would be entirely at the mercy of their dissatisfied superiors; they require sufficient protection. All the protection is merely nominal, it is merely psychological. You must give an opportunity to show cause. These clauses of the proviso cannot be given effect to and they should be deleted. With regard to proviso (a) it should be seriously modified so as to reduce it to cover offences involving moral turpitude.\textsuperscript{119}

Shri H. V. Kamath\textsuperscript{120} : moved;

\begin{quote}
(a) That in the proposed new Article 282B, in sub-clause (b) of the proviso to clause (2), for the words ‘that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause’ the words on grounds to be recorded in writing, that the whereabouts of that person are unknown be substituted;

That in the proposed new Article 282B, sub-clause (c) of the proviso to clause (2) be deleted;

That in the proposed new Article 282B, clause (3) be deleted.\textsuperscript{121}
\end{quote}

May I humbly add my feeble voice to the protest that has been raised in the House by several honourable Members against the injustice that has been sought to be embodied in this Article? We have proclaimed in the Preamble to the Constitution that Justice shall be the Pole Star or the lode-star of our Constitution. We have given pride of place in the Preamble to our ideal that

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\footnote{\textsuperscript{119} Supra note 107 at p 1107-1108}
\footnote{\textsuperscript{120} Member Constituent Assembly}
\footnote{\textsuperscript{121} Supra note 107 at p 1109}
\end{footnotes}
Justice, social, political and economic, shall be meted out to all. I hope we shall not deny any class of people, public servants or others, the fundamental justice that is their due. I was wondering whether, after all, these Articles 282A, 282B and 282C are at all necessary to be embodied in our Constitution. I was wondering whether we in this House are sitting as mere lawyers framing Fundamental Rules for civil servants or a Civil Service Manual, or whether we as a free people, after the attainment of freedom, are busy drafting a Constitution for a free people—a Constitution illumined by the ideals of liberty, equality, and justice. These Articles are reminiscent or redolent of the Civil Service Manual. There is no need for these Articles in the Constitution. No constitution anywhere in the world includes such rules. Our Drafting Committee has taken the Government of India Act, 1935, as a guide to draft a Constitution for a free country. I am sorry for it. My friend Mr. Naziruddin Ahmad pointed out how iniquitous it is to copy in our Constitution the provisions of the Government of India Act with regard to the Civil Services. This, to say the least, is a blot on our escutcheon and denial of the Justice which we have proclaimed to the world in the Preamble of our Constitution. I would have proclaimed to the world in the Preamble of our Constitution. I would only say that if we adopt this Article as it is, I warn the House that the services will have no heart in their work; they will get demoralised and they will not be efficient. There will always be, hanging over their heads, this sword of Damocles. When will it fall, when will a whimsical or a vindictive Minister let it fall?
Sir, I was saying that the public services, with this sword hanging over their head, will not put their heart into their work. A capricious Minister might any day dismiss or remove a civil servant without serving a notice asking him to show cause. Of course the Article mentions the President or Governor; but it means the Minister or the Council of Ministers. A Minister might take it into his head to inform a public servant, thus: "In the interests of the security of the State, I hereby take action against you. You are removed from service". This is most unfair to anybody, not to say a civil servant.

About sub-clause (b) I think the attention of the House has been drawn by Pandit Thakur Das Bhargava or Mr. Naziruddin Ahmad that the only circumstance in which it will not be possible to serve a notice upon a public servant asking him to show cause is when his whereabouts are unknown. As that is the case, I have moved my alternative amendment (a) to the effect that for the words "that for some reason to be recorded by that authority in writing, it is not reasonably practicable etc., etc." the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted. This is the only circumstance when it would not be possible to serve a notice on a public servant. The two lacunae in this Article are, firstly, that a person, according to (b) and (c) could be summarily removed without any opportunity being given him to show cause. If it is not practicable, I would like the authority to record in writing that the whereabouts are unknown. If otherwise it is obligatory on the State to ask him to show cause, (c) must be deleted. It is grossly unfair to summarily
dismiss any man without giving him an opportunity to explain. Even detenus in jails, during the last war you will remember, Sir, were informed of the grounds of detention and given an opportunity to make their representations in writing. This has been proposed to be denied to Government servants who form an important part of the machinery of the State.

There is another point on which I would say a few words. There is no right of appeal specifically mentioned in the Article. I feel that every public servant before he is removed must be given not only an opportunity to show cause why he should not be removed, but also the right of appeal against any such order before he is finally removed.

Shri H. V. Kamath : I am concluding my speech. If unfortunately this Article is adopted without amendment, I feel that public servants, whether of the Union or of the States, who are so important to an efficient administration will be reduced to the position of virtual slaves or serfs. I for one shudder to think what will happen to our administration if that situation develops. I commend my amendments. Sir.122

Shri B. N. Munavalli123: Moved

That in clause (3) of the proposed new Article 282B, for the word 'If', the words 'if, on the application of the person, so affected,' be substituted.

(2) That, in clause (3) of the proposed new Article 282B, for the words 'any person' the word 'him' be substituted.124

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282 B(2) (b), or his friends may

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122 Supra note 107 at p 1109-1110
123 Member Constituent Assembly Represented from Bombay State
124 Supra note 86 at p 1111
raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this Article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this Article. Some of the honourable Members said that what has been provided in this Article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who
come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore, I am of opinion that this proviso should exist and I suppose the provisions of this Article wholeheartedly.\textsuperscript{125}

Mr. Mahboob Ali Baig\textsuperscript{126}: move.

\textit{That in clause (2) of the proposed new Article 282B, after the words 'aforesaid shall be' the word 'suspended' be inserted.}

\textit{That in sub-clause (a) of the proviso to clause (2) of the proposed new Article 282B, the following be added:--}

\textit{for offences of bribery, corruption or treason, or offences involving moral delinquency.}

\textit{That the following new clause be added at the end of the proposed new Article 282B:--}

\textit{The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority.}\textsuperscript{127}

Under Article 282A, a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this Article 282B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the

\textsuperscript{125} Supra note 107 at p 1111

\textsuperscript{126} Member Constituent Assembly Represented from Madras State

\textsuperscript{127} Supra note 107 at p 1112
question before us when we are discussing this 282B. My first amendment, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal.\(^{128}\)

My next amendment refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as “for offences of bribery, corruption, or treason or offences involving moral delinquency”. The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I

\(^{128}\)ibid
submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.\textsuperscript{129}

I have purposely added the word "treason" for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.\textsuperscript{130}

Now, Sir, with regard to clause (b) it has been argued by my honourable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the procedure which can be easily followed. I do not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary.\textsuperscript{131}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{129} Supra note 107 at p 1112
\item \textsuperscript{130} Ibid
\item \textsuperscript{131} Supra note 107 at p 1112-1113
\end{itemize}
\end{footnotesize}
I consider that sub clause (c) is not only unnecessary but it is retrograde and out to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows: -- "Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied". This it was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words "reasonable opportunity" have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a "reasonable opportunity" whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the "reasonable opportunity" has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be granted to him. I am not only referring to the remedy that he may have
before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated "if any question arises whether it is reasonably practicable to give notice to any person under clause (b)", you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide for that, you might make it clear even now when we are dealing with this matter. Therefore, Sir, my submission is that while the Article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.\textsuperscript{132}

Prof. Shibban Lal Saksena\textsuperscript{133} : Mr. President, Sir, While carefully listening to the debate, I have been wondering whether the removal of this Article from this Constitution would not be better than putting it in this form. In fact

\textsuperscript{132} Supra note 107 at p 1113-1114
\textsuperscript{133} Member Constituent Assembly
there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this Article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this Article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Das Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not
been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope will accept the amendment.¹³⁴ After hearing the submissions and arguments of the members of the Committee, The Honourable Dr. B. R. Ambedkar the Chairman of the Committee replied as follows: -

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate: these matters are grounds for dismissal and grounds for not giving notice. This Article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of Article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this Article 282-B to deal with that matter.

This Article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice

¹³⁴ Supra note 107 at 1114
shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the Article says. It has been, in my judgement, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this Article is a disgrace or a shame or a blot on the Constitution.

I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got commonsense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate.

It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain
act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing section 240 of the Government of India Act was to give protection to the services. Even the British people, who were very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore, it is provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the President to abrogate the provisions contained in sub-clause (2), I am inclined to think that in the better interests of the State, it ought to be retained.
Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position? The position would be that any person, who has not been given notice under sub-clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction': is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to
the Public Service Commission and to file an appeal that he has been
wrongfully dismissed contrary to the provisions contained in the rules made
relating to his service. I, therefore, think that the apprehensions which have
been expressed by honourable Members with regard to the provisions
contained in this Article are entirely mis-founded and are due to
misunderstanding of the provisions of this Act, the provisions of Article 282
and the provisions relating to Public Service Commission.135

The Honourable Dr. B.R. Ambedkar, the Chairman of the Drafting
Committee negatived the Amendments sought by the members of the
Drafting Committee and finally motion was adopted and Article 282-B was
added to the Constitution.

**VII-E—DISCUSSION ON ARTICLE 282-C**

Shri Brajeshwar Prasad137: moved;

> That in clause (1) of the proposed Article 282C the words ‘if the Council
> of States has declared by resolution supported by not less than two-
> thirds of the members present and voting that it is necessary or
> expedient in the national interest so to do’ be deleted and after the
> words ‘other provisions of this Chapter’ the words ‘the Union Public
> Service Commission shall’ be inserted.138

The whole aim of Article 282C is to protect the Federal foundations of this
Constitution. Therefore, this power has been given to the Upper Chamber.
They have the right to take the initiative in the matter and the Lower House
has no power in this respect. Secondly, not only they have this power of

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135 Supra note 107 at p 1114-1116
136 Constituent Assembly Debates, Volume IX Reprinted by Lok Sabha Secretariat, New Delhi 2003 p 1118
137 Member Constituent Assembly
138 Supra note 136 at p 1118
moving this resolution but something like a veto power has been given to 
them. A resolution must be passed by two-third members of the House. I do 
not see any reason why the Federal foundations of this Constitution should 
be protected. Our constitution is not merely federal in character but it is also 
unitary in character. There is no reason why the unitary foundations of this 
Constitution should not be protected. Federal Government tends towards 
unitary type of Government. It would be wrong on our part to put the hands 
of the clock back. I am in favour that all services in the country should be 
centralised and I am convinced that there are no classes of persons in this 
country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this 
country who want to protect the federal sentiments? I come to the industrial 
workers in this land. Sir, Karl Marx had the vision to see that the industrial 
workers fare international minded. Circumstanced as they are today in this 
world there is no course left open to them but to become champions of 
internationalism. Therefore, these industrial workers are not at all in any 
way champions of local rights

The whole aim of this Article is to protect the Federal Constitution or else 
there is no meaning in giving this power. I want to deal with the theoretical 
foundations of this Constitution. If you want me to speak only on the 
provisions and not to deal with the philosophical background I am quite 
prepared to do so.

Sir, there is no danger if this power is vested in the hands of Parliament 
instead of vesting this power in the Upper Chamber because thereby you
give the power to the Central Ministry, and no Ministry in its senses would resort to a process of centralization of services unless a need has been felt for it and unless it has developed the technical resources for that purpose. The other part of the amendment says that the power to regulate recruitment and conditions of service should be placed in the hands of Parliament. I have suggested that this power should be vested in the Union Public Service Commission.\textsuperscript{139}

Shri V. I. Muniswamy Pillay\textsuperscript{140}: moved that;

\begin{quote}
That in clause (1) of the proposed new Article 282C, after the words ‘Union and the States’ the words ‘giving equal opportunities to all unrepresented communities’ be inserted.\textsuperscript{141}
\end{quote}

This clause envisages giving power to Parliament to make laws for the creation of more all-India services coming under the Union and the States, regulate recruitment and so on, I feel it my duty to bring to the notice of the House the paucity of members of the backward communities in the services, both at the Centre and in the Provinces. Sir, due to the influences that have been exercised by some privileged communities, it was not possible for these backward communities to get their adequate share in the services. Since this clause wants to make laws for the rules and regulation of recruitment, I feel that accurate statistics must be obtained before any law is made, so as to find out the number of persons serving, belonging to the various communities in the provinces and in the Union, and to make such laws so

\textsuperscript{139} Supra note 136 at p 1118-1119
\textsuperscript{140} Member Constituent Assembly Madras General
\textsuperscript{141} Supra note 136 p 1119
that those people who are being left out from the services may get equal opportunities with the rest, in all the services.\textsuperscript{142}

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words:

If the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do\textsuperscript{143}.

I had intended to move a similar amendment, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative in any important matter been left to any other House except the House of the People in the Central Parliament. For the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think these words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an

\textsuperscript{142} Ibid
\textsuperscript{143} Supra note 136 at p 1120
important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.\textsuperscript{144}

The Honourable Dr. B. R. Ambedkar, the Chairman of the Committee replied that;

I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of Article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by Article 282 provided complete jurisdiction. Article 282C to some extent takes away the autonomy given to the States by Article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, Article 282 is to secure the consent of two-thirds of the Members of the Upper Chamber. The Upper Chamber is the only body mentioned in Article 282. Ex-hypothesis the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in Article 282C.

The Honourable Dr. B.R. Ambedkar, the Chairman of the Drafting Committee negatived the Amendments sought by the members of the

\textsuperscript{144} ibid
Drafting Committee and finally motion was adopted and Article 282-C was added to the Constitution.

The necessity of providing protection to the Civil Servants, from arbitrary acts of the executive heads or the political heads, always was felt throughout the period of history. For the purpose of discharge of lawful duties without any fear or favour certain protections are necessary. These protections though, important, were not at all available to the civil servants in India prior to the advent of East India Company, during the Hindu and Islamic period.

During the period of East India Company, the employees were held their office at the pleasure of the employer. Absolute power was vested in the Court of Directors of the East India Company, the King, his heirs and successors to dismiss remove or recall any of its officers or servants at their will and pleasure. The civil servants had no remedy against arbitrary dismissal or removal. The Government of India Act, 1858, however, did not bring about any material changes in the position of the civil servants. After the assumption of the control by the Crown over Indian possession, the Secretary of State in Council was given power to do what formerly was done by the Court of Directors. The Government of India adopted a resolution in 1897 providing certain procedural safeguards before an official could be dismissed or removed from the service. However, the resolution remained not enforced.

In the beginning of 20th century it was thought expedient that some restriction on the ‘doctrine of pleasure’ should be put in with the object of
providing sense of security in the minds of European civil servants, serving under the Crown in India. Therefore the Government of India Act 1919 was passed, and for the first time, gave statutory recognition to the safeguards under Section 96-B of the Act. The Courts enforced the statutory safeguards guaranteed to the civil servants in various cases under the Government of India Act, 1919. The Act also confers power upon the Government to make rules regulating the conditions of service.

The Government of India Act, 1935 is an important piece of legislation provided protections to the civil servants. Section 240 of the Act, retain the ‘doctrine of pleasure’ and at the same time placed restriction upon the doctrine of pleasure. The important safeguards provided under the Government of India Act are;- (i) a civil servant could not be dismissed by an authority subordinate to that by which he was appointed; (ii) no civil servant could be dismissed or reduced in rank until he had been given a reasonable opportunity to show cause against the action proposed to be taken against him subject to exceptions.

The task of laying down the preliminary principles relating to the Constitution was entrusted to B.N.Rau, the Constitutional Advisor. The draft submitted by the Constitutional Advisor contained nothing about the protections of the tenure of services.

The Drafting Committee framed a new draft after considering the B.N.Rau’s draft. For the first time regulations for the safeguards to the civil servants were, laid down in the draft. The important safeguard was, for providing reasonable opportunity to the civil servants before infliction of major penalty.
Sardar Vallabhbhai Patel, The Deputy Prime Minister, highlighted the importance of the civil services and he stressed upon the importance of including the basic protections to the civil servants in the Constitution of India. He strongly advocated the importance of the civil service and protections to the civil servants for better administration and his efforts bore fruit. Finally the Draft was placed for discussion in the Constituent Assembly by Dr B.R.Ambedkar.

The members of the Constituent Assembly suggested many important amendments. However, all the amendments suggested were negative by the Constituent Assembly. The Constituent Assembly passed the draft placed before it by Dr B.R.Ambedkar. Finally at the revision stage the Articles on the services were renumbered as Articles 308 to 314. Article 311(1) and (2) of the Constitution contains the safeguards against dismissal, removal and reduction in rank.

Therefore, The civil service and protections to civil servants are traced from Mouryan period (CA 323- 185 BC), Gupta Period (CICRA 322 – 542 CE), Mogal Period 1526 – 1757), during East India Company and British period in 1858 in all subsequently the discussions were laid down in Indian Constituent assembly debates and was carried in the Constitution of India under Part XIV.