CHAPTER - 6

PROTECTION OF CIVIL SERVANTS OF UNITED KINGDOM, UNITED STATES OF AMERICA AND INDIA - A COMPARATIVE STUDY
CHAPTER VI

PROTECTION OF CIVIL SERVANTS OF UNITED KINGDOM, UNITED STATES OF AMERICA AND INDIA- A COMPARATIVE STUDY

The researcher has discussed the protection of civil servants of India at length in preceding chapters, hence the protections provided to the civil servants UK and USA has been examined in this chapter and compared along with India. Civil Services basically are nationalistic. An increasing the scope of the activities of the State throughout entire world has, one of its consequences, that the different Civil Services systems meet each other on more occasions than in the olden days. As the world becomes small unit, the demand increases to know the different Civil Services System and protections provided to the civil servants and to adopt the same if it suits the conditions for adoption.

6.1 THE CIVIL SERVICE OF UNITED KINGDOM:

It needs hardly be mentioned that the work of the Government would never be done if there were only ministers to do it. These peoples cannot carry the routine tasks of collecting taxes, auditing accounts, arresting the criminals, inspecting factories and carrying mails. These tasks are carried by a number of officials and employees who are not whit less necessary to the realization of the purpose for which the Government exists and who together form the permanent executive. It is with this branch of executive that the common man mostly comes into contact with and it is through this branch
that the National Government establishes its contacts with the rank and file of citizens\textsuperscript{366}.

The civil service has assumed great prominence in British Administration. The ministers are an amateur, being a political and non-permanent person who comes to head the department without any expert knowledge of its working. The civil servant is an expert professional, non-political and permanent person who has spent several years in the department and gained rich experience of its working. Naturally under such conditions the ministers has to rely on his Secretaries for information about matters of which he knows little or nothing.

\textbf{(a) ORGANIZATION:} The British civil service has been classified into five categories in accordance with their status and dignity of office.

\textbf{THE FIRST CLASS: ADMINISTRATIVE CLASS:} It is the “pivotal and directing class of whole civil service this class includes high civil service officers\textsuperscript{367}. Though the Administrative class comprises only half per cent of the civil service its duties enable it to extract considerable influence on the affairs of the Government in United Kingdom.

The administrative class has four\textsuperscript{368} main functions:

\begin{quote}
\textit{(a) Administrative class assists in the formation of policies. While the political head, the minister, is ultimately responsible to the cabinet and parliament for his department, he must depend considerably on the accumulated experience and wisdom of his senior civil servants.}
\end{quote}

\textsuperscript{366} Vishnook Bhagwan Vidya Bhushan – World Constitutions. P77.

\textsuperscript{367} (a) Permanent Secretary (b) Deputy Secretary (c) Under Secretary (d) Assistant Secretary (e) Principal and (f) Assistant Principal

\textsuperscript{368} J.Harvey & L.Bather – The British Constitution, - P.20
(b) Members of administrative class prepare answers to parliamentary questions, anticipating supplementary and briefing the ministers accordingly.

(c) The higher civil servants are responsible for preparing and watching over bills during their passage through parliament. In the preliminaries to the bill, discussions take place with officials of the departments affected, the scope of the bill is defined for the consideration of the minister and cabinet; Treasury approval is sought for the cost entailed, outside interests are consulted.

(d) Finally, the administrative class is in-charge of the administrative machine, giving necessary directions which put the Government decisions into effect. In the case of new Acts of the parliament, rules, orders and regulations must be drawn up to fill in the details of the measures and laid before the house as statutory instruments. In addition administrative machinery must be created, no small undertaking when it covers such developments as providing social services, operating trading organizations or supervising the activities of the local authorities.

The members of the administrative class are recruited through a civil service competitive examination between age group of 20½ and 24. New recruits serve two years probationary period and are promoted on the basis of merits and performance.
THE SECOND CLASS: EXECUTIVE CLASS: The second category of British civil service is the class of executive officers\(^{369}\). They do the work of the supply and accounting departments and of other executive or specialized branch of service. These officers carry preliminary investigations of the problems before the department, collect data, arrange and classify it and make observation thereto.

THE THIRD CLASS: THE CLERICAL CLASS: The third category of British Civil Service is that of the clerical class officers\(^{370}\). The class undertakes all the usual clerical work of a department, e.g., scrutinizing accounts, preparing statistics and material or returns, keeping records, handling claims in accordance with known rules, and summarizing and noting documents for senior officers.

THE FOURTH CLASS: CLERICAL ASSISTANT CLASS: This class is recruited from among the women\(^{371}\) and engaged in copying, filing, and addressing, counting and other simple mechanical work.

THE FIFTH CLASS: THE TYPIST AND SHORTHAND TYPIST CLASS: This class consists of the typists and shorthand typists. This class is exclusively recruited from among the women and girls.

In addition to these five classes, there are number of technical and scientist personnel's\(^{372}\). They are selected not through any written examination but through the method of competitive interviews.

\(^{369}\) These officers are recruited through competitive examination between the age group of 17½ and 19 from among the men & women who have completed secondary education.

\(^{370}\) These officers are recruited at the age of 16 to 17½ through the competitive examination of the standard of the intermediate stage of secondary course.

\(^{371}\) Assistant classes are recruited through an examination held twice a year.
(b) **RECRUITMENT**: The open competitive examination was instituted to eliminate patronage and secure recruits of high ability. It is difficult to find better system, and there is a little criticism of its use for the executive and clerical classes. But an examination can hardly be assessing all the qualities which are essential for future top administration. Success in an examination demands ability, learning, persistence, power of discerning what is relevant and important, composure and cultural background, all of which are vital to the work the examinee will be called upon to perform. But personal qualities, such as pleasant and confident manner, patience and an oven temper, quickness of thought and fluency in speech are equally desirable. Hence the written examination has been supplemented by other forms of assessment.

(i) **Method – I**: Consist of written examination at Honours degree standard followed by an interview before a selection board under the chairmanship of a civil service commissioner\(^{373}\).

(ii) **Method – II**: By which 25% of direct candidates enter, was divised to meet these objections, being based on the experience of the war office selection board for officers. Candidates, who must have a first or second class honours degree, are first given brief written examination and then spend two or three days on a series of group tests and interviews conducted by civil service selection board in London\(^{374}\).

---

372 Including Doctors, Architects, Engineers and Scientist research staff.
373 Method I may give some indication of non-academic qualities, a short interview has obvious limitation.
374 Method II enables the civil service selection Board to obtain a greater insight into candidate's potentialities.
(c) Training:

The method of recruiting civil servants on the basis of a liberal education pre-supposes that the new entrant will be given a systematic training. In fact, earlier, the tradition of the service at all levels has been a somewhat excessive reliance on the haphazard method of ‘learning by experience’. Little encouragement was given to the recruit, either by his seniors or in the form of incentives, to continue his studies and take such examinations as a degree in economics or Government or Diploma in Public Administration\(^{375}\).

An adequate training arrangement is vital to efficiency of administration and in 1934 committee\(^{376}\) was set up. Its report criticized the lack of system, and recommended a three months course for new entrants on general aspects of administration, periodic refresher course and leave of up to 12 months for members of the administrative class upon reaching 30 years of age to enable them to carry out approved research. Many of the committee’s ideas were put into practice, although some of the earlier enthusiasm was host during the Government’s refreshment policy of 1950.

Training courses are still too short, while for administrative class, greater use could be made of university post-graduate training.

(d) Promotion: The system of advancement influences efficiency not only by its effect on morale but because it reduces the likelihood of Square pegs being forced into round holes. In practice, however, the public service encounters difficulties in determining the basis of

\(^{375}\) Much of his training, he had to rely on general information contained in a booklets, notices and memoranda circulated by the departments. Most were formal, dull and difficult reading, unsuit to young entrants.

\(^{376}\) Training of civil servants’ under the chairman ship of Sir Rulph Assheton, Financial Secretary to the treasury.
promotion, assessing an official’s suitability for advancement, and in arranging a steady rate of promotion.

Promotion may be based either on seniority or on merit. Especially where it is difficult to assess merit objectively, there is a support for giving weight to seniority. An official repeatedly over-looked might develop a sense of grievance and loosing hope of advancement, settle down for the rest of his carrier in a comfortable nich. On the other hand, seniority as a criterion assumes that all are fit for promotion, that all can be absorbed into the available opportunities and that the intake of the service has been regular. None of these requirements does in fact holds good and so efficiency demands that most should play the dominant part.

But this necessitates an accurate means of assessing an official’s qualities. While examinations are the most objective method, they cannot test adequately personality, powers of leadership, discernment, and breadth of view. Hence, only where specialized knowledge is paramount are they really satisfactory. On the other hand, the regular reports made on each official are subjective and may lock uniformity. In practice, therefore, the final decision on promotions rests with the head of the departments, who is advised by the departmental promotion board\textsuperscript{377}.

\textsuperscript{377} The departmental promotion board consisting of the principal establishment officer and other senior officials.
6.2 PROTECTIONS TO CIVIL SERVANTS OF UNITED KINGDOM:

A. RIGHT OF EQUAL OPPORTUNITY

Equality legislation in the United Kingdom formerly governed by separate Acts and Regulations. Now a comprehensive legislation has been enacted to deal with equal opportunity in public employment is called as the Equality Act 2010\textsuperscript{378}. Particularly since the United Kingdom joined the social chapter of the European Union; it mirrors a series of EU Directives. The three main Directives are the Equal Treatment Directive, the racial equality Directive and the directive establishing a general framework for equal treatment in employment and occupation.

The civil service equal opportunity policy provides that all eligible peoples must have equality of opportunity for employment and advancement on the basis of their suitability for the work. There must be no unfair discrimination on the basis of age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin.

The departments and agencies must comply with equal opportunities legislation and with the Code of Practice issued under the legislation. The departments and agencies must also have regard to the provisions of Civil Service programs for action to achieve equality of opportunity for peoples of ethnic minority origin, for women and for disabled people.

With the object of providing equal opportunity in public employment, etc.,
Equality Act 2010 was enacted. The Act provides to make provision to
require Ministers of the Crown and others when making strategic decisions
about the exercise of their functions to have regard to the desirability of
reducing socio-economic inequalities; to reform and harmonize equality law
and restate the greater part of the enactments relating to discrimination and
harassment related to certain personal characteristics; to enable certain
employers to be required to publish information about the differences in pay
between male and female employees; to prohibit victimization in certain
circumstances; to require the exercise of certain functions to be with regard
to the need to eliminate discrimination and other prohibited conduct; to
enable duties to be imposed in relation to the exercise of public procurement
functions; to increase equality of opportunity; to amend the law relating to
rights and responsibilities in family relationships; and for connected
purposes.

The Equality Act, 2010\textsuperscript{379} which outlaws discrimination in access to
education, public services, private goods and services or premises in
addition to employment. However it is not illegal if they come under
protected characteristics. Therefore the protected characteristics are like an
exception to equality of treatment under Equality Act 2010.

\textsuperscript{379} Supra Note 378
B. PROTECTED CHARACTERISTICS:

Equality Act, 2010 though prohibits discrimination in public employment on the ground of age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin, but with the object of protecting and promoting the interest of the so called protected characteristics, any benefits are given are not amounts violation of Equality Act.

The Equality Act covers the same groups that were protected by existing equality legislation such as age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called `protected characteristics`. The Act extends some protections to characteristics that were not previously covered, and also strengthens particular aspects of equality law.

(i) **Age:** The Equality Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if you can justify it. Age is the only protected characteristic that allows employers to justify direct discrimination.

(ii) **Disability:** The Equality Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, a person is disabled if they have a physical or mental impairment which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities,
which would include things like using a telephone, reading a book or using public transport.

As before, the Act puts a duty on the employer to make reasonable adjustments for staff to help them overcome disadvantage resulting from impairment.

The Equality Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability. This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate aim.

(iii) **Gender reassignment:** The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender. The Act no longer requires a person to be under medical supervision to be protected – so a woman who decides to live as a man but does not under go any medical procedures would be covered.

It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are
undergoing or have undergone gender reassignment than they
would be treated if they were absent because they were ill or
injured.

This is being taken into account as part of the review of Sickness
Absence, and will be integrated within the updated policy.

(iv) **Marriage and civil partnership:** The Act protects employees who are
married or in a civil partnership against discrimination. Single
people are not protected.

(v) **Pregnancy and maternity:** A woman is protected against
discrimination on the grounds of pregnancy and maternity during
the period of her pregnancy and any statutory maternity leave to
which she is entitled. During this period, pregnancy and maternity
discrimination cannot be treated as sex discrimination. You must
not take into account an employee’s period of absence due to
pregnancy-related illness when making a decision about her
employment.

Breastfeeding is now explicitly protected, and needs to be brought
to the attention of the providers of e.g. our catering services, or any
on-campus retail outlets.

(vi) **Race:** For the purposes of the Act ‘race’ includes colour, nationality
and ethnic or national origins.
(vii) **Religion or belief:** In the Equality Act, religion includes any religion. It also includes no religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief or no belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

This characteristic includes having a religion or belief and not having one. It does not include political beliefs, scientific beliefs, or supporting football teams. However, there has been a tribunal case where a belief in man-made climate change met the threshold of the belief being `cogent, serious and worthy of respect in a democratic society.’ We have to be mindful of this threshold when determining if a person’s belief falls under the protection of the Equality Act. It is important to note that minority religions are treated with the same consideration and respect as more prominent religions.

(viii) **Sex:** Both men and women are protected under the Act.
(ix) **Sexual orientation:** The Act protects bisexual, gay, heterosexual and lesbian people.

Direct discrimination occurs when an employer treats someone less favourably on the ground of a protected characteristic. Direct discrimination is unlawful under section 13 of the Equality Act 2010. A protected characteristic must be the reason for the different treatment, so that it is because of that characteristic that the less favourable treatment occurs. Generally, the law protects everyone, not just a group perceived to suffer discrimination. Therefore it is unlawful to treat a man less favourably than a woman or a woman less favourably than a man, on the ground of the person's sex.

---

380 Section 4 to 12: age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation

381 Section 13: Direct discrimination: (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

(4) If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.

(5) If the protected characteristic is race, less favourable treatment includes segregating B from others.

(6) If the protected characteristic is sex—(a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding; (b) In a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

(7) Subsection (6)(a) does not apply for the purposes of Part 5 (work).

(8) This section is subject to sections 17(6) and 18(7).
"Indirect" discrimination is unlawful under Section 19\textsuperscript{382} of the Equality Act 2010. It involves the application of a provision, criterion or practice to everyone, which has a disproportionate effect on some people and is not objectively justified. For instance, a requirement that applicants for a job be over a certain height would have a greater impact on women than on men, as the average height of women is lower than that of men. It is a defence for the employer to show that the requirement is “a proportionate means of achieving a legitimate aim”.

However there are certain exceptions are provided to the protected characteristics (age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex and sexual orientation) under the Equality Act, 2010.

**C. POSITIVE ACTION:** Positive discrimination (affirmative action as it is known in the US and reservation in India) to fill up diversity quotas, or for any other purpose, is prohibited throughout Europe, because it violates the principle of equal treatment just as much as negative discrimination. There is, however, a large exception. Suppose an employer is hiring new staff, and they have two applications where the applicants are equally qualified for the

\textsuperscript{382}Section 19: Indirect discrimination: (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if— (a) A applies, or would apply, it to persons with whom B does not share the characteristic, (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, (c) It puts, or would put, B at that disadvantage, and (d) A cannot show it to be a proportionate means of achieving a legitimate aim.
(3) The relevant protected characteristics are—age; disability; gender reassignment; marriage and civil partnership; race; religion or belief; sex; sexual orientation.
job. If the work force does not reflect society's makeup (e.g. that women, or ethnic minorities are under-represented) then the employer may prefer the candidate which would correct that imbalance. But they may only do so where both candidates are of equal merit and further conditions must be met. This type of measure is also known as positive action as provided under Sections 158\textsuperscript{383} and 159\textsuperscript{384} Equality Act 2010 set out the circumstances in

\textsuperscript{383} \textbf{Section 158 Positive actions: general-} (1)This section applies if a person (P) reasonably thinks that—(a)persons who share a protected characteristic suffer a disadvantage connected to the characteristic
(b) Persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or (c) Participation in an activity by persons who share a protected characteristic is disproportionately low.
(2)This Act does not prohibit P from taking any action which is a proportionate means of achieving the aim of—
(a)enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage, (b) meeting those needs, or (c) Enabling or encouraging persons who share the protected characteristic to participate in that activity.
(3)Regulations may specify action, or descriptions of action, to which subsection (2) does not apply.
(4)This section does not apply to— (a) action within section 159(3), or (b) anything that is permitted by virtue of section 104.
(5)If section 104(7) is repealed by virtue of section 105, this section will not apply to anything that would have been so permitted but for the repeal.
(6)This section does not enable P to do anything that is prohibited by or under an enactment other than this Act.

\textsuperscript{384} 159 Positive actions: recruitment and promotion- (1)This section applies if a person (P) reasonably thinks that—
(a) Persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or (b) Participation in an activity by persons who share a protected characteristic is disproportionately low.
(2)Part 5 (work) does not prohibit P from taking action within subsection (3) with the aim of enabling or encouraging persons who share the protected characteristic to— (a) Overcome or minimise that disadvantage, or (b) Participate in that activity.
(3)That action is treating a person (A) more favourably in connection with recruitment or promotion than another person (B) because A has the protected characteristic but B does not.
(4)But subsection (2) applies only if— (a)A is as qualified as B to be recruited or promoted, (b)P does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not share it, and (c) Taking the action in question is a proportionate means of achieving the aim referred to in subsection (2).
(5) "Recruitment" means a process for deciding whether to— (a) Offer employment to a person, (b) Make contract work available to a contract worker, (c) Offer a person a position as a partner in a firm or proposed firm,(d) Offer a person a position as a member of an LLP or proposed LLP, (e) Offer a person a pupillage or tenancy in barristers' chambers, (f) Take a person as an advocate's devil or offer a person membership of an advocate's stable, (g) Offer a person an appointment to a personal office, (h) Offer a person an appointment to a public
which positive action is allowed. Section 158 deals with the circumstances in which positive action is permitted other than in connection with recruitment and promotion, for example in provision of training opportunities. Section 159 of the Equality Act, deals with positive action in connection with recruitment and promotion of servants.

The European Court of Justice in *Abrahamsson and Andreson V. Fogelqvist*385 held that, in the instant case Mr. Anderson was better qualified than the three female competitors for the post of professor of Hydrospheric Science at the University of Goteborg. But the job was offered to one of the female candidate and when she was not willing, given to another woman Ms. Fogelqvist was appointed. Mr. Abrahamsson had complained the appointment. The University policy was to hire sufficiently qualified people in underrepresented group, even if a less qualified woman.

The European Court of Justice held that this form of positive discrimination was unlawful because it overrode considerations of the applicant’s individual merits. A rule which required an unrepresented group to be promoted over other was justified if two candidates were equally qualified and the assessment was based on objective assessment of their personnel situations.

---

385(2000) ECR I-05539
In *Ladele V. London Borough of Islington*\(^{386}\) Ms Lillian Ladele worked as Islington’s registrar for marriages. She objected to the civil partnership and she said this was to do with her religious feelings or the beliefs. But the Islington had designated all their staff to registering civil partnership as well as marriages.

Islington disciplined and threatened to dismiss from service. Ms ladele claimed that this treat was unlawful as it was not consider for the post of Superintendent Registrar and accommodate her religious beliefs by treating her differently.

The Tribunal held that she had been directly and indirectly discriminated as well as harassed. The Employment Appeal Tribunal reversed the decision of the Tribunal. On appeal Lord Neuberger MR held there was no direct discrimination or harassment. The Tribunal erred because it could not be a discrimination to treat all employees in the same way, the appropriate comparator was a hypothetical someone who disliked gay without it being due to a religious belief and it is clear that Ms. Ladele had not been harassed.

**6.2.1 - ENFORCEMENT OF RIGHT TO EQUALITY:** The breach of equality clause or a rule can be enforced through the Employment Tribunal Constituted under Employment Act 2010. Section 127 of the Act provide for the jurisdiction of the Tribunal to determine the complaints relating to the breach of equality clause, Section 128 deals with the reference by courts to

\(^{386}(2009)\) EWCA Civ 1357
tribunal and Section 129 deals with the time limits of complaints relating to breach of equality clause. Section 127, 128 and 129 of the Act reads as follows;

"Section 127: **Jurisdiction** (1) an employment tribunal has, subject to subsection (6), jurisdiction to determine a complaint relating to a breach of an equality clause or rule.

(2) The jurisdiction conferred by subsection (1) includes jurisdiction to determine a complaint arising out of a breach of an equality clause or rule; and a reference in this Chapter to a complaint relating to such a breach is to be read accordingly.

(3) An employment tribunal also has jurisdiction to determine an application by a responsible person for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of an equality clause or rule.

(4) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of an equality rule.

(5) An employment tribunal also has jurisdiction to determine a question that—

(a) Relates to an equality clause or rule, and

(b) Is referred to the tribunal by virtue of section 128(2).
(6) This section does not apply to a complaint relating to an act done when the complainant was serving as a member of the armed forces unless—

(a) The complainant has made a service complaint about the matter, and
(b) The complaint has not been withdrawn.

(7) Subsections (2) to (5) of section 121 apply for the purposes of subsection (6) of this section as they apply for the purposes of subsection (1) of that section.

(8) In proceedings before an employment tribunal on a complaint relating to a breach of an equality rule, the employer—

(a) Is to be treated as a party, and
(b) Is accordingly entitled to appear and be heard.

(9) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to an equality clause or rule.

Section 128: References by court to tribunal, etc.

(1) If it appears to a court in which proceedings are pending that a claim or Counter-claim relating to an equality clause or rule could more conveniently be determined by an employment tribunal, the court may strike out the claim or counter-claim.
(2) If in proceedings before a court a question arises about an equality clause or rule, the court may (whether or not on an application by a party to the proceedings)—

(a) Refer the question, or direct that it be referred by a party to the proceedings, to an employment tribunal for determination, and

(b) Stay or the proceedings in the meantime.

Section: 129 Time limits (1) this section applies to—(a) A complaint relating to a breach of an equality clause or rule;(b) An application for a declaration referred to in section 127(3) or (4).

(2) Proceedings on the complaint or application may not be brought in an employment tribunal after the end of the qualifying period.

(3) If the complaint or application relates to terms of work other than terms of service in the armed forces, the qualifying period is, in a case mentioned in the first column of the table, the period mentioned in the second column.

Case qualifying period A standard case the period of 6 months beginning with the last day of the employment or appointment.

6.2.2- ENFORCEMENT OF EMPLOYMENT OR WORK:

The enforcement of the provisions of employment and contravention of the Part 5387 (Employment) of the Employment Act 2010 through the

387Section 39 Employees and applicants: (1) An employer (A) must not discriminate against a person (B)— (a) in the arrangements A makes for deciding to whom to offer employment; (b) as to the terms on which A offers B employment; (c) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A’s (B)— (a) as to B’s terms of employment; (b) in the way A affords B access, or by not affording B access, to
Employment Tribunals constituted under chapter 3 of part 9 of the Employment Act. Section 120 of the Act deals with the Jurisdiction of the Employment Tribunal, Section 123 of the Act deals with Time limit and Section 124 of the Act provides the remedies. Section 120, 123 and 124 of the Equality Act reads as follows:-

**JURISDICTION:** Section 120 of the Act;(1) An employment tribunal has, subject to section 121, jurisdiction to determine a complaint relating to—(a) a contravention of Part 5 (work); (b) a contravention of section 108, 111 or 112 that relates to Part 5.

opportunities for promotion, transfer or training or for receiving any other benefit, facility or service; (c) by dismissing B; (d) by subjecting B to any other detriment.
(3) An employer (A) must not victimize a person (B)— (a) in the arrangements A makes for deciding to whom to offer employment; (b) as to the terms on which A offers B employment; (c) by not offering B employment.
(4) An employer (A) must not victimize an employee of A’s (B)— (a) as to B’s terms of employment; (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service; (c) by dismissing B; (d) by subjecting B to any other detriment.
(5) A duty to make reasonable adjustments applies to an employer.
(6) Subsection (1)(b), so far as relating to sex or pregnancy and maternity, does not apply to a term that relates to pay— (a) unless, were B to accept the offer, an equality clause or rule would have effect in relation to the term, or (b) if paragraph (a) does not apply, except in so far as making an offer on terms including that term amounts to a contravention of subsection (1)(b) by virtue of section 13, 14 or 18.
(7) In subsections (2)(c) and (4)(c), the reference to dismissing B includes a reference to the termination of B’s employment— (a) by the expiry of a period (including a period expiring by reference to an event or circumstance); (b) by an act of B’s (including giving notice) in circumstances such that B is entitled, because of A’s conduct, to terminate the employment without notice.
(8) Subsection (7)(a) does not apply if, immediately after the termination, the employment is renewed on the same terms.

**Section 40 Employees and applicants: harassment:** (1) An employer (A) must not, in relation to employment by A, harass a person (B)—(a) who is an employee of A’s; (b) who has applied to A for employment.
(2) The circumstances in which A is to be treated as harassing B under subsection (1) include those where— (a) third party harasses B in the course of B’s employment, and (b) A failed to take such steps as would have been reasonably practicable to prevent the third party from doing so.
(3) Subsection (2) does not apply unless A knows that B has been harassed in the course of B’s employment on at least two other occasions by a third party; and it does not matter whether the third party is the same or a different person on each occasion.
(4) A third party is a person other than— (a) A, or (b) an employee of A’s.
(2) An employment tribunal has jurisdiction to determine an application by a responsible person (as defined by section 61) for a declaration as to the rights of that person and a worker in relation to a dispute about the effect of a non-discrimination rule.

(3) An employment tribunal also has jurisdiction to determine an application by the trustees or managers of an occupational pension scheme for a declaration as to their rights and those of a member in relation to a dispute about the effect of a non-discrimination rule.

(4) An employment tribunal also has jurisdiction to determine a question that— (a) relates to a non-discrimination rule, and (b) is referred to the tribunal by virtue of section 122.

(5) In proceedings before an employment tribunal on a complaint relating to a breach of a non-discrimination rule, the employer— (a) is to be treated as a party, and (b) is accordingly entitled to appear and be heard.

(6) Nothing in this section affects such jurisdiction as the High Court, a county court, the Court of Session or the sheriff has in relation to a non-discrimination rule.

(7) Subsection (1)(a) does not apply to a contravention of section 53 in so far as the act complained of May, by virtue of an enactment, be subject to an appeal or proceedings in the nature of an appeal.

(8) In subsection (1), the references to Part 5 do not include a reference to section 60(1).
**TIME LIMIT:** Section 123 of the Act: (1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) The period of 3 months starting with the date of the act to which the complaint relates, or (b) Such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—(a) the period of 6 months starting with the date of the act to which the proceedings relate, or (b) such other period as the employment tribunal thinks just and equitable.

**REMEDIES:** Section 124 of the Employment Act: (1) this section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).

(2) The tribunal may—

(a) Make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;

(b) Order the respondent to pay compensation to the complainant;

(c) Make an appropriate recommendation.

(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect of any matter to which the proceedings relate—(a) On the complainant; (b) On any other person.
(4) Subsection (5) applies if the tribunal—

(a) Finds that a contravention is established by virtue of section 19, but

(b) Is satisfied that the provision, criterion or practice was not applied with the intention of discriminating against the complainant.

(5) It must not make an order under subsection (2)(b) unless it first considers whether to act under subsection (2)(a) or (c).

(6) The amount of compensation which may be awarded under subsection (2) (b) corresponds to the amount which could be awarded by a county court or the sheriff under section 119.

(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation in so far as it relates to the complainant, the tribunal may—(a) If an order was made under subsection (2)(b), increase the amount of compensation to be paid; (b) if no such order was made, make one.

6.2.3 - PROTECTION IN RELATION TO DISMISSAL OF CIVIL SERVANTS

The civil servants are conferred with certain procedural protections under Employment Rights Act 1996.388 Under the ERA the employer can terminate the services of the employee job lawfully if the employer follows a fair

388 www.legislation.gov.uk/ukpga/1996/18/section/201/-
procedure, acts reasonably and has a fair reason. Fair reasons for dismissal are:

(i) A reason related to the employee’s conduct
(ii) A reason related to the employee’s capability or qualifications for the job.
(iii) Because the employee’s job was redundant
(iv) Because a statutory duty or restriction prohibited the employment being continued
(v) Some other substantial reason of a kind which justifies the dismissal.

(A) PROCEDURE:

Through the Employment Act 2002 the government had introduced a mandatory statutory dismissal procedure, which had been designed to be followed in any case. If employers did not follow the procedure before dismissing their employees, the dismissal would be deemed automatically unfair. The Employment Act, 2002 (Dispute Resolution) Regulations, 2004 brought into effect, from 1 October 2004, the provisions in the Employment Act, 2002 which sets out minimum statutory dismissal and disciplinary procedures. These apply where the employer, including the Government, first contemplates dismissing or taking such action against an employee on or after that date. The procedure as laid down in Schedule 2 of the Act\textsuperscript{389} involves three stages and is detailed below.

1 Employer must set out in writing the employee’s alleged conduct or characteristics or the other circumstances which led them to contemplate dismissing or taking action against the employee. The

\textsuperscript{389}Employment Act 2002
employer must send a copy of the above statement to the employee and invite him or her to attend a meeting to discuss the matter.

2 The meeting must take place before the action is taken and must not take place unless:

(a) The employer has informed the employee about the reasons for the meeting; and

(b) The employee has had a reasonable opportunity to consider his/her response to that information.

On his/her part, the employee must take all reasonable steps to attend the meeting at which he/she may be accompanied.

After the meeting, the employer must inform the employee of his/her decision and notify him or her of the right to appeal against the decision if he or she is not satisfied with it.

3 If the employee wishes to appeal, he/she must inform the employer. The appeal meeting need not take place before the dismissal takes effect. If the employee informs the employer of his/her wish to appeal, the employer must extend an invitation to attend a further meeting at which the employee may be accompanied.

The employee must take all reasonable steps to attend the meeting. When reasonably practicable, the appeal should be dealt with by a more senior officer than the one who dealt with the disciplinary hearing. After the appeal meeting, the employer must inform the employee of the final decision.

Without following the procedure if an agency or authority exercise its power to dismiss a civil servant amounts to unfair dismissal.

The employer has to follow certain procedure of giving statutory notice before terminating the services of the civil servant under the Employment Rights
Act 1996. Under the ERA employees have a right to reasonable notice before having their contracts terminated under Section 86,\textsuperscript{390} of the Act.

Further the most important right is conferred upon the civil servants under Section 94 of the ERA, not to be unfairly dismissed.

**B. REMIDIES FOR UNFAIR DISMISSAL:**

The way to enforce a claim for unfair dismissal is at an Employment Tribunals. Section 111 of the Act provides for the provision to approach the Employment Tribunal to challenge the order of an agency or the authority.

Section 111 of the Act reads as follows;

\textsuperscript{390}Section 86 Rights of employer and employee to minimum notice- (1) The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more-- (a) is not less than one week's notice if his period of continuous employment is less than two years, (b) is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and (c) is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.

(2) The notice required to be given by an employee who has been continuously employed for one month or more to terminate his contract of employment is not less than one week.

(3) Any provision for shorter notice in any contract of employment with a person who has been continuously employed for one month or more has effect subject to subsections (1) and (2); but this section does not prevent either party from waiving his right to notice on any occasion or from accepting a payment in lieu of notice.

(4) Any contract of employment of a person who has been continuously employed for three months or more which is a contract for a term certain of one month or less shall have effect as if it were for an indefinite period; and, accordingly, subsections (1) and (2) apply to the contract.

(5) Subsections (1) and (2) do not apply to a contract made in contemplation of the performance of a specific task which is not expected to last for more than three months unless the employee has been continuously employed for a period of more than three months.

(6) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of the conduct of the other party.
Section 111: Complaints to Employment Tribunal

(1) a complaint may be presented to an Employment Tribunal against an employer by an employee who was unfairly dismissed by the employer.

(2) Subject to subsection (3), an Employment Tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) Before the end of the period of three months beginning with the effective date of termination, or

(b) Within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where a dismissal is with notice, an Employment Tribunal shall consider a complaint under this section if it is presented after the notice is given but before the effective date of termination.

(4) In relation to a complaint which is presented as mentioned in subsection(3), the provisions of this Act, so far as they relate to unfair dismissal have effect as if—

(a) references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires,

(b) References to reinstatement included references to the withdrawal of the notice by the employer,
(c) References to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice, and

(d) References to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

Section 112 the ERA provides the following remedies in case of unfair dismissal a servant

(1) This section applies where, on a complaint under section 111, an employment tribunal finds that the grounds of the complaint are well-founded.

(2) The tribunal shall—

(a) Explain to the complainant what orders may be made under section 113 and in what circumstances they may be made, and (b) ask him whether he wishes the tribunal to make such an order.

(3) If the complainant expresses such a wish, the tribunal may make an order under section 113.\textsuperscript{391}

(4) If no order is made under section 113, the tribunal shall make an award of compensation for unfair dismissal to be paid by the employer to the employee.

\textsuperscript{391}\textbf{Section 113}: An order under this section may be--(a) an order for reinstatement or(b) an order for re-engagement as the tribunal may decide
In *Bell V. Stuart Peters Ltd*[^392] The Court of Appeal held that, the employee was found to have been unfairly dismissed by the employer. The appellant was found have been constructively dismissed under section 95 (1)(c) of the Employment Rights Act 1996. The tribunal found that she had been entitled to a compensation of a period of contractual notice of six months.

During the period the employee had found the temporary employment of work. The employer asserted that in the assessment of her compensation which under section 123 of the Employment Rights Act was the amount which was just and equitable having regard to loss sustained the employee should give credit for those earnings.

The Employment Tribunal refused to offset those earnings against the compensatory award on the ground that would be inconsistent with the law laid down in North Tool CO Ltd V. Tewson (1973) 1 All ER 183

> “If an employee has been summarily terminated an employee’s contract was entitled to award for the compensation for the notice period by ignoring any remuneration received by the employee for work done for the third parties in that period”

The Employer appeal to the Employment Appellate Tribunal contending that the law laid down in North Tool CO Ltd V. Tewson is not applicable in the instant case. Further contended that the dismissal is not under section 95(1)(a) but under section 95(1)(c) of the Act. The Employment Appellate

[^392]: (2010) 1 All ER 775
Tribunal dismissed the Appeal holding that no legitimate basis for distinguishing termination by employer and constructive dismissal.

The employer filed the appeal to Court of Appeal and the Court of APPEAL held that North Tools principle should not be extended to a case of constructive dismissal hence the appeal Allowed by the Court of Appeal.

In *Gisda Cyf V. Barratt*\(^{393}\) in the instant case, Gisda Cyf employed Ms Barratt. On 30 November 2006 a letter was sent to her that she was being summarily dismissed for gross misconduct, the misconduct at a private party, ‘witnessed by one of the company’s service users’. She had been given a disciplinary hearing, and then told she would hear by post. Ms Barratt was visiting her sister who was giving birth, and did not open the letter until 4 December. She appealed through the charity’s internal procedure, and that was dismissed. Then she filed an unfair dismissal claim for sex discrimination on 2 March 2007.

The contention was the unfair dismissal claim was made after three months and hence claim cannot be made. Appeal Tribunal held it was within time. On appeal to the Supreme Court, the Supreme Court through Lord Kerr for the Supreme Court held that because he Employment Rights Act 1996 section 97 is part of an employees’ charter of rights, about which people must be properly informed, that the employer’s communication of dismissal was ineffective until Miss Barratt was actually informed therefore the appeal was dismissed holding that the claim is in time.

\(^{393}\text{(2010) 4 All E R 851} \)
Further in *HSBC Bank plc V. Madden*\(^{394}\) in this case Mr Madden worked in two different HSBC branches (previously Midland Bank, the Enfield Town and Palmers Green branches) where three debit cards went missing. There was an internal investigation. Police came but found nothing. HSBC dismissed Madden from service. He challenged the order of dismissal before the Tribunal. The Tribunal found the dismissal was unfair because the investigation showed no evidence of anything. There should have been further investigation.

On appeal to the Court of Appeal, the Court of Appeal held that the employer was entitled to dismiss him, and the Tribunal should not have substituted its view for the employers'. No reasonable tribunal could have said the investigation was not proper.

**6.2.4 - JUDICIAL CONTROL OF ADMINISTRATIVE DECISIONS:**

British jurisprudence requires, according to Lord Atkin, that “no member of the executive can interfere with the liberty or property of British subject except on the condition that he can support the legality of his action before the Court of Justice.” But the express Statutory prohibition of judicial review of administrative actions made the British Courts powerless to question the validity of the administrative actions.\(^{395}\)

---

\(^{394}\)(2010) EWCA Civ 330  
\(^{395}\)R V. Metropolitan Police Commissioner (1953) 1 WLR 1150
However the Frank Committee recommended that no statute should contain words purporting to oust the certiorari, prohibition and mandamus.\textsuperscript{396} Subsequently The Tribunal and Inquiry Act, 1958 was passed following the recommendations of the Frank Committee. Therefore under and after passing the Tribunal and Inquiry Act, any person who is dissatisfied on the point of law with the decisions of a tribunal may appeal to the High Court.

The Judicial powers to issue certiorari or mandamus are discretionary which may be refused if some other adequate, convenient and effectual remedy is available.\textsuperscript{397}

Normally the Courts in United Kingdom do not interfere in cases where the statute empowers administrators to act according to their satisfaction in the public interest. The High Court of England in \textit{R V. Metropolitan Police Commissioner}\textsuperscript{398} held that it cannot interfere either by certiorari or otherwise as the Commissioner of Police was empowered by regulation to revoke the driving licence, if he was satisfied that the licencee was not a fit person to hold the licence.

\textbf{6.2.5 RIGHT OF ASSOCIATION:}

Civil servants in United Kingdom are absolutely free to form service associations and to continue to be a member of such associations, whether they are recognized by the Government or not.\textsuperscript{399}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{396} Franks Committee Report p 27 and 93
\item \textsuperscript{397} Griffith and Street, Principles of Administrative Law p 225 and 229
\item \textsuperscript{398} [1953] WLR 1150
\item \textsuperscript{399} Dr Amreshwar Avasthi, Revised by Dr S.R.Maheswari. “Public Administration” 23rd revised edition 1999, p 326
\end{itemize}
\end{footnotesize}
There is no law prohibiting demonstrations or strikes by civil servants. Therefore in United Kingdom if a civil servant goes on strike, he commits no penal offence,\textsuperscript{400} however, the Government is free to take disciplinary action against the civil servants if situation demands. In practice, civil servants in United Kingdom do not go on strike or even threaten to do so because; the civil servants are conferred adequate protection of statutory conditions of service to the civil servants.

\textbf{6.3 - CIVIL SERVICE OF UNITED STATES OF AMERICA}

In the United States, the civil service was established in 1872. The Federal Civil Service is defined as "all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services."

In the early 19th century, government jobs were held at the pleasure of the president a person could be fired at any time without giving any reasons or cause, and the federal civil service system was based upon the \textit{spoils system}. The Spoils System is the policy of giving government jobs to political party workers who have supported a victorious candidate. The practice began during the Thomas Jefferson presidency. At the height of patronage every administration was marked by massive removals of officials working for the departing administration. As a matter of fact, Political sympathy and partisan activity were now required as a condition of appointment. Eventually the Spoils System was associated with corruption and a reform came about. A Rhode Island Representative by the name of Thomas Jenckes

\textsuperscript{400} ibid p 328
introduced reform legislation to Congress in 1865, but it was not approved. Demands for reform increased after the political scandals of the Grant administration.

In 1871, George Curtis organized the Civil Service Reform League. That eventually led to more people recognizing the need for reform, and then came the Pendleton Act. The Pendleton Act of 1883 was the first comprehensive national reform program. The Act established the United States Civil Service Commission. This Act classified that government jobs were now being applied for and given to those whose abilities fit the best position. This Act classified certain jobs, removed them from the patronage ranks, and once again established the Civil Service Commission to administer a system based on merit rather than political connections. By 1909, almost two-thirds of the U.S. federal work force was appointed based on merit, that is, qualifications measured by tests.

The Pendleton Act also accelerated politics and administration. President Jimmy Carter abolished the Civil Service Commission and divided its functions among the Merit Systems Protection Board, The Office of Special Counsel, and The Office of Personnel Management. The Office of Personnel Management is responsible for administering a nationwide merit system for federal employment, recruitment, exams and training. The U.S. civil service includes the Competitive service\textsuperscript{401} and the excepted service.\textsuperscript{402} The majority of civil service appointments in the U.S. are made under the Competitive

\textsuperscript{401} Applicants for jobs in the competitive service compete with other applicants for civil service jobs usually by taking written examination.

\textsuperscript{402} United States Government positions which are not in the competitive service including those in the legislative, judicial and executive branches.
Service, but certain categories in the Diplomatic Service the FBI and other National Security positions are made under the Excepted Service.

6.3.1- PROTECTIONS TO CIVIL SERVANTS OF UNITED STATES OF AMERICA:

a. EQUAL EMPLOYMENT OPPORTUNITY

Title VII of Civil Rights Act of 1964\textsuperscript{403} was a landmark piece of legislation in the United State of America that outlawed major forms of discrimination against racial, ethnic, national and religious minorities and women. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public. Title VII of the Act created the Equal Employment Opportunity Commission (EEOC) to implement the law. The EEOC, as an independent regulatory body, plays a major role in dealing with this issue. Since its creation in 1964, Congress has gradually extended EEOC powers to include investigatory authority, creating conciliation programs, filing lawsuits, and conducting voluntary assistance programs.

Civil Rights Act 1964 was amended in 1972 to apply to all the Federal Civil Employees except the uniformed service. The amendment Act confers exclusive protection for all federal employees and all applicants for employment against employment related discrimination based on race, sex, national origin, colour or religion subject to affirmative action programmes to correct historic discrimination\textsuperscript{404}.

\textsuperscript{403}Public Law United State. 88-352, 78 Stat. 241, enacted July 2, 1964
\textsuperscript{404}42 U.S.C. 2000e-16(b)
b. AFFIRMATIVE ACTION:

**Meaning:** Affirmative action programmes means a policy designed to redress past discrimination against women and minority groups through measures to improve their economic, employment and educational opportunities.

Employment programs required by federal statutes and regulations designed to remedy discriminatory practices in hiring minority group members; i.e., positive steps designed to eliminate existing and continuing discrimination, to remedy lingering effects of past discrimination, and to create systems and procedures to prevent future discrimination; commonly based on population percentages of minority groups in a particular area. Factors considered are race, color, sex, creed, and age.

Affirmative action programs developed following the decision in *Brown v. Board of Education*[^405] Supreme Court held that public school segregation of children by race denied minority children equal educational opportunities, rejecting the doctrine of "separate but equal" in the public education. These groups appealed for equal rights under the Fourteenth Amendment, and they sought opportunity in the public arenas of education and employment. In many ways, they were successful and Supreme Court declared segregation in schools unlawful.

The first major legal setback for voluntary affirmation action was the decision of Supreme Court *in Regent University of California V. Allan*

Bakke\textsuperscript{406}, in which the Supreme Court struck down an admission plan at the University of California, Davis medical school. The plan, which had set aside 16 places for minority applicants, was challenged by white applicant Allan Bakke, who had been refused admission even though he had higher test scores than some of the minority applicants. The Court held that by setting aside a specific number, or quota, of places by race, the school had violated Bakke's civil rights, and "set-aside" practice of an affirmative action plan. The decision of the Supreme Court seemed to threaten the principle underlying affirmative action.

However, the Supreme Court found in United Steel Workers V. Weber\textsuperscript{407} held that the voluntary plan of Kaiser Aluminium Company to promote some of its black workers into a special training program ahead of more senior white workers did not violate the latter's civil rights.

Further the Supreme Court of United State in Johnson v. Transportation Agency\textsuperscript{408}, the Court ruled that a county agency had not violated Title VII of the Civil Rights Act when, as part of an affirmative action plan, it took a female employee's gender into account in promoting her ahead of a male employee with a slightly higher test score. The Court held that a "manifest imbalance" existed in this workforce because of an under representation of women, and that the employer had acted properly in using a "moderate, flexible, case-by-case approach to effecting a gradual improvement in the representation of minorities and women."

\textsuperscript{406}438 U.S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978),
\textsuperscript{407}443 U.S. 193, 99 S. Ct. 2721, 61 L. Ed. 2d 480 (1979),
\textsuperscript{408}480 U.S. 616, 107 S. Ct. 1442, 94 L. Ed. 2d 615 (1987),
c. **EXTENT:** The issue in affirmative action cases is whether the Equal Protection Clause of the Fourteenth Amendment can be employed to advance the welfare of one class of individuals for compelling social reasons even when that advancement may infringe in some way upon the life or liberty of another. The continuing existence of affirmative action laws and programs suggests that so far infringes the life or liberty of others. As the Supreme Court held in *Regent of University of California v. Allan Bakke* 409

Criticisers of the Affirmative programmes in America criticised frequently that affirmative action does an injustice to the idea of merit. Organizations representing police officers and fire fighters, such as the national Fraternal Order of Police, complain that qualifications and standards have fallen to accommodate affirmative action candidates. This criticism is popular not only with whites, who have long claimed that better qualified candidates lose out as a result of affirmative action, but also with two leading conservative African American critics. "What we have had to do for 25 years to pull off affirmative action,"

Further the idea continuing the affirmative action programs was abandon the race and gender as yardsticks and match preferences solely with economic need. President Bill Clinton declared that his administration was against quotas and guaranteed results, ordered a review of federal employment policies in 1995 to ensure that they were being applied fairly.

409 Supra note 334
Some of the important enactments enacted by the Congress to protect and promote the interest of the women and minority groups through measures to improve their economic, employment and educational opportunities are;

(i) Age discrimination in Employment Act, 1967
(ii) Rehabilitation Act, 1973
(iii) Equal Pay Act, 1963

i. AGE DISCRIMINATION IN PUBLIC EMPLOYMENT ACT:

The Age discrimination in Employment Act, 1967 as amended in 1974 and 1978\textsuperscript{410} prohibits discriminates on the basis of age in federal employment. It applies to the individuals who are at least 40 years of age.\textsuperscript{411} Reprisal and retaliation against the employee for exercising his or rights under the Act are also prohibited.\textsuperscript{412}

The Age discrimination in Employment Act prohibit discrimination based upon age except where the age can be shown to be a bona fide occupational qualification (BFOQ) reasonably necessary to the operation of the agency`s business.\textsuperscript{413}

Age discrimination in Employment complaint may file in administrative process or may file notice of intention to sue in federal district courts. If the complainant elects to file an administrative complaint, he must exhaust those administrative remedies before taking the action to the court. If the complainant elects to file a notice of intention to sue, he must file within 180

\textsuperscript{410} 29 U.S.C 621-634
\textsuperscript{411} 29 U.S.C 631(b)
\textsuperscript{412} 29 U.S.C 623(b)
\textsuperscript{413} Smallwood V. United Airlines, 661 F. 2d 303
days of the action giving rise to the complaint and must wait not less than 30 days before filing a suit.\textsuperscript{414}

\textbf{Remedies Available:} If the complainant is successful, the Act provides for appropriate legal and equitable remedies, including reinstatement, promotion, back pay, and injunctive reliefs,\textsuperscript{415} damages for unpaid wages and over time is also available.

\textit{ii. THE REHABILITATION ACT:}

The rehabilitation Act 1973, as amended in 1978, prohibits among other things, discriminating handicapping conditions. The Act requires “reasonable accommodation” in employment practices for handicapped persons, provisions of physical access to worksites and affirmative action measures. The Federal Court in \textit{School Bd. Nassau County, Atlanta V. Airlines}\textsuperscript{416} observed that the purpose behind the Rehabilitation Act is to require the federal agencies to take “affirmative efforts” to help the individuals overcome disabilities caused by handicap.

On 7\textsuperscript{th} September 1979, the United States Senate passed Section 933, which provides disabled persons, including peoples suffering from AIDS, with same protection against discrimination in employment, accommodation, and services that apply to the minorities, women and the elderly persons.

A handicapped individual under the Act means a person;

\textsuperscript{414}29 U.S.C 633a(d): The 30 days rule is intended to provide some time for the EEOC to notify the agency and to allow it to attempt resolution.

\textsuperscript{415}29 U.S.C 626(b) and 633a(c)

\textsuperscript{416}480 U.S. 273, 43 FEP Cases81(1987)
(i) who has a physical or mental impairment that substantially limits one or more of that person's major life activities,
(ii) has a record of such an impairment, or
(iii) is regarded as having such an impairment.

A major life activity has been defined by the EEOC as a function, such as caring for one's self, performing manual tasks, walking, seeing, hearing, or speaking, breathing, learning or working. Physical or mental impairment means any psychological disorder or condition, cosmetic disfigurement etc.

A federal agency is required to make reasonable accommodation to the known physical or mental limitations of the qualified handicapped employees unless the agency can demonstrate that the accommodation would pose an undue hardship on the operation of the program. If the employee claimed of handicapped discrimination, an employee must first establish a prima facie case of discrimination. The necessary elements of discrimination may vary from case to case depending upon the facts and circumstance of each case.

**iii. THE EQUAL PAY ACT:**

The equal pay Act 1963, as amended in 1974, prohibits paying male and females in any establishment in which the work a different wage for 'equal work' i.e., the work that requires equal skill, effort, and responsibility and that is performed under similar working conditions.

---

41729 C.F.R. 1613, 207(c)
418 Stalkfeet V. Postal service., 6 MSPR 637 (1981)
41929 U.S.C.204(f) and 216
The Act was intended to counter what congress and the Supreme Court of America have called the “ancient but outmoded belief that a man, because of his role in the society, should be paid more than a women even though his duties are the same.”

The equal skill standard requires substantially equal skill actually and regularly performed in the jobs compared. Examples of skill factors include experience, training, education and ability.\textsuperscript{420} The equal efforts standard includes such factors as physical and mental exertion. The efforts expanded to perform the jobs compared must be substantially equal and must be actually and regularly expanded. Where the ultimate degree of efforts expanded is substantially equal, it may not matter that the two jobs call for expenditure of efforts different kinds.

The equal responsibility standard involves factors including the degree of accountability requires in the performance of the job.\textsuperscript{421} Different duties may carry different weight or degree of priority.

The similar working conditions standard requires examinations of the physical surroundings and hazards.\textsuperscript{422} Surroundings and hazards include such things as toxic fumes or chemicals regularly encountered by the worker, and physical hazards regularly encountered.

All violations of Equal Pay Act can be brought before the EEOC and also provided separate enforcement procedure for alleged violations of the Act. Suspected violation of the Act may also be reported directly to the

\textsuperscript{420} 29 U.S.C. 1620.16
\textsuperscript{421} 29 C.F.R. 1620.17
\textsuperscript{422} 29 C.F.R. 1620.18
appropriate EEOC district office, which will undertake any necessary investigation and subsequent prosecution. Remedies available under the Act include back wage, promotion, liquidated damages etc.

6.3.2 - ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITY:

For the purpose of enforcement of equality of employment, the Equal Employment Opportunity Commission (EEOC) has been established. An employee, or the applicant for employment, may file an individual Equal Employment Opportunity complaint seeking relief or remedy applicable solely to his or her employment status. Also, an employee or applicant for employment may initiate a class action seeking relief for everyone who may be allegedly suffering from particular discriminatory practices.

a. CONSULTING AN EEO COUNSELOR: When an employee or applicant for employment, believe that he or she has been discriminated on the basis of the race, colour, religion, sex, national origin, handicapping condition, or reprisal for a protected EEO activity, the first step in the complaint process requires consultation with an agency EEO counselor. The complainant has a right to be represented and advised by his or her choice. If the complainant is the agency employee, he or she is entitled to ‘reasonable time’ to represent the complaint.

The EEO counselor is required to;

---

4239 C.F.R. Part 1620
(i) To make whatever enquiry he or she believes is necessary in to the matter.
(ii) To seek solution to the matter on an informal basis, and
(iii) To counsel the individual who is raising the complaint.

After holding the enquiry the EEO counselor submitting the report to the EEO officer a written report summarising the counsellor action and advice. The complainant will receive the copy of the report. Thereafter EEO officer must take decision as to whether to reject or accept the complaint.

b. INVESTIGATION OF A COMPLAINT: If the agency accepts the complaint, someone must be appointed to investigate the allegations of discrimination. The agency must provide to a person conducting the investigation written authorisation to;

(i) Investigate all aspect of the complaints of discrimination,
(ii) Require all employees of the agency to cooperative with the investigator in the conduct of the investigation,
(iii) Require the employee of the agency having any knowledge of the matter complained of to furnish testimony under oath

The investigator complies an investigative file, which includes, written statement from the complainant and witnesses, together with the copies of the records, policy statements or regulations that may relating to complaint.

At the conclusion of the investigation, the complainant and the representative of the complainant are given a copy of the investigative file.

---

424EEO officer is the official designated to represent the agency or agency subdivision in EEO complaints.
42529 C.F.R. 1613.216(a)
The complainant is given an opportunity to discuss the file with the appropriate agency official. If the agency or the complainant agrees to settle the matter at this point, it is referred to an ‘informal adjustment.’ The settlement must be reduced to writing and included in the investigative file.\textsuperscript{426}

If there is no informal adjustment of the complaint, then the agency must notify the complainant of its proposed disposition. The agency must also advise the complainant a right to a decision by the agency head either with or without hearing.

After enquiry if the agency decision finds discriminatory, the agency must determine whether the disciplinary action is appropriate for the managers or the supervisors responsible for the discriminatory action against the complainant.

\textbf{6.3.3 - PROTECTION IN RELTION TO REMOVAL, SUSPENSION, REDUCTION IN GRADE AND REDUCTION IN PAY ETC:}

\textbf{(A) ADVERSE ACTION:}

Under 5 U.S.C.7512, an adverse action means removal, suspension, reduction in grade, reduction in pay etc., on account of disciplinary action for misconduct. To take an adverse action against an employee on account of disciplinary action, an agency must comply with the statutory and regulatory requirement. At the outset, it must provide the employee 30 days

\textsuperscript{426}29 C.F.R. 1613.217(a)
advance, written notice of the charges.\textsuperscript{427} The notice of proposed action must explain the charge or the charges against the employee and must be given enough time to submit the reply. The employee must be informed of the right to review all of the material relied upon by the agency in taking the action against the employee.

To determine as to whether ad adverse action against a particular employee is appropriate, an agency may undertake an investigation. While the investigation being conducted, the employee is required to cooperate, but the employee has no right to counsel during the investigation.\textsuperscript{428}

An agency may not place an employee on annual leave during the notice period if the employee is ready and willing and able to work. Further the agency may not suspend an employee during the notice period, if suspended itself an adverse action that may only be taken after the appropriate notice.

An agency may shorten the notice period if there is a reasonable cause to be believed that an employee against whom an adverse action has been proposed has committed a crime.\textsuperscript{429} In addition, an agency may indefinitely suspend an employee pending the resolution of possible criminal misconduct if an indictment has been brought, if there is a connection between the crime the employee is alleged to have been committed and the efficiency of the service, and if the penalty of suspension is reasonable.

After receiving the notice of proposed adverse action, an employee has a reasonable time but not less than seven days, to respond to the notice orally.

\textsuperscript{427} 5 U.S.C 7513(b)(1)
\textsuperscript{428} Ashford V. Bureau of Prison, 6 MSPB 389(1981)
\textsuperscript{429} 5 U.S.C 7513(b)(1)
or in writing or both. At this stage the employee has the right to be represented by counsel. Prior to the filing of reply the employee must be granted the opportunity to review all the material relied upon by the agency in making the charges.

The final agency decision may be based upon only those reasons specified in the notice of proposed action. Thus, if an employee is charged with corruption, he cannot be removed for poor accounting procedures.

**WHERE TO CHALLENGE AN AGENCY ACTION:** The Civil Service Reforms Act 1987 abolished the United States Civil Service Commission and created the United States Office of Personnel Management (OPM), the Federal Labour Relation Authority (FLRA) and United States Merit System Protection Board (MSPB). United States Merit System Protection Board conducts the studies of the federal civil service and mainly hears the appeals of federal employees who are disciplined or adverse action taken against the employees.

The action of the agency may be challenged before the Merit System Protection Boards (MSPB). The petition for appeal must be filed within 20 calendar days of the effective date of action. The time limit may be waived by the MSPB when there is no prejudice to the agency and when good cause is shown for such waiver. The agency has 15 days’ time to file reply to the petition filed by the petitioner from the date of receipt of the petition of the appeal from the MSPB.

---

430 5 U.S.C 7513(b)(2)
431 5 C.F.R 1201.22(b)
432 5 C.F.R 1201.22(c)
433 5 C.F.R 1201.26(b) and (c)
After receiving evidence and holding hearing the administrative judge issues a decision, which is referred to as "initial decision." The initial decision becomes final 35 days after it is issued unless one of the party files a request with the MSPB to reconsider the decision.

(B) PERFORMANCE BASED ACTIONS:

In United States of America all agencies are required to adopt a performance appraisal system, which must provide for periodic appraisals of the job performance, encourage employees to participate in the adoption of performance standards, and use the performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining and removing employees.\textsuperscript{434} If the performance of the employee is poor, an agency may take action and to follow the procedure governing disciplinary action for misconduct.

PROCEDURE: Unacceptable performance means the performance that fails to meet established standard in one or more critical elements\textsuperscript{435} of the employee's position. The employee must be given 30 days advance written notice which identifies specific examples of unacceptable performance and the critical element involved.\textsuperscript{436} The employee after receiving the notice is entitled to give reply either in writing or orally or both and also be permitted

\textsuperscript{4315} U.S.C. 4302
\textsuperscript{435} Critical element means "performance below the minimum standard established by the management requires remedial action"
\textsuperscript{436}5 U.S.C. 4303(b)(1)(a)
to represented by counsel, the decision which has been concurred in by an employee at a level higher than the employee proposing the action.

An employee can be removed or reduced in grade for poor performance only after being given an opportunity to demonstrate acceptable performance and this opportunity is called as one of the most important substantive right of the employee. The agency is required to identify the critical elements for which performance is unacceptable and give the employee a reasonable time to demonstrate acceptable performance before removal is proposed.

6.3.4 JUDICIAL CONTROL OF ADMINISTRATIVE DECISIONS:

Any person in United States adversely affected or aggrieved by an agency's action is entitled to get his grievance redressed by the Courts. The Courts in US empowered to pronounce declaratory judgments or to issue writ of prohibition or Habeas Corpus or mandatory injunctions, apart from other statutory remedy provided in the enabling Statutes. All available administrative remedies have to be exhausted before approaching the judiciary against the administrative decisions. But it does not apply where the administrative remedy fails to comply with the requirement of the procedural due process.

Like United Kingdom even in United States of America the Supreme Court of U.S.A. decided that it was not the province of the courts to inquire how the

---

437 5 U.S.C. 4303(b)(1)(B)
439 5 U.S.C. 4303(b)(6)
441 Ibid p 109
executive or executive officers perform duties in which the servants or the executive have the discretion. The Administrative Procedure Act, 1946 also laid down that the determination of matter statutorily committed to agency’s discretion is immune from judicial interference.

6.3.5 RIGHT TO FORM ASSOCIATION

In United States, the federal employees have the right to be members of any service organizations or association subject to the condition that such organization or association does not employ to go on strike against the Government.\(^{442}\)

In practice in America, the civil servants unions have voluntarily restricted their membership to certain well defined categories of workers. There are separate unions for different categories of servants.\(^{443}\) Further the civil servants are prohibited by law to engage in strikes. The Labour Management Relation (Taft-Hartly) Act 1947 makes it unlawful for any employee of the Government of the United States of America or any of the agencies including Government Corporation to resort strike against the Government. In case if an employee of the federal civil service or any of the agencies resorted strike the penalty provided for was discharge from employment, forfeiture of civil service status, and in eligibility for reemployment for three years.\(^{444}\)

---

\(^{442}\) Dr Amreshwar Avasthi, revised by Dr S.R.Maheswari. “Public Administration” 23rd revised edition 1999, p 326

\(^{443}\) Ibid p 327

\(^{444}\) Ibid p 328
6.3.6 COMPARITIVE TABLE’S OF PROTECTIONS and PROCEDURES TO CIVIL SERVANTS OF INDIA, UK AND U.S.A

**TABLE-1**

<table>
<thead>
<tr>
<th>LAW’S</th>
<th>INDIA</th>
<th>UNITED KINGDOM</th>
<th>U.S.A</th>
</tr>
</thead>
<tbody>
<tr>
<td>(IV)</td>
<td>Constitution of India,1950</td>
<td>Earlier Laws</td>
<td>(I) Constitution America</td>
</tr>
<tr>
<td>(VIII)</td>
<td>All-India Civil Servants Act, 1951</td>
<td>(IV) The Disability Discrimination Act 1995</td>
<td>(V) Civil Service Reforms Act 1978</td>
</tr>
<tr>
<td>(X)</td>
<td>The Central Civil Services (Classification, Control and Appeal) Rules 1965</td>
<td></td>
<td>(VII) Rehabilitation Act, 1973</td>
</tr>
<tr>
<td>(XII)</td>
<td>The Departmental Inquiries (Enforcement of Attendance of witnesses and production of Documents) Act 1972</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(XIII)</td>
<td>The Indian Administrative Service (Appointment by Competitive Examination) Regulation 1955</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(XIV)</td>
<td>The Indian Administrative Service Appointment by Promotion Regulation 1955</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(XV)</td>
<td>The Indian Administrative Service (Recruitment)Rules 1954</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Present laws:**

| (I)    | Equality Act,2010                                 |                                             |               |
| (II)   | Employment Rights Act 1996                        |                                             |               |
| (III)  | Employment Act 2002                               |                                             |               |

*The laws / enactments / Rules governing the protections to civil servants prepared by the Researcher*
<table>
<thead>
<tr>
<th>NOs</th>
<th>Concepts</th>
<th>India</th>
<th>U.K</th>
<th>U.S.A</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>Equality</td>
<td><strong>Article 14:</strong> States shall not deny to any person equality before the law or equal protection of law within the territory of India. <strong>Article 15:</strong> State shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. <strong>Article 16:</strong> There shall be equality of opportunity of all citizens in the matters relating to employment or appointment to any office under the state. Constitution of India, 1950</td>
<td><strong>Equality Act, 2010:</strong> No unfair discrimination on the basis of Age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin.</td>
<td><strong>Title VII of The Civil Rights Act, 1964:</strong> It is exclusive protections for all federal employees and all applicants for employment against employment-related discrimination based on race, sex(includes sexual harassments), national origin, colour or religion are under</td>
</tr>
</tbody>
</table>
| 02  | Privileges for under-privileged | Reservation system under Article 15 (4) and 16(4) of the Constitution of India, 1950 | Protected characteristics in sections 4 to 12, part-2 of Equality Act, 2010 | **Affirmative actions:**  
  b. Rehabilitation Act, 1973 prohibits discrimination based on |
<p>| 03 | Implementing agencies of equality in public employment | Through the commissions constituted under the Constitution of India, 1950 | Through the enforcement by courts and employment tribunals under the Equality Act, 2010 | Implemented through the federal district courts and Equal Employment Opportunity Commission (EEOC) |
| 04 | Doctrine of pleasure | Not absolute | Absolute, subject to law made by parliament. | Earlier it was absolute and now it is subject to due process of law |
| 05 | Disciplinary proceedings | Civil Services (Classification Control and Appeal) Rules | Employment 2002 | 5 United States Code - 7512, Through the Merit System Protection Board. |
| 06 | Procedural protection | Article 311 (1), (2) of the Constitution of India, 1950 | Fair hearing – | Due process of law Under the Constitution of America |
| 07 | Right to form an association or trade union | The Civil Servants cannot join or continue to be member of any service association which has not either been recognized by the Government | Civil Servants are absolutely free to form service Associations and to continue to be a member of the Association. | Federal Employees have a right to be a member of any service association subject to the condition that such a association does not impose upon them |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>within six months of its formation or recognition to which has been refused or withdrawn.</td>
<td>the duty to go on strike against the Government.</td>
</tr>
<tr>
<td>08</td>
<td>Right to participate in political activities</td>
<td>Civil servants are prohibited to take part in the political activities (All-India Services(conduct) Rules 1968)</td>
</tr>
<tr>
<td></td>
<td>Industrial workers are permitted to take part where as non-industrial workers are not permitted. (Civil Servant’s Conduct Rules, UK)</td>
<td>Prohibits the federal to take part in political activities (Hatch Act 1939)</td>
</tr>
<tr>
<td>09</td>
<td>Right to strike</td>
<td>Government servants are prohibited from participating in any demonstration or resorting to any form of strikes in connections with any matter pertaining to conditions of service. (Central Civil Services (conduct) Rules 1955)</td>
</tr>
<tr>
<td></td>
<td>There is no Law prohibiting the civil servants for demonstration or strike.</td>
<td>The civil servants prohibited to engage strike. (The Labour Management Relations (Taft-Hartley) Act 1947)</td>
</tr>
<tr>
<td>10</td>
<td>Discrimination in public employment</td>
<td>No discrimination on the ground of religion race, caste, sex, place of birth or any of them.</td>
</tr>
<tr>
<td></td>
<td>No discrimination on the ground of Age, disability, gender reassignment, marriage and civil partnerships, race, religion or belief, sex and sexual orientation</td>
<td>No discrimination on the ground on race, sex national origin, colour or religion</td>
</tr>
<tr>
<td>11</td>
<td>Status and procedure of administrative tribunals</td>
<td>The proceedings of the Administrative Tribunals as a judicial proceedings for the purpose of Section 21, 193 and 228 of IPC and Section 195 of Cr.P.C and Section 39,75 and Order XVI, XI and XXVI OF C.P.C in respect of enforcement of attendance of witnesses, inspection</td>
</tr>
<tr>
<td></td>
<td>The tribunals in United Kingdom have similar powers.</td>
<td>Quasi-judicial proceedings of administrative agencies are comparable to judicial proceedings. The Tribunals has power to issue summons either to appear or to produce documents.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>12</strong></td>
<td><strong>Right to Counsel</strong></td>
<td><strong>In United Kingdom even before the Tribunals deny the representation of legal practitioners subject to exceptions.</strong> In United States of America right to a fair hearing includes right to have a representation by legal practitioners.</td>
</tr>
<tr>
<td><strong>13</strong></td>
<td><strong>Oral hearing</strong></td>
<td><strong>Requirement of oral hearing is not mandatory in United Kingdom.</strong> In United States of America the right of oral argument in some cases be a requirement of ‘due process of law’</td>
</tr>
<tr>
<td><strong>14</strong></td>
<td><strong>Disclosure of enquiry Report</strong></td>
<td><strong>The Enquiry officer is bound to disclose the enquiry report, on the basis of which the decision is made.</strong> The Officer is bound to disclose the enquiry report, on the basis of which the decision is made. The agency is bound to disclose the enquiry report, on the basis of which the decision is made.</td>
</tr>
<tr>
<td><strong>15</strong></td>
<td><strong>PRINCIPLES OF NATURAL JUSTICE</strong></td>
<td><strong>NOTICE:</strong> The fundamental rule of natural justice ‘Audi Alteram partem’ implies before taking any action adequate notice be given. <strong>NOTICE:</strong> there are decisions of the Courts that the giving of the notice implies all relevant information should be disclosed to the concerned servant. <strong>NOTICE:</strong> Due process law requires that hearing be preceded by proper notice. The respondents are entitled to to adequate notice containing the information as to the time, place and nature of hearing with the matter of fact law asserted. <strong>HEARING:</strong> The right of hearing before administrative authorities has been recognized in India. <strong>HEARING:</strong> “No man should be condemned unheard” is an important principles of natural justice. <strong>HEARING:</strong> The requirement of Hearing for all administrative adjudication has been statutorily recognized in United States.</td>
</tr>
<tr>
<td>REASONED DECISION:</td>
<td>REASONED DECISION:</td>
<td>REASONED DECISION:</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>There are no statutory obligations to state the reasons for their decisions yet a happy trend in the requirement of principles of natural justice has developed where by the Courts insists that all administrative authorities must give reasons for their decisions.</td>
<td>There is no general duty to state reasons for the decisions of the administrative agencies, but under certain statute require to state the reasons.</td>
<td>The Administrative decision must contain a finding of facts upon which the order is based. This requirement is essential even if the statute does not expressly provide it.</td>
</tr>
</tbody>
</table>

**Judicial Control**

- The administrative decisions in India are required to conform to the Statute as well as the Constitution. If not the Courts have the power to interfere with the order passed by the administrative authority.

**EXHAUSTION OF ALTERNATIVE REMEDY:**

The rule India known as ‘alternative remedy’ has to exhaust before approaching the Courts. Generally Courts do not interfere in administrative decisions if alternative efficacious and adequate remedies are available.

- The judicial review of administrative decisions is limited to questions of statutory and common law constructions.

**EXHAUSTION OF ALTERNATIVE REMEDY:**

In United Kingdom if extra judicial remedies are available courts may be refused to interfere with orders passed by the administrative authorities.

- All available administrative remedies have to exhaust before approaching the judiciary against any administrative decisions.

*COMPARITIVE TABLE’S OF PROTECTIONS and PROCEDURES TO CIVIL SERVANTS OF INDIA, UK and U.S.A prepared by the Researcher.*