CHAPTER VII
Comparative study of civil services

The task of enforcement of the laws and policies of the Government are upon the executive. The executive comprises civil services. It is the Civil servants who make the nation functional. Therefore all the countries incorporate the provisions of civil service in their written constitution.

France:

Droit Administratif is the main feature of French administrative system.
Droit Administrative is that portion of French law, which determines.
(i) The position and liabilities of State officials.
(ii) The Civil rights and liabilities of private individuals in their dealings with office also as representative of the states and
(iii) The procedure by which these rights and liabilities are enforced.¹

There is dual judicature in France. Under the French legal system known as droit administrative there are two types of laws and two sets of courts independent from each other. First the ordinary court for the subjects and second Administrative tribunals headed by conseil d'Etat for functionaries of the Government. Conseil d'Etat is the supreme administrative Court. The Government servants possesses special rights, privileges as against private citizens and they are not subject to the jurisdiction of ordinary courts.

England:

Dicey in 1885 observed that every man including a public official (i.e. Government Servant) was subject to the same law and the same tribunal. He opposed the French legal system under which there were two sets of law and two sets of court. But Dicey's view proved not true as administrative authorities have been conferred judicial powers. Certain officers of Civil servants exercise Judicial powers. They are commissioners of Income Tax, Chief Registrar of Friendly Societies etc. Some of the ministers (Executive) possesses quasi judicial power.

¹ Dicey: Law of the constitution 9th ed. 1939 p. 495
On recommendations made by the committee on minister’s power two Acts were passed—

(i) Statutory Instrument Act 1946.


On recommendations made by Frank’s committee, the parliament passed the Tribunals and enquiries Act 1958. The Act as amended in 1971 extends the supervisory jurisdiction of High Court over the tribunals and provides for an appeal on the point of law to the High Court.

On demand a minister or other Tribunal holding a statutory enquiry must give reasons for his decision. ¹

Under the parliamentary Commissioner Act 1967, an ombudsman was installed. Supreme Court Act 1981 not only codifies the rules of practice adopted by the Supreme Court in 1977 (R.S.C. 053) but widens the avenues of judicial review against administrative action, by all kinds of authorities.

U.S.A. -

In 1946 “Administrative procedure Act 1946” was passed which may be said to constitute a statutory code relating to the Judicial control of administrative action in the U.S.A. The Act constitute a great land mark in the development of Administrative law as compared to that of other countries in as much, it codifies in one comprehensive. The various functions of administrative bodies, quasi legislative and quasi judicial and the procedure to be followed while exercising each of these functions and also provides for definite avenues of Judicial review of these administrative actions.

India :

Since the law commission of India, after a comparison of the various systems of administrative law, has opined that the French system of Droit Administratif need not be imported to India and that the system of judicial Review obtaining under India’s constitutional system provides avenues of redress, to an individual by affected state action, includ

ing acts of public fairness, abuse of discretion etc. There is no need to supplement it by the French system, though there may be a scope for improving upon or extending the system of control by the ordinary courts upon public action.

Of Course the insertion of Article 323 A proved more beneficial and convenience to the Government employees to their redresses.