CHAPTER - 1

INTRODUCTION
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The Administration of the Union and the States has to be carried on through the agency of large number of persons employed in various services and posts under the Union and the States. The work of the Government would never be done if there are only ministers to do it. The real work of administration is done by the permanent members of the Government who are called as Civil Servants. It is known that each department, in a Parliamentary form of Government is headed by a Minister. But it is not his business to run the Department independently. Those who actually run the Department and implement the policies of the government are the servants of Union or the States. The Civil Servants are the Reservoir of knowledge and experience. The Civil Servants are the symbol of efficiency in the machinery of administration. The administrative machineries are so vital for the purpose of maintaining peace and progress of the country. A country without efficient civil service cannot progress in the administration of the Government. The efficient administration of the Government and successful execution of Government policies, schemes, programs or plans of the Union and the State Governments or other authorities depends upon the members of the All- India civil servants, Central civil servants and State civil servants. The term ‘civil servant’ has not been defined anywhere in the Constitution of India nor does it give any indication to help the courts together its meaning.
The debates in the Constituent Assembly also do not reveal the scope of the term civil servant.

The term ‘civil servant’ was used for the first time 1854, when Sir Charles Trevelyan borrowed it from the British administration of India, and applied it to English conditions. It included simply the professional body of the officials employed by the state in non-military and non-judicial services\(^1\).

The term “Public servant” is used in common parlance as synonym of ‘civil servant’. The term ‘public servant’ is defined under Section 21 of the Indian penal Code, 1860, but the definition reveals that the two terms are not one and the same. The term ‘public servant’ is much wider than the term ‘civil servant’. The term ‘public servant’ would take Defence personnel as well, which is outside the ambit of ‘civil servant.’

Generally the term ‘civil servant’ is also called ‘Government Servant’ the term Government servant is defined under Section 2(h) of Central Civil Service (Classification, Control and Appeal) rules, 1965. Section 2(h) reads as follows:

“Government servant” means a person who-

(i) Is a member of a service or holds civil posts under the Union, and includes any such person in foreign service or whose service are temporarily placed at the disposal of the state government or a local or other authority.

(ii) Is a member of service or holds a civil posts under the state government and whose service are temporarily placed at the disposal of the central government

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(iii) Is in the service of the local or other authority and whose services are temporarily placed at the disposal of the Central Government.

The above definition of ‘Government Servant’ clearly shows that, the persons who are under the control of local and other authorities are government servants. But the persons falling under the control of local and other authorities are not entitled to the protection guaranteed under Article 311 of the Constitution of India. Therefore both the definitions of “Public Servant” and “Government Servant” as defined under Section 21 of the Indian Penal Code and Section 2(h) of Central Civil Service (Classification, Control and Appeal) rules, 1965 are not fit in with the term “Civil Servant” as envisaged by Article 311 of the Indian Constitution. Generally a person who serves in civil service is a civil servant. But the question is whether this general view applies to the word “Civil Servant” used in the Constitution. To ascertain this, it becomes necessary to evolve the definition on the basis of Courts decisions.

In *Mohammed Matten Qidwai V. Governor General in Council*, the Allahabad High Court held that; The word ‘Civil’ used before the word ‘post’ in Section 240(1) is clearly meant to distinguish post in the Defence Force. The word ‘Civil post’ cannot be confined merely to posts which are born on the cadre of any regular constituted service. All posts held by public servants, if the post did not belong to the Military department or the Defence force, must be deemed to be civil posts under the Crown.

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2Mangal Sain V. State of Punjab. A.I.R.1952, Punjab 58
3A.I.R 1953 All.17
In *Jagan Nath V. State of Uttar Pradesh*\(^4\) the Hon’ble Supreme Court of India held that, The expression ‘Civil Post’ means an appointment or office on the civil side of the administration as distinguished from a posts under the Defence force.

In *State of Assam V. Kanak Chandra Dutta*,\(^5\) the Hon’ble Supreme Court of India observed that, there is no formal definition of ‘Post’ and ‘civil post’. The sense in which these expressions are used in services is indicated by their context and settings. A civil post is distinguished in Article 311 from the post connected with defence; it is a post on civil side as distinguished from defence side of the administration. In Article 311, a member of civil service of the union or an All-India service or a civil servant of a state is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services.

In the light of these decisions the term ‘civil servant’ means a member of a civil service of the center, or a state or a person holding ‘civil posts’ under the center or the state.

There is no definite test to determine whether the person is a civil servant or not. The Hon’ble Supreme Court of India clarified the position in *Kanak Chandra Dutta*\(^6\) that the test to determine whether or not a post is held under the union or state is, whether there is a relationship of master and servant between the union and the state and the person said to be holding a post under it.

\(^4\)A.I.R.1961 S.C 1245  
\(^5\)A.I.R.1967 SC 884  
\(^6\) *Ibid*
The Court held that there are certain elements the presence of which gives a strong indication of the relation of master and servant these elements are; the right of an employer to control the method of doing the work and the power of superintendence etc., are the relevant criteria to decide the relation between the master and servant.

The Supreme Court in *Shivanandan V. Punjab National Bank*\(^7\), held that, a master is one who not only prescribes to the workmen the end of his work, but directs or at any moment may direct the means to perform the work also, or as it has been put retains the power of controlling the work; Therefore a servant is a person subject to the command or a control of his master in terms of the manner in which he shall do the work.

The Supreme Court in *D.C. Works Limited. V. State of Saurashtra*.\(^8\) held that; The test for the determination of the relationship between the master and servant is the existence of the right of the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work.

Further applying the test laid down in *Kanaka Chandra case*,\(^9\) was however held in case of *A. Surya Rao V. Superintendent of Post Offices*,\(^10\) that an Extra Departmental Branch Post Master is one who is appointed by the Senior Superintendent of Post Offices, or Superintendent of Post Offices is, subject to the disciplinary control of the authorities in the rules and his method of work is regulated by the instructions issued by the department,

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\(^7\)A.I.R.1955 SC.404  
\(^8\)A.I.R.1957 SC.264  
\(^9\)Supra Note 5  
\(^10\) (1972)1 Andh WR 152
receives remuneration fixed by the Government. The appointing authority has power to remove or dismiss and fill up the vacancies by fresh selections. Therefore, he satisfied all the tests that are laid down by the Supreme Court to determine whether holds a ‘civil posts’ and therefore he is entitled to the protections under Article 311(2) of the Constitution. The same view was reiterated by the Supreme Court of India in case of *Superintendent of Post Offices V. P.K. Rajamma.*\(^{11}\)

Though the Hon’ble Supreme Court of India has laid down some guidelines to determine whether a person is a Civil Servant or not in Kanakachandra’s case, it has not yet been possible to laid down a definite test as it is clear from the observation of the Hon’ble Supreme Court in *State of Gujarrath V. Ram Lal Keshav Lal Soni.*\(^{12}\)

> “We do not propose and indeed it is neither politic nor possible to lay down any definite test to determine whether a person may be said to hold a civil post under the Government. Several factors may indicate the relation of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors such as, right to appoint, the right to determine the appointment, right to take disciplinary action etc. The right to prescribe conditions of service, the nature of duties performed by the employee, the right to control the employee, manner and method of work, the right to issue directions and the right to determine appointment and the source from which wage and salary are paid and a host of such circumstances may have to be considered to determine the existence of the master and servant. In such a case it is the question of fact whether a person is a servant of the State or not.”

\(^{11}\)AIR 1977 SC 1677  
\(^{12}\)(1983)2 SCC 34 at p 49
Therefore, it is clear from the decisions of the various High Courts and the Hon'ble Supreme Court of India, a Civil Servant is one whose appointment is on the civil side of the administration. The test to determine the whether a person is a Civil Servant or not is whether there exist any relationship of master and servant between the State and the employee or not. It has been held that in order to determine the relation of master and servant, it is essential to know the right of an employer to control the method of doing the work, the power of superintendence etc. The employee of the civilian defence force, public servants, for example members of Parliament or State legislature have been held not to be Civil Servants. Similarly, if the duties of the person relate to activities which fall within the local authority constituted by a statute is not a Civil Servant, even though the Union or a State controls some of the activities, but if they fall directly within the preview of the Union or the State are Civil Servants.

The civil servants occupy an important role in the successful administration of country at different levels. Therefore, their recruitment, training, emoluments, conditions of service, Promotion policies, etc. assume importance. Civil Servants are considered as the back bone of the administration. In order to ensure the progress of the country it is essential to strengthen the administration by protecting civil servants from political and personal influence. Therefore PART XIV which was in existence and XIV-A\textsuperscript{13} have been included in the Constitution of India to protect the interest of civil servants and to strengthen the Indian Administration.

\textsuperscript{13}Inserted by the Constitution (Forty second Amendment) Act, 1976. w, e, f.3.1 1977.
Under part XIV of Article 309 of the Constitution of India provides that, the State is empowered to regulate "Recruitment and condition of service." The regulation of recruitment means the prescription of qualification for appointment to any service or post and also prescription of the method or procedure for selection and appointment. The expression "condition of service" means and includes all those conditions which regulate the holding of a post by a person from the time of appointment till his retirement. For instance, rules regulating payment of salary, pay scale, increment, leave, seniority, promotion, tenure, termination, superannuation, pension etc., are all matters relating to conditions of service.

Out of various matters relating to services, the recruitment and conditions of service under the Union and the State have been singled out for special treatment under Article 309. The first part of Article 309 only reiterates the power of Parliament and the legislature to make laws relating to the services even in respect of recruitment and conditions of service which is included within its legislative power under Article 246. The problems relating to recruitment and condition of service are manifold and required to be regulated as and when the necessity arises and cannot depend upon the framing of legislative enactments for which naturally takes more time. Therefore, under the proviso to Article 309 it is provided that the recruitment and conditions of service could be regulated by rules framed by the President or the Governor as the case may be, subject to the Acts of appropriate legislature.
The Recruitment and selection of civil servants constitute a vital importance to the administrative system as a whole, since they determine the tone and caliber of the civil service. The process of recruitment and selection is the key to a strong civil service. A faulty recruitment and selection policy inflicts a permanent weakness upon the administration; whatsoever the amount of in-service training cannot make bright and efficient civil servants. Recruitment of suitable persons is of great importance. Those aspiring to be civil servant must have not only the required skills and knowledge, but also the right values which would include integrity, commitment to service and above all, commitment to the ideals and philosophy embodied in the Constitution. Therefore the recruitment process, apart from being transparent, objective, fair and equitable should also ensure that the right types of persons who join the civil services. The system of recruitment to the civil services in India has evolved over the years. Several changes have been made in the recruitment process, especially after Independence to reflect the needs of the administration from time to time. A number of Committees and Commissions were set up to make recommendations on various aspects of recruitment.

The security of tenure and better conditions of service by way of suitable pay scale, promotional opportunities, retirement benefits and just and fair treatment to government servants have to be given with the object of securing honesty, contentment and discipline among the civil servants which are of utmost importance. Low salary, harsh treatment, insult and imposition of major penalty are causes of unrest among the civil servants.
The Constitutional law reposes great trust and confidence in the services and confers upon the civil servants security of tenure and conditions of service and in turn expect an honest and sincere service from the members of the civil services for providing to the peoples of India an efficient, polite and incorruptible administration and to achieve and fulfill the aims and objectives of the Constitution. Therefore, while the civil servants are undoubtedly entitled to enforce their rights, when they are wronged, they must be equally conscious of their duties and should discharge their duties with honesty, discipline and sense of devotion.\textsuperscript{14}

In order to discharge the duties honestly and sincerely, the Civil Servants will not be put to any capricious action by the political heads, that they are capable of exercising influence on the authorities having power to take action against Civil Servants; the Constitutional law provides protection to Civil Servants to discharge their duties and responsibilities in connection with activities relating to different department of Union or State without any fear or favour.

The Constitution of India provides series of fundamental rights and safeguards to the civil servants as it provides to the citizens of the country. Article 14, 15, 16, 309, 310 and 311 are some of the rights and protections provided to the civil servants of the State as well as the Union of India. Further apart from the protection provided under constitutional law, certain protections are also provided under Criminal Procedure Code, Civil Procedure Code and Prevention of Corruption Act, etc., and rules, to the civil

\textsuperscript{14} Justice M. Rama Jois “Service Under the State” ILI Publication, revised and updated by faculty of ILI, 2007 at p 24
servants of Union and States in discharge their duties impartially according to the wisdom of legislation.

Civil Services basically are nationalistic. An increasing internationalism 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 become smaller, the demand increases for persons with knowledge of different Civil Services System because the civil service system in the entire world is almost similar for the better administration of the State. Therefore the researcher find it necessary to know the protections provided to the civil servants in some of the advanced countries in the world such as United Kingdom and the United States of America.

The protections provided to the civil servants of United Kingdom relating to employment, non-employment and conditions of services of civil servants are somewhat similar to the civil servants of India subject to certain changes. The protections provided in United Kingdom are basically Statutory in nature whereas the protections provided in India are Constitutional in nature. The comprehensive legislation was enacted in United Kingdom known as Equality Act 2010. Equality Act guaranteed the equality of opportunity of employment and forbidden from being discriminated on the ground of age, disability, gender, marital status, sexual orientation, religion or belief, race, colour, nationality, ethnic or national origin, subject to certain exceptions (protected characteristic). Though the Act prohibits discrimination but for the purpose of achieving equality need to protect the certain group of persons from being discriminated. Therefore the Equality
Act guaranteed certain protections to protected characteristics such as on the basis of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

For the purpose of providing protection from being harassed by the employer the important enactment was enacted in United Kingdom Known as Employment Rights Act 1996. The Act lay down the certain protection to the civil servants before initiation of disciplinary action against the civil servants on the allegation of misconduct. Further the Act provides the statutory remedy to the civil servants who become the victims of unfair dismissal from the service. The Employment Rights Act 1996 is considered as the guarantor of the rights of the civil servants in United Kingdom. Therefore the protections provided to the civil servants in India and United Kingdom though looks similar but the protections provided in United Kingdom are Statutory in nature whereas protections provided in India are Constitutional in nature.

The protections provided to the Federal civil servants of United States of America relating to employment and conditions of services of civil servants are somewhat similar to the civil servants of India subject to certain statutory changes. The protections provided to the federal civil servants of United States of America are Statutory in nature as that of the United Kingdom whereas the protections provided in India are Constitutional in nature.
Title VII of the Civil Rights Act 1964 outlawed major forms of discrimination against racial, ethnic, national and religious minorities and women. It ended the racial segregation in schools, at the workplace and by facilities that served the general public. The 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 programs to correct historic discrimination.

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. For the purpose of improving the economic, employment and educational opportunities certain enactments were enacted in United States of America such as Age discrimination in Employment Act, 1967, Rehabilitation Act, 1973 and Equal Pay Act, 1963.

Further for the purpose of enforcement of equality of employment in United State of America 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. In case such an application has been filed with the allegation of violation of Equal Employment Opportunity, and if the agency accepts the complaint, someone must be appointed to investigate the allegations of discrimination.
Further 5 of U.S.C.-7512, guaranteed to take adverse (removal, suspension, reduction in grade, reduction in pay etc.) action against an employee on account of disciplinary action, an agency must comply with the statutory and regulatory requirement. 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.

Therefore like United Kingdom even in United States of America protections provided to the federal civil servants in relation to the employment and conditions of service are governed by Statute whereas in India protections are Constitutional.

1.1 **STATEMENT OF THE PROBLEM:**

The Civil Servants are appointed to the posts, by the government to discharge specific duties and responsibilities connected with activities relating to specific department under the Union of India as well as the States. The civil servants are the persons amenable to the common people to solve the day to day problems of the citizens of the country. Though the civil servants are the back bone of the efficient administration, are subject to victimization by way of frequent transfers, suspension from service, unnecessary harassment and reduction in rank, removal and even dismissal from service.

The Constitutional law, the law laid down by the Indian Parliament and various rules provides certain protections to civil servants to meet the
problems of unnecessary interference by the political heads and non-compliance of service conditions. The protections provided under the Constitution and legislations are inadequate for the efficient, sincere and unbiased civil servants. Thus the majority of the efficient, sincere and unbiased civil servants are facing a problem of insecurity of their jobs, though their jobs are secured. The honest civil servants are becomes the victims of frequent transfer from one place to another place, though the rules do not permit the authority to transfer a civil servant in the middle of the year, and some time facing the problem of suspension without any fault of a civil servants. The only way to come out from the problem is the strict implementation of the constitutional provisions and restructuring the existing civil service laws and rules to ensure protection to the efficient, sincere and honest civil servants. As far as possible political interference in the administration has be minimized, if it is not possible to avoided in totality.

1.2 SCOPE OF THE STUDY:

The scope of the present study encompasses the constitutional, statutory and procedural protections conferred upon the civil servants for the efficient administration of the government. The efficient administration of the government and successful execution of governmental programs, schemes and policies are dependent upon the civil servants of Union of India as well as the servants of the State. Further this study intends to compare the protections conferred upon the civil servants of the United Kingdom and the United State of America and the implementation of the protections provided
to the civil servants, further the study encompasses the adjudication of dispute and complaints in respect of recruitment and some important areas pertaining to conditions of services of persons appointed to civil services and post in connections with the affairs of the State by the Apex Court and the administrative tribunals established under Administrative Tribunals Act 1985.

1.3. AIMS AND OBJECTIVES:

It is inevitable for the any kind of government to have a civil service which, consists of efficient, sincere and honest civil servants upon which the modern government can function.

The quality of civil servants is the prime determinant of the output and outcome of the administration. Appropriate recruitment procedures are crucial for ensuring competence and delivery of services. A country without efficient civil service cannot progress in spite of earnestness of the people at the helm of affairs in the country. Whatever democratic institution exists, experience has shown that, it is essential to protect civil services as far as possible from the political and personal influence. It is well known fact that India has adopted the principle known as ‘Doctrine of Rule of law’. The rule of law involved the proposition that every person, including ministers and officials, was subject to ordinary law of the realm and amenable to the jurisdiction of the ordinary courts.

The Constitutional law India has expressly provided various safeguards to the civil servants serving under the Union of India as well as the State. The civil servants have the rights to hold the post but their services are
terminable at the pleasure of the President or the Governor as the case may be. The Constitutional law requires that certain procedural requirements are to be fulfilled before taking any adverse action against civil servants; therefore the main reason for constituting the Administrative tribunals at the Centre and the States in India arises for providing justice to the civil servants. Procedural irregularities in recruitment, undue political interference and non-observance of constitutional safeguards to civil servants were responsible for establishment of Administrative tribunals.

The British civil service is considered to be one of the best in the world. It maintains the highest possible standards of efficiency and integrity. Herbert Morrison says, “We are proud of British civil service. As a whole, civil servants are efficient, public spirited, incorruptible; very rarely does British civil service get convicted of bribery, corruption, nepotism, treachery or favouritism.\textsuperscript{15}

In United States of America, the Civil Service Reforms Act 1978 was strongly motivated by considerations that federal civil servants of United State of America had becomes too secure. The rights and procedural safeguards for employees were also strengthened.\textsuperscript{16}

Hence the present research is aimed at knowing and analyzing the protections conferred upon the civil servants, some conditions of service of civil servants of India, the United Kingdom and the United States of America

\textsuperscript{15} N. Jayapalan, "Modern Governments and Constitutions" Atlantic Publishers and Distributors, Volume I, p.62.

and also the role of judiciary and Administrative tribunals to protect and safeguard the interest of civil servants.

Therefore the main objectives of this research are;

(i) To evaluate and asses the role of civil servants in modern constitutional States.
(ii) To examine the extent of Doctrine of pleasure has been adopted in the Indian Constitution.
(iii) To compare the rights and protections conferred upon civil servants of India, the United Kingdom and the United State of America.
(iv) To analyze the regulations of recruitment and some conditions of services of civil servants.
(v) To analyze the role of judiciary and Administrative tribunals in protecting the civil servants against the wrongful dismissal, removal and reduction in rank.
(vi) To bring out suitable changes in the functioning of administration keeping in view innovative jurisprudence that has evolved in U.K and U.S.A

1.4 REVIEW OF LITRATURE:

For the purpose of carrying on this research work the researcher has referred relevant literature, books and journals and relied upon the following materials. For the sake of convenience, this source of material has been classified as primary sources and secondary sources.

The primary Sources for the purpose of carry out the research are;

(i) The constituent Assembly debates on providing of protection to the civil servants and the views of the Hon’ble members of the Constituent Assembly in the form of Constituent Assembly debates.
(ii) The various provisions of the Constitution of India 1950 and the Constitution of different countries.
(iii) The various enactments enacted by the parliament of India and the legislations enacted in relation to the Civil Servants in different countries pertaining to civil service.

(iv) The decisions rendered by the Supreme Court of India, High Courts and Administrative tribunals, reported in different law journals like the Supreme Court Cases, All India Reporter, Service Law Reporter and Judgment Today and

(v) Reports of Administrative Reforms Commissions, etc.

The Secondary sources for the purpose of carry out the research are;

(i) Articles written by Academicians, Advocates and Journalists, published in leading law journals;

(ii) Articles published in leading newspapers, relating to rights and safeguards of civil servants, by the eminent politicians.

(vii) Encyclopedias on the Constitution; and

(viii) Legal Dictionaries etc.,

Apart from these sources an efforts has been made to refer the personal discussion and exchange of views with eminent civil servants on the process of appointment, conditions of service of civil servants and disciplinary enquiry against civil servants in India.

In the words of Dr. P. C. Alexander, the rationale of Constitutional protections to all Government employees is that a civil servants enjoying security of tenure is indispensable for smooth Administration in a system of parliamentary democracy like India. Such protections are also considered necessary by the framers of the Indian Constitution in order to enable the senior civil servants to express their views freely and fearlessly on issues on which decisions are to be taken by the political executive.

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17Former Governor of the State of Maharashtra and Tamil Nadu. "The right to be heard before dismissal" Published in the daily news paper titled "Asian Age", Bombay Edn 8th March 2007.
Dr. Shahaji Laxman Rao Hassekar\textsuperscript{18} opines that the courts have very judiciously interpreted the provisions of the Constitution so that the kind of persons to whom the protections are guaranteed and the kind of protections envisaged by the Constitution is available to them in the letter and spirit of the Constitution.

Shri B. K. Nehru\textsuperscript{19} monotonously says that “it is not possible to run any kind of Government whether a dictatorship or a monorchy or a democracy without a large number of servants of the State to ensure that the order of the ruler are carried out. Prior to the emergence of the democracy, the ruler appointed his servants from among his courtiers, relatives and favourites. They were responsible to him and held their office at his pleasure”.

Dr. K.S. Sharma\textsuperscript{20} the government felt that providing an opportunity of being heard at two stages not only consumed too much time and consequently delayed the award of punishment to the guilty employee. But the original draft of the bill becomes the subject of criticism at the floor of the parliament and the government had to change the draft and provided two opportunities.

D.C. Jain\textsuperscript{21} the enquiry report in departmental enquiry against the delinquent civil servant becomes an important document on the basis of which the disciplinary authority has to impose the punishment against the delinquent civil servant. It would be defeating the fundamental principle of

\textsuperscript{18} Senior Lecturer, Narayana Rao Chavan Law College Naned “Nature and scope of Constitutional Protections to the tenure of the civil servants in India” Published in Orient Journal of Law and Social Science Volume IV, Issue 5 April 2010.

\textsuperscript{19} The former Indian Ambassador to the United State, “The Civil Service in Transition” Published in Indian Star Review of Books.

\textsuperscript{20} Government Servants Constitutional safeguards and Administrative Tribunals (1987)

\textsuperscript{21} “Forty Second Amendment as culmination of socio –economic aspirations of the people” XI Journal of Constitutional and Parliamentary Studies
natural justice if the punishment is imposed upon the delinquent civil servant without furnishing such report to the employee concerned.

**Meena Issarani**\(^{22}\) the rule of natural justice must be abided in order to promote a sense of security among Government servants because the *audi alteram partem* is an ancient rule and even Adam has been called upon by a God to meet the change of having eaten the fruits of the forbidden tree before suffering expulsion. This is the fundamental rule of natural justice and it means that a man have a right to be heard before he is condemned.

**K.P.C.Rao**\(^{23}\) for a long time a search was going on for a mechanism to relieve the courts including the High Courts and the Supreme Court from the burden of service litigations which form the substantial portion of pending litigation. This problem engaged the attention of the Law Commission which recommended for the establishment of tribunals consisting of judicial and administrative members to decide service matter.

**M Veerappa Moily**\(^{24}\) need to ‘revisit’ constitutional provisions giving protection to civil servants. “There is no gainsaying that the provisions of Article 311 have come in the way of bringing corrupt civil servants to book. Article 311 would require a revisit... these needs to be done.

**Sanjeev shirohi**\(^{25}\) In recent few years, much ink has been spilt by legal luminaries on the dire need to revisit Article 311 of our Constitution as they consider it to be the biggest irritant in making the corrupt public servants

\(^{22}\) Advocate High Court of Madhya Pradesh. “Agony of a Government Servant”
\(^{23}\) Practicing Company Secretary, “Functioning of Administrative Tribunals”
\(^{24}\) The then Law Minister while addressing a seminar on combating corruption — it was organized by the CBI and National Institute of Criminology and Forensic Science.
\(^{25}\) Advocate, “Should Article 311 of the Constitution be Amended”? 4\(^{th}\) Jan 2011
accountable. I personally also favour zero tolerance for corruption at all levels but certainly at the same time we also have to ensure that the innocents are not punished for what they have not done at all and so some safeguards have to be there in order to ensure the same.

It is imperative that political remote control of politicians to appoint, transfer, award or punish public servants as per their own whims must be taken away from them permanently because it goes a long way in mushrooming corruption. The root cause of most of corruption in our country is "undue political patronage" which must be checked.

Dr. Manmohan Singh\textsuperscript{26} "No system could deliver if top civil servants were changed without notice and favoured a minimum security of tenure for judging their performance. One major issue which has arisen is the security of the tenure of key functionaries like district collectors and superintendent of police,"

1.5. HYPOTHESIS

The present study has been undertaken by the researcher to put to test the following hypothesis regarding the legal protections provided to the civil servants under the constitutional law as well as various laws in force in India, and also the protections provided to civil servants of the United Kingdom and the United States of America.

\textsuperscript{26} The Prime Minister while addressing the second national conference of district collectors
(i) The protections provided upon civil servants for discharging their lawful duties without fear or favours are insufficient.

(ii) The recruitment and conditions of service laws in Indian jurisprudence are not sufficient than, when compared to that of recruitment and condition of service laws in United Kingdom and United State of America.

(iii) Maladministration in India is because of political intervention in discharge of lawful duties of civil servants.

(iv) Supreme Court and Administrative tribunals in India have contributed in protecting the interest of civil servants against malafide intervention of political heads.

(v) The object of the 42nd Amendment to the Constitution is partially defeated by vesting jurisdiction to High Court from the orders of the State Administrative Tribunals.

(vi) The creation of All India Judicial Service will help for recruiting expert members to the Administrative tribunals for the purpose of protecting the interest of civil servants in India.

1.6. METHODOLOGY:

For the purpose of perusing the research on the topic "A Critical study of legal protections to civil servants-with special reference to India, United Kingdom and United State of America", the researcher has followed the doctrinal method for the purpose of collection of data. As the topic is selected for research is from constitutional law and labour law, historical approach for the purpose of study is also adopted for the purpose of the study.

The method of citing is uniform method style.
1.7. PLAN OF STUDY:

The research topic entitled “A Critical study of legal protections to civil servants-with special reference to India, United Kingdom and United State of America,” has been divided in to eight chapters in all including “introduction” and conclusion.

The first chapter is entitled “Introduction” provides a brief introduction about the topic and explains the importance of civil servants in modern democratic states, the objectives of the research, the methodology adopted by the researcher for the purpose of collection of data and the hypotheses mentioned in the introduction chapter.

The second chapter is entitled “Historical Evolution of civil service and safeguards to the civil servants.” In this chapter the researcher has made efforts to explain the evolution and development of civil service since from the date of inception to the present day democratic system of civil service and also made an efforts to study the protections or safeguards provided to civil servants in India prior to the East India Company, under the East India Company and under the British Crown.

The third chapter is entitled The “DOCTRINE OF PLEASURE”. The civil servants ‘tenure of office is conditioned by the ‘Doctringe of pleasure’. In India, the pleasure doctrine though modeled upon the British pattern is different from English approach. In England the public officers and servants of the crown held their office during the pleasure of the appointor or during good pleasure. In this chapter the researcher has made efforts to explain the
implication of doctrine of pleasure, the doctrine of pleasure in India and the basis of the doctrine of pleasure.

The fourth chapter is entitled "The constitutional and legal protections to the civil servants". In India though the civil servants holds the post at the pleasure of the President of India or the Governor of the State, there are Constitutional safeguards provided for the civil servants against arbitrary dismissal, removal or reduction in rank. In this chapter the researcher has made efforts to the study of protections provided to civil servants under the Constitutional Law of India against the arbitrary action of the superior authority, procedural safeguards provided to civil servants and protections provided under various enactments for discharge of lawful duties.

The fifth chapter is entitled “protections in relation to Recruitment and conditions of civil servants” In this chapter the researcher has made an effort to study the process of recruitment to All India Civil Services and Central Civil Services of Union of India as well as to the State services. Further efforts are made to study the some of the important working conditions of civil servants working under the Union of India and the State.

The sixth chapter is entitled “Protection of Civil Servants of united kingdom, united states of America and India- A Comparative Study” In this chapter the researcher has made efforts to study and compare the process of equality of employment and protections provided to civil servants in relation to disciplinary proceedings against civil servants, dismissal of civil
servants from the service and some important conditions of service of civil servants.

The seventh chapter is entitled “The role of judiciary and Administrative tribunal in India.” In developing country like India wherein the peoples of the society, faced with innumerable problems, the judiciary as a guardian of the peoples and uphold the constitution, occupies highest position in India. The judicial power is also trusted the peoples of India. The Supreme judiciary and establishment of Administrative Tribunals in India played an important role to win the soul of the citizens of our country, because of its impartiality in delivering justice and independent from all kinds of influences. In this chapter the researcher has made efforts to highlight the judicial response towards the protection of working conditions of civil servants and also by the administrative tribunals established under the Administrative Tribunals Act, 1985.

The eighth chapter is the “Conclusion and suggestions”, based on the studies carried out by the researcher. The researcher has made suggestions for conferring protections to civil servants for fair and impartial discharge of their lawful duties without any kind of personal or political influence