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Job Security

It is hard fact that without job security a worker cannot perform his duties fearlessly and efficiently. Unjust dismissal and suspension; unmerited promotion and demotion; partiality towards one set of workers and regardless merits are the main causes which create sense of insecurity among the workers and civil servants.

The present chapter is divided into two parts. Part 'A' delas with the security of job of the workers and an attempt has been made to discuss all the incidents and the protection which is provided in various statutes. In Part 'B' an attempt is further made to discuss the job security which is provided in the constitution of India. The provision relating to services under the Union and States are laid down in Part XIV of the Constitution. The central idea of this chapter is to crystalise the important provisions of the Constitution. They are Articles 309, 310 and 311.

(A) Workers

(1) In retrospect: Modern Indian working class first germinated from the construction of railways in India. Hundreds of workers who were engaged in this railway building were the harbingers of modern Indian working class.

First railway building in India was undertaken by two private British companies. the Great India Railway Company, and the Great Peninsular Railway Company founded in London in 1845. Twenty miles were laid in 1853, and two hundred and eighty eight in 1857. Larger scale construction
began, however, only after the great revolt of 1857-59 when the colonialists fully grasped the significance of communication lines to maintain their domination.

Coal was indispensable for railway locomotion and quick expansion occurred in coal mining industry also along with construction of railways. Discovery and use of coal started in 1877. The Bengal Coal Company was founded in 1843 and the large collieries in Jharia came into operation in 1895.

More effective means of communication, mainly railways and shipping lines being established, there was an increase in the number of mercantile enterprises importing manufactured goods and exporting raw materials, as well as in all types of plantation. As some raw materials needed initial processing before export, enterprises like rice mills, packing houses, flour mills, cotton pressing and ginning establishments, etc. sprang up like mushrooms to meet this need.

With an amazing capacity of foresight Karl Marx wrote:

"I know that the English millocracy intend to endow India with railways with the executive view of extracting at diminished expense the cotton and other raw materials for their manufacturers. But when you have once introduced machinery into the locomotion of a country, which possess iron and coals, you are unable to withhold it from its fabrication. You cannot maintain a net of railway over an immense country without introducing all those industrial processes necessary...

to meet the immediate and current wants of railway locomotion, and out of which there must grow the application of machinery to those branches of industry not immediately connected with railways. The railway system will therefore, become, in India, truly the forerunner of modern industry".

Meanwhile, plantation farming also developed intensively. The British Tea Company and Assam Tea, established in 1839. Although at the initial stage tea plantations faced many difficulties, with investment of immense British capital the industry greatly flourished. The contract labour used in the plantations differed little from slave labour and these semislaves also formed part of the growing Indian Labour. Jute industry also developed simultaneously. This industry monopolised by the British capitalists attracted much of the exported British capital. Jute was discovered by the East India Company in 1775. It was first processed at Dundee in England in 1885. The first Jute mill of India was established in 1884 by Aukland at Rishra, near Calcutta.

Abundance of raw material and cheap labour lured the British capitalists to invest large amount of capital in setting up industries in India—Jute, coal mining and tea plantations claiming the major part of it. Calcutta turned out to be the main capital of British investment while Bombay developed as the principal centre of Indian capital.

Development of large industrial units and expending commercial operations towards the close of the nineteenth century caused the growth and quick modernization of large cities and ports like Calcutta, Bombay and Madras. These cities and ports became the centres round which Indian labour developed as an organised class.

Prior to independence, apart from a fairly extensive network of railways, plantations, mines, cotton and jute textiles, sugar and cement factories among the more important industrial ventures in the country were three steel plants with a total capacity of 1.5 million tons of steel ingots, and a few engineering units. Today the complex of industry has changed. Assam no longer means jute tea; it means also fertilizers, chemicals, oil refining and distribution, electricity generation and engineering. Nor does Kerala mean cashew processing, coir manufacture and plantations; a prosperous fertilizer and chemical industry is growing up as are petrochemicals, oil refining, and ship-building. The face of Rajasthan is changing; sophisticated industries for the manufacture of ball bearings, synthetic fibres and electro magnetic and electronic instruments are coming up. Andhra Pradesh is no longer confined to agriculture and tobacco; it now has fertilizers, chemicals, ship-building and other industries. Madhya Pradesh and Orissa too are claiming a place on the country's industrial map. Older centres are diversifying. Bombay Poona, Surat, Baroda, Durgapur, Asansol, Ahmedabad, Bangalore and their surrounding areas, Hyderabad and its environs, the region around Madras and beyond are all having a greater measure of industrial activity. Kanpur no longer means mere textiles and leather; units manufacturing machine tools, transport equipments, automobiles, aeronautics, plastics and heavy chemicals are coming up. Small scale units in Punjab, Haryana manufacture a wide range of products such as woollen and cotton textiles, steel rolling, agricultural equipments, automobile part etc. These are symbols not only of increased industrial output, but also of a fair diversification of industrial structure. On account of expansion in industries employment increased tremendously.

The industrial worker today has acquired a dignity, status in law, prestige not known to his predecessor. He has now a personality of his own.
He shares the benefits, albeit meagre, which a welfare State with a vast population and inadequate resources can offer, and some more. He enjoys a measure of social security; he is secure in his employment once he enters it; he can not be dismissed, terminated, discharged unjustly and has been given statutory and Constitutional protection against unjust dismissal, termination and discharge.

(2) Terms explained and Compared:

(a) Worker, workman, Employee:

The individual working in an undertaking or a factory has been called a worker, workman or an employee in various enactments. Each one of these terms is significant by itself and is not interchangeable with the other as the meanings assigned to these terms are different. Factories Act, 1948, uses the term "worker" to refer to a person employed in the factory and many other Acts borrow the term. The term "workman" is used in Industrial Disputes Act, 1947, and Workmen's Compensation Act, 1923. The term 'employee' has been used in Employees State Insurance Act and Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

According to section 2(1) of Factories Act, 1948 worker means a person employed, directly or by or through any agency including a contractor with or without the knowledge of the Principal Employer whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process, or the subject of manufacturing process but does not include any member of the armed forces of the Union.

For covering a person within the scope of the term "worker" is that must be engaged or employed in the manufacturing process or in any kind of work incidental to or connected with the manufacturing process. The worker, need not be directly employed by the Principal Employer. It is sufficient if a person has been employed by or through any agency including a contractor with or without the knowledge of the Principal Employer, whether employed for remuneration or not.

The term 'workman' has been defined in Section 2 (s) of the Industrial Disputes Act, 1947. Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950, or the Army Act, 1950 or the Navy Act, 1957 or

(ii) Who is employed in the police service or as an officer or employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.
Thus the definition of workman covers all persons employed unskilled, manual, supervisory, technical or clerical work. It also includes apprentices, who may be employed for hire or reward and their contract of employment may be express or implied. For the purpose of any proceeding under this Act in relation to an industrial dispute, it includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that industrial dispute or whose dismissal, discharge or retrenchment has led to that dispute. The term workman excludes the persons on whom Army Act, Air Force Act, Navy (Discipline) Act, do apply. It also excludes the person who is employed in the police service or an officer or other employee of prison or who is employed mainly in a managerial or administrative capacity or draws wages exceeding one thousand six hundred rupees per month.

A comparison of the definition of "worker" in Factories Act, 1948 and "workman" in Industrial Disputes Act, 1947, brings out a few significant differences. From one point of view, the term "worker" is wider than "workman" because it includes persons who may not be receiving wages. It is narrow in another sense because it includes persons employed in factories only. A workman may be employed in any industry. Before a person can become a worker, there must exist some relationship between him and the manufacturing process. This is not so in the case of a workman. Again, the term "workman" distinguishes between non-supervisory, supervisory and managerial as well as administrative staff. It is exclusive of managers and administrators but includes supervisory staff whose monthly wages do not exceed one thousand six hundred.

Section 2 (n) of Workmen's Compensation Act, 1923 defines the expression "workman". Under this section, the workman is a person other than whose employment is of casual nature and who is employed otherwise
than for the purposes of the employer's trade or business. He is employed on monthly wages not exceeding two thousand rupees.

The term "workmen" used in Workmen's Compensation is very narrow in its approach. It includes permanent worker, employed directly in the manufacturing process in any of the scheduled industries whose total monthly remuneration does not exceed two thousand rupees.

According to section 2(f) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, "employee" means a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled, unskilled, manual or clerical, and includes-

(i) any labour who is given raw material by an employer or a contractor for being made into beedi or cigar or both at home,

(ii) any person not employed by an employer or a contractor but working with the permission of or under agreement with, the employer or contractor.

Thus the definition of "employee" under section 2(f) is very wide and has the following features:

(a) The definition includes the workers who work in industrial premises and establishment.

(b) The Act also recognised "home worker" who is given raw material for processing beedis at home.

(c) The Act also recognises "contract labour" by or through contractor.

5. Substituted for 'one' by the workmen's compensation (Amendment) Act, 1995, w.e.f. 15.9.1995
(d) Any person who is given raw material by an employer or a contractor is an employee. Again any person though not employed by an employer or a contractor but working with the permission or under agreement with the employer or a contractor is an employee.

According to section 2(9) of Employees' State Insurance Act, "employee" means any person employed for wages or in connection with the work of a factory or establishment to which this Act applies and-

(i) Who is directly employed by the Principal Employer on any work of, or incidental of preliminary to or connected with the work of the factory or establishment whether such work is done by the employee in the factory or establishment or elsewhere, or

(ii) Who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the Principal Employer or his agent on work which is ordinarily part of the work of the factory or establishment, or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment, or

(iii) Whose services are temporarily lent or let on hire to the Principal Employer by the person with whom the person whose services are lent or to let on hire has entered into a contract of service.

The definition of "employee" under E.S.I. Act is very wide like the one under Beedi and Cigar workers (Conditions of Employment) Act, 1966. The E.S.I. Scheme extends to all employees in covered establishments whether they are directly employed by Principal Employer or not. They may be employed by or through an immediate employer. The definition clearly indicates that the persons who are engaged in manual work and non-manual work both are covered for the purpose of this Act. Thus the term employee
includes every clerical labourer and part-time workers and apprentice.

In order to determine whether a person is a workman or not the following two question may be asked in relation to the definition of 'workman' given in Industrial Disputes Act, 1947:

What is the nature of work and degree of responsibility involved in performance of the duty? Is it mainly clerical or mainly administrative? Is it mainly supervisory or supervision is secondary or incidental function? What is the extent of control and supervision by the employer over persons in question? A person who agrees to work and actually does work is a workman even though he may get other people to work along with him. A contractor who is bound by the terms of contract to work himself, even if he employs other persons, will be workman. The worker may be employed even without the knowledge of Principal Employer for remuneration or not (section 2(1) of Factories Act 1948). It is not necessary that an employer should exercise his control directly. Piece rate workers working at home or elsewhere but under a measure of control by the employer are workmen.

In the light of the above discussion, it is clear that all skilled, unskilled, manual or clerical workers and office staff employed in an undertaking and working under the control of the employer are workmen. Musicians, Chemists, draftsmen, overseers, depot keepers, lauring auditors, pilots, radio officers, watch and ward jamadars, salesmen, apprentices, probationers, temporary and bodli workers, working journalists etc. all are workmen. Persons employed in supervisory capacity and drawing wages not exceeding Rs. 1000 per month are also workmen.

7 K N Vaid, 'State and Labour in India', 22-23 (Asia Publishing House, Bombay 1965).
(b) **Employer** - In ordinary sense "employer" means any person who employs another person for wages or salary. In the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 under section 2(g), "employer" means-

(a) in relation to contract labour, the Principal Employer, and (b) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has by reason of his advancing money supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name.

The term "Principal Employer" is defined under section 2(m) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 which means a person for whom or on whose behalf any contract labour is engaged or employed in any establishment.

The definition of "employer" has two parts, namely, sections 2 (g) (a) and 2 (g) (b). Two types of persons are made employers for the purpose of this Act. Under section 2(g) (a) the contract labour is either engaged or employed by a contractor and the employer has no knowledge of whom the contractor has employed or engaged, he would still be the Principal Employer in relation to such contract labour. This is, therefore, a deeming definition of "employer" where the contractual relationship of employer and employee may not exist. Section 2 (g) (b) makes the person employer in relation to "other labour", when he has ultimate control over the affairs of an establishment or who by reason of his advancing money, supplying goods or otherwise, he has a substantial interest in the control of the affairs of any establishment. The term "employer" includes any other person to whom the affairs of the establishment
are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name. Thus, in this definition, establishment is the basis for a person to be known as "employer". Accordingly, the worker's home where the family is rolling beedis with the help of the raw material supplied to them is an establishment.

The Principal Employer being made an employer would be answerable civilly as well as criminally for everything that such an employer is required to do under the Act*. In M/S C.P. Patel Vs. State*, the Court observed:

"The definition of employer in section 2(g) sub-clause (a) which includes the Principal Employer in relation to contract labour and the definition of Principal Employer in section 2(m) are declared as invalid. The words 'in relation to other labour' in sub-clause (b) of section 2 are to be treated as deleted. The rest of the Act is upheld as valid, and is to be read without these clauses".

In Chirukandoth Chandrasekharan Vs. Union of India**, the court examined the method of contract system adopted in the Beedi industry and struck down sections 2(g) (a) and section 2(m) of the Act as unconstitutional. The court further held that the words "in relation to other labour" occurring in section 2(g) (b) had no place and had to be deleted.

On the other hand, in Ganesh Beedi Works' Case*** it was held otherwise. The court held that the Act is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade mark holder

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8 Supra No 6 at 49
9 A I R 1971 Bombay 244 at 245
10 (1973) Lab I C 558
11 Mangalore Ganesh Beedi Works Vs Union of India, (1974) II Lab I C 1237
becomes the Principal Employer though he engages contract labour through the contractor. But he cannot escape statutory liability imposed on him, by stating that he has engaged the labour through a contractor, and therefore, he is not responsible for the labour. In fact the contractor employs that labour only for and on behalf of the Principal Employer. That is why the statute provides that even if the contractor engages labour without the knowledge of the employer, the Principal Employer is answerable for such labour, because the labour is engaged for or on his behalf. The Act and the Rules thereunder the manufacturer requires the contractor to maintain log books and registers. It is through such books and registers that the manufacturers keeps control over both the contractors and the labour. There is no restriction on the right of the manufacturer or the trade mark holder to carry on business. Therefore, the court held that the provisions of the Act contained in section 2(g)(a), 2(g)(b) and 2(m) are Constitutionally valid. Thus the decisions of C.P. Patel and C. Chandra Sekharan's cases were overruled.

In place of the term "employer", the term "occupier" has been used in section 2(n) of the Factories Act, 1948. "Occupier" means the person who has ultimate control over the affairs of the factory. The definition of the occupier has been amended in 1976 and 1987 and now it covers under its purview many other persons.

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12 Section 2(n) of the Factories Act, 1948 defines "occupier" as: "occupier of a factory means the person who has ultimate control over the affairs of the factory. Provided that-
(i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be occupier,
(ii) in the case of a company, any one of the directors shall be deemed to be the occupier,
(iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.
Under the Factories Act, the term "occupier" does not include the term "Principal Employer", while in Beedi and Cigar Workers Act, the term "Principal Employer" is expressly included and it widens the area of the definition.

In the definition of "occupier" the expression 'who has ultimate control over the affairs of the factory' is used. On the other hand in the definition of "employer" the expression 'affairs of the establishment are entrusted, whether such other person is called the managing agent, manager superintendent or by only other name' is used. The later expression covers a area more than that in the former expression. The later expression includes "managing agent", "manager", "superintendent" or a person "by other name". The former expression includes only "managing agent".

Further the expression 'ultimate Control over the affairs of the factory' used in the definition of occupier has limited scope than the expression 'has the ultimate control over the affairs of any establishment, used in the definition of "employer" under Beedi and Cigar workers (Conditions of Employment) Act, 1966'.

An "employer" under section 2(g) of the Industrial Disputes Act, 1947 means—

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13 Section 2 (g) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 defines 'employer' as:

'(a) in relation to contract labour, the principle employer, and
(b) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying good or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name.'
(i) in relation to an industry carried on by or under the authority of any department of the Central Government or State Government; the authority prescribed on this behalf, or where no authority is prescribed, the head of the department:

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief of executive officer of that authority.

The definition of "employer" under Industrial Disputes Act, 1947, in relation to the definition of "employer" under Beedi and Cigar Workers (Conditions of Employment) Act, 1966, is neither exhaustive nor inclusive. Under Industrial Dispute Act, 1947, the word "employer" is not specifically defined. It merely indicate who is to be considered an employer for the purposes of an industry carried on by or under the authority of a department of Government and or on behalf of a local authority.

The definition of "employer" under the Industrial Disputes Act, 1947, does not cover the contract labour as under Beedi and Cigar Workers Act, 1966.

The term "employer" has been defined under section 2 (e) of the Workmen's Compensation Act, 1923. The expression "employer" includes:

(1) any body of persons whether incorporated or otherwise;

(2) any managing agent of an employer i.e., a person entitled to the management of the whole affairs of another person. He differs from the manager though the later has similar managements in his hand, he is subordinate to the employer, while the managing agent is not;

(3) legal representative of a deceased employer; and

(4) When the services of a workman are temporarily lent or let on hire to another person with whom the workman has entered into a contract of
service of apprenticeship, such other person while the workman is working for him.

The word "employer" means any person who gives employment to any other person. Unlike the word "employer" which is defined in Beedi and Cigar Workers (Conditions of Employment) Act, 1966, includes and also a legal representative of a deceased employer. The term "apprentice" is also added in the definition of "employer" under Workmen's Compensation Act.

There is one more important difference between the definition of "employer" under the two Acts. Under Beedi and Cigar Workers Act, the word "includes" is used in the beginning of the definition clause. Section 2(e) of Workmen's Compensation Act uses the word "means" in such a case as distinct from the word "includes".

In England under the Act of 1925 the original employer also continues to be the employer. In India, the exemption of the original employer for any accident during the period of hire or letting may leave the workman without any remedy. For instance, if a truck owner hires out the truck with services of the driver and cleaner on a casual work, the hirer may avoid liability by pleading that the employment not being for his trade or business and being of a casual nature, the driver and cleaner were not workmen so far as he was concerned under section 2(n) of the workmen's compensation Act. On the other hand, the permanent employer may plead under section 2(n) that during the period of hire he had ceased to be the employer for the purposes of this Act.

It is submitted that the definition of "employer" under Workmen's Compensation Act, covers area larger than that under Beedi and Cigar workers (Conditions of Employment) Act 1966.  

14. Supra note 6 at p. 48-53.
(3) **Discipline**: Worker and employer are two participants of business organisation. This organisation is like a chariot and worker and employer are the two wheels of this chariot. "Each needs the other: capital cannot do without labor, nor labor without capital". Pope Leo XIII. Good discipline is necessary for the orderly conduct of any organisation (industry). Good discipline means "orderly conduct of affairs by the members of an organization who adhere to its necessary regulations because they desire to cooperate harmoniously in forwarding the ends which the group has in view and willingly recognise that do this their own wishes must be brought into reasonable unison with the requirement of the group in action.

Good discipline would require better performance from both the management and the employees. The important requirements of such a good discipline are:

1. The foremost thing is to see that every member of the organisation knows just what is expected of him and to have the members of the group and his superior no less than himself support him in seeing that it is done.
2. The disciplinary plan including the statement of rules, and imposition of penalties should gradually be shared in by the employees in an organised way.
3. The rules and regulations must be (a) as few as possible, (b) as simple as possible, (c) as explicit as possible.
4. The rules should be considered as means and not ends. There should be periodical reviews of the rules.
5. The rules should be widely publicised and communicated to the employees.
(6) There must be consistency and fairness in the application and enforcement of the rules. Those who are responsible for enforcement of the rules must themselves respect them. Preferably there should be an agreed procedure of appeal, chance for statement and hearing of a case, and final decision by an impartial domestic tribunal.

(7) If a rule is infringed frequently, the real cause of such infringement must be looked into.

(8) Penalties and Punishments should be devised on the theory of constructive correction and not vindictiveness. The emphasis should be on a plan of rewards for compliance with rules rather than on the penalty features. Justice should be tempered with mercy and humanism, patience and understanding. 15

Industrial discipline is necessary for the well ordered conduct of the industrial activity. For a good discipline the employers as well as the workers should follow the above requirements. It is submitted that hard and efficient work on the one hand and the avoidance of indiscipline activities on the part of the workers on the other, will be needed for achieving the goal which the community desires to achieve.

(a) Misconduct: The term "misconduct" has not been defined either in the Industrial Disputes Act, 1947 or in the Industrial Employment (Standing Orders) Act, 1946. The dictionary meanings of the word, "misconduct" are - "improper behaviour; intentional wrong doing or deliberate violation of a rule of standard of behaviour". In so far as the relationship of industrial employment is concerned, a workman has certain express or implied obligations towards his employer. Any conduct on the part of an employee inconsistent with the

faithful discharge of his duties towards his employer would be a misconduct. Any breach of the express or implied duties of an employee towards his employer, therefore, unless it be of trifling nature, would constitute an act of misconduct. In industrial law, the word 'misconduct' has acquired a specific connotation. It cannot mean inefficiency or slackness. It is something far more positive and certainly deliberate. The charge of 'misconduct', therefore, is the charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee to the employer.

Under the Industrial Employment (Standing Orders) Central Rules, 1946 framed under the Industrial Employment (Standing Orders) Act, 1946, the Central Government has prescribed the Model Standing Orders in Schedule 1, Clause 14(3) of which provides that the following acts and omissions shall be treated as misconduct:

(a) wilful insubordination or disobedience, whether alone or in combination with other, to any lawful and reasonable order of a superior;

(b) theft, fraud or dishonesty in connection with the employer's business or property;

(c) wilful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave, or absence without leave for more than 10 days.

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent reception or any act or omission for which a fine may be imposed to a maximum of 2% of the wages in month or

(k) striking work or inciting other to strike in contravention of the provisions of any law, or rule having the force of law.

From the language of this Model Standing Order itself, it is clear that it does not define misconduct or illustrate it exhaustively. It is not possible to provide for every type of misconduct in the Standing Orders for justifying disciplinary action against the workman. What is misconduct, will naturally depend upon the circumstances of each case. When there are Standing Orders, there would be no difficulty because they define "misconduct". In the absence of the Standing Orders, however, the question will have to be dealt with reasonably and in accordance with commonsense. As to what acts can be treated as acts of misconduct, therefore, would depend on the facts and circumstances of each case.

(b) Punishment : Punishment is the ultimate sanction of discipline. The imposition of punishment by an employer on his employee is an exercise of quasi-judicial authority. The act of punishment by itself may be an administrative act, yet it can be lawfully done only after proceeding judicially. It also involves exercise of judgement\(^\text{17}\). The proceeding culminating in this act are, therefore, held to be quasi judicial\(^\text{18}\).


Every authority exercising quasi-judicial power of imposition of punishment can do so only in accordance with the following rules:

(a) No punishment can be imposed on an employee unless it is supported by findings arrived at a disciplinary inquiry and

(b) Every disciplinary inquiry must be held as follows:

(i) where statute, Standing Orders, award, settlement or any binding service rules lay down any procedure for conduct of such inquiry then in accordance with such disciplinary law;

(ii) where no specific disciplinary law or express rules are provided then in accordance with the rules of "Natural justice"

Every punitive action must be preceded by a quasi-judicial proceeding or investigation called "disciplinary inquiry" or domestic inquiry". The application of these principles to industrial employment is recognition of social justice in employment matters, the denial of which would amount to denial of security of service to the employees against the arbitrary and capricious actions of the employers. Though the management concerned has power to direct its own internal administration and discipline the emergence of modern concept of social justice that an employee should be protected against vindictive or capricious action on the part of the management which may affect the security of his service, has resulted in subjecting managerial discretion to certain restrictions. At the same time undue interference by a tribunal with administration and management has not been encouraged19.

(c) Kinds of Punishment: It is already discussed earlier that punishment is the ultimate sanction of discipline. The disciplinary sanctions which are

19 Buckingham and Carnatic Mills Ltd Vs. Their workmen, 1951 II L.L.J. 314.
imposed for misconduct against employee are also innumerable in their variety. But in practice, depending upon the gravity of misconduct committed, generally the following punishments are inflicted as disciplinary action.

**Warning, Fine, withholding increments, Demotion, Suspension, Discharge and Dismissal**

(i) **Warning**  Warning is a minor punishment when administered to a workman in writing by the employer for some blameworthy act or omission. Though not identical, warning is analogous to" censure" as administered to employee.

Since warning is punishment, it is to be administered to a workman after giving him an opportunity to explain the act or omission alleged against him and after considering his explanation. However, as this punishment is of milled nature, the procedure to be adopted for administering a warning need not be as elaborate as in the case of major punishment of "discharge" and "dismissal"

(ii) **Fine** : Fine is pecuniary punishment that may be inflicted by the employer against the workman for some blameworthy act or omission. The Standing Orders of some establishment provide for the imposition of fines in case of certain act of misconduct. This power under the Standing Orders, however, is subject to section 8 of the Payment of wages Act.²⁰

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²⁰ Section 8 of the Payment of Wages Act,1936 reads ,"(1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with previous approval of the State Government or of the prescribed authority, may have specified by notice under sub-section (2)

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such
(iii) **Withholding increment**: In case of graded scales, increments are automatic till efficiency bar or the maximum of a scale is reached. Withholding increments in such a case is punishment. This punishment materially affects the workman concerned in his earning. Hence this punishment can be inflicted only for proved inefficiency or acts of misconduct, such as insubordination or habitual negligence, etc. after giving him a fair opportunity to explain his conduct.

(iv) **Demotion**: Demotion is the negative of promotion whereby not only the delinquent employee is not promoted to the next job, but he is also downgraded from the present job and is reduced to a lower cadre of service. This punishment is somewhat analogous to "reduction in rank" as envisaged by Article 311 of the constitution. It is severer in degree than the foregoing punishments. This punishment may be inflicted in accordance with the degree of severity of misconduct proved against the delinquent workman. The procedure to be followed for administering this punishment is the same as in the case of "discharge" and "dismissal".

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procedure as may be prescribed for the imposition of fines

(4) The total amount of fine which may be imposed in any one wage period on any employed person shall not exceed an amount equal to 3 per cent in the rupee of the wages payable to him in respect of that wage period.

(5) No fine shall be imposed on any employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realisations thereof shall be recorded in a register only to such purposes beneficial to the person employed in the factory or establishment as are approved by the prescribed authority.

*Explanation*: When the persons employed upon or in any railway, factory that the fund shall be applied only to such purposes as are approved by the prescribed authority.

21 Supra note 16 at 888
(v) **Suspension** - Suspension connotes temporary cessation of the right to work or labour. Lord Goddard, in Marshall Vs. English Electric Co.Ltd\(^22\) described suspension as "dismissal mitigated at the discretion of the employer by a promise to re-employ". It merely amounts to a postponement of the actual performance of the contract, and in the case of a continuing contract like the contract of service between master and servant suspension means that the relationship of master and servant remains in abeyance for a certain period". Though an order of suspension affects the efficiency of employee injuriously, he continues to be in the service of the employer. In other words, suspension does not dissolve the vinculam juris of the employment relationship. During the period of suspension, though the parties are absolved from some of their obligations, a connection however tenuous, continues between the master and the servant. The servant therefore, cannot seek employment anywhere, though he does not perform his normal duties for his master. Likewise, the master is obliged to give a subsistence allowance to the servant, though he may not be obliged to pay him the full wages which are to be paid for the specific work done by the servant\(^23\).

Suspension in industrial law is ordinarily of two kinds:

(a) Suspension as an interim measure pending a domestic enquiry; and

(b) Suspension as a substantive punishment.

(a) **Suspension pending enquiry** - After the service of charge sheet, where the charges are of serious nature, the employer may suspend the delinquent workman pending the enquiry. But there is no hard and fast rule that the service of charge sheet must precede the suspension order. If the misconduct

\(^22\) [1945] I. All. E R. 653 (655) (C.A.)

alleged is of very grave nature and the workman is apprehended at the spot of the commission of the offence, the employer, in such circumstances may forthwith suspend the workman and then serve him with the charge-sheet. In Delhi Electric Supply undertaking Vs. G.P. Satsangi\textsuperscript{24} the Court observed that the power of suspension has to be exercised with circumspection, care and after application of mind. The disciplinary authority must make a fair and proper assessment of the matter in the given circumstances and carefully scrutinise that prima facie there exists grave and compelling circumstances which in the light of the material available and collected during the primary investigation would lead to the likelihood of removal or dismissal of employee from service. A proper judgement exercised would prevent unnecessary harassment and humiliation of suspension.

(b) Suspension as a punishment: Suspension as punishment can be inflicted on a workman for a specified period as permissible under the contract of service or the Standing Orders after finding the workman guilty of misconduct committed by him. Suspension by way of punishment under the relevant Standing Orders would not alter the character of suspension as a temporary action as distinct from the permanent measure of termination of employment. The effect of the punishment of suspension is that the relationship of the master and servant is temporarily suspended with the consequence that the servant is not bound to render service and master is not bound to pay. In other words, the workman will not be entitled to wages for the period of suspension.

(vi) Discharge: The punishments discussed above inflicted as punishment for an act of misconduct while the workman continues in the employment of the employer. These punishments are generally known as minor punishments or light punishments in the parlance of Industrial Law. "Discharge" of a workman

\textsuperscript{24} (1984) Lab. I.C. 65 (Delhi).
from service as punishment is known as 'major punishment'. In this punishment, the contract of employment is determined and the employer-employee relationship ceases to exist. Discharge as a punishment is milder than the extreme punishment of dismissal though like dismissal, it also puts the contract of service to an end. In case of dismissal the employee loses a number of benefits where as in case of discharge only the contract of service is terminated from a particular date and the employee is not deprived of the benefits occurring to him to that date. The expressions 'dismissal' and 'discharge' as measures of punishment for misconduct in industrial law have acquired different connotations and one cannot be equated with the other.

(vii) Dismissal: The dictionary meaning of the word “dismissal” is "to let go"; to "relieve from duty". In ordinary parlance it means nothing more or less than termination of a person's office. Dismissal is the ultimate and most drastic disciplinary sanction which may be inflicted by an employee for an act of misconduct against an industrial workman. Hence, if there is no misconduct, there can be no punishment. In Moti Ram Vs. General Manager, N.E.F. Railway25, the court observed:

"Punishment is, therefore, correlated to misconduct, both in its positive and negative aspects. That is to say, punishment could be sustained if there was misconduct and could not be meted out if there was no misconduct".26

In bringing the service of a workman to an end, as a measure of punishment for misconduct, the employer has to comply with the requirements of the procedure laid down in the Standing Orders applicable to his establishment or with rules of natural justice. In other words, the service, as

25. (1964) II L.L.J. 467 S.C.
26. Id. at 493.
a measure of punishment, can be terminated only after giving the delinquent employee an opportunity to defend himself against the charges levelled against him by holding a fair and proper domestic enquiry. If the workman is found guilty of the charges by the enquiry officer, the employer will be justified to inflict the punishment of discharge or dismissal.

The employer's right to dismiss a workman arises from the terms, express or implied, of the contract of employment. The employers and the workmen, therefore, are free to limit the employer's right of dismissal or to extend it by incorporation provisions in the service rules or the Standing Orders applicable to the establishments, which may make certain acts dismissable which otherwise might not give rise to the right of dismissal. However, the justifiability of the punishment of discharge or dismissal would depend upon the degree of misconduct necessary to establish a right to dismiss a workman.

In A.H. Mehta Vs. Bank of Baroda the Court has observed:

"The charge-sheet is vague. The evidence does not indicate how the petitioner was grossly negligent. It is, on the contrary, shown that he was a diligent employee and it has been established that he had taken all precautionary steps which he was required to take. It is established that the locking system was faulty. In such circumstances, the petitioner could not be punished by a severe punishment of dismissal. The punishment is shockingly disproportionate."

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28. Ibid
30. Ibid.
In Cooperative Central Bank' case\textsuperscript{31} the Court observed:

"---The employer has a right, recognised in law, to dismiss his servant for misconduct. But he is not bound to dismiss him. That right to dismiss is recognised in law in order to protect the interest of the master. The master himself is the best judge of the circumstances under which he may choose or elect to exercise or refrain from exercising that power or right of dismissal. He can waive that right after condoning the misconduct. But he can not exercise that right after condoning the misconduct. The choice, election, condonation as well as the waiver may be either express or implied, depending upon the particular circumstances of each case. But they must be unequivocal, unqualified and unconditional to be effective, operative and valid\textsuperscript{31a}.

It is well settled that there can be no dismissal or discharge made with retrospective effect. Such dismissal cannot be sustained in law. But this principle is subject to the condition that if such a dismissal be made according to the terms of service, either contractual or statutory; for example, contained in the Standing Orders, such dismissal is within the competence of the employer\textsuperscript{32}. Such terms of service may be modified according to law, but as long as they stand unmodified, they bind the parties, unless of course, such terms contravene the provisions of the Industrial Employment (Standing Orders) Act, 1946 or any other law. Whether the retrospective dismissal is justified or not would depend upon the peculiar circumstances of a case. The order of dismissal cannot be said to be invalid merely because it is sought to be given effect retrospectively. In other words, if the order is otherwise valid the mere retrospectivity would not make it invalid in its entirely. In any case,

\textsuperscript{31a} Id. at 1702.
\textsuperscript{32} Harbanslal Malhotra and Sons (P) Ltd. Vs. State Bank of West Bengal (1964) II L.L.J. 342 (cal).
the dismissal may be given effect to from the date of the order instead of retrospectively\textsuperscript{33}

(d) **Rules of Natural Justice**: Natural justice is a justice that is simple and elementary and distinct from justice that complex, and technical.

The rules of natural justice mean and include the following:

(i) That every person whose civil rights are affected must have a reasonable notice of the case he has to meet.

(ii) That he must have reasonable opportunity of being heard in his defence.

(iii) That the hearing must be by an impartial tribunal, i.e. a person who is neither directly nor indirectly a party to the case.

(iv) That the authority must act in good faith, and not arbitrarily but reasonably.

The rules of natural justice may be varied depending upon the subject matter of the dispute or circumstances of a particular case. The fixed content of the rules of natural justice is that justice must be done to the parties. Without diluting this substance of the rules, variations in procedure can be affected\textsuperscript{34}.

In Shri Bhagwan Vs. Ram Chandra\textsuperscript{35}, it was held that the application of the doctrine depends upon the administrative authority, character of the rights to be affected and the scheme and policy of the statute and other relevant circumstances and in view of the special circumstances relating to

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\textsuperscript{33} Hemant Kumar Vs S N Mukherjee, A I R 1954 Cal 340. Calcutta Chemical Co Ltd Vs D K Barman (1969) Lab IC 1498 at 1511 (Pat)
\textsuperscript{34} Mukhtiar Singh Vs State of U P, A I R 1957 All 297 at 301
\textsuperscript{35} 1965 (3) S C R 222
\end{footnotesizes}
employment under the government, opportunity should have been furnished at both the stages.

The different constitution of the tribunals may also require variance in compliance with the rules. The requirement of natural justice may vary from different situations and varying constitutions of tribunals and the question should not be decided with any preconceived notions\(^3^6\). Because of this the disciplinary enquiries against the employees are permitted to be conducted by employers, even though the employers themselves initiate the enquiries, charge sheet the employees and to that extent are interested in the matter. Inspite of such interest they become judges of their own cause and have right to punish the employee\(^3^7\).

It would, therefore, appear that in appropriate cases even the principles of natural justice can be dispensed with or waived in matters of disciplinary enquiries\(^3^8\).

The real test whether the principles of natural justice have been complied with or not lies in seeing whether the non observance of any of these principles has resulted in miscarriage of justice or has affected the course of justice. If the party affected has been given reasonable opportunity of presenting his case then the requirements of natural justice are substantially fulfilled and no grievance can be made of infringement of the rules of natural justice by reference to definition of natural justice or citations of natural justice given in different cases from time to time. Thus the principles of natural justice are not inflexible rules. The flexibility of these principles has been recognised by the Supreme Court in as much as in cases of obvious misconducts\(^3^9\).

\(^3^6\) Rameshwar Singh Vs Union of India, 1967 I.L.L J 792
\(^3^7\) N V Nair Vs Government of Kerala, A I R 1962 Kerala 43
\(^3^8\) Dr G M Kothari, "Labour Demands and Their Adjudication", 4 (Vol II N M Tribathí (P) Ltd, Bombay, 1977)
\(^3^9\) Ibid
The rules of natural justice based on the fundamental principle "audi alteram partem" which goes back to centuries. These rules have now received acceptance from the Supreme Court of India in a series of cases.

The Supreme Court regarded the rule as essential condition for the validity of a statute in case it provides for the termination of the services of an employee without an inquiry and without observing the rules of natural justice.

In Charanlal Sahu Vs. Union of India the Supreme Court observed that they (rules of natural justice) are integrally embeded in our Constitutional frame work and their prestige, glory and primacy cannot and should not be allowed to be submerged by the exigencies of particular situations or cases.

The horizon of natural justice is constantly expanding. Its remedial significance has considerably increased.

In Mohinder Singh Case Krishna Iyer J. observed:

"Natural justice is a pervasive fact of secular principle where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes. It applies when people are affected by acts of authority. It is the bone of healthy Government, recognised from earliest times and not a mystic testament of judge-made law. Indeed, from the legendary day of Adam-and of Kautilya's Arthshastra-the rule of law has had this stamp of natural justice which makes it social justice---Today its application must be sustained by current legislation, case law of other extant principle, not the

40 Central Inland Water Transport Corp Vs Brojo Nath Gonguly, A I R 1986 S C 1571
41 A I R 1990 S C 1480
42 Mohinder Singh Vs Chief Election Commissioner, A I R 1978 S C 851
hoary chords of legend and history.

The concept of natural justice has undergone a great deal of change in recent years. In the past, it was thought that it included two rules, namely-(1) No one shall be a judge in his own cause (nemo debit esse judex in propria Causa or nemo judex in re sua), and (2) No decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is quasi-judicial inquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice.

The Court reiterated in 1993 that there can be no distinction between a quasi-judicial function and an administrative function for the purpose of rules of natural justice. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if rules of natural justice are calculated to secure justice or to put it negatively, to prevent miscarriage of justice. it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative inquiry. it must logically apply to both.

In Union of India Vs. P.Seth, in relation to the matter of compulsory retirement, the Supreme Court said that the rule of audi alteram Partem is not applicable in such a case as the order of compulsory retirement is not penal in nature. But the court held that the judicial review of the said order can be made on the grounds of malafides, arbitrariness or perversity.

43. Id at 870
Rules of natural justice need not be followed if termination of service follows legislative direction.46

About the fairness of procedure the court in M.S. Nally, Bharat Engineering Co. Ltd. Vs. State of Bihar47, said that it is fundamental principle of good administration showing that justice not only done but seem to have been done. It should be observed even where principles of natural justice are not applicable. What would amount to fairness would depend on particular facts and circumstances.

The rule of procedural fairness requires that if the disciplinary authority before passing an order of punishment does not supply or show the material to delinquent officer, the order should be declared bad in law. In such cases the plea that the report on the basis of which punishment is imposed is a privileged documents is not sustainable48. But where the inspection of document not relevant to the charges is disallowed, it does not vitiate the inquiry49.

Natural justice has various facets and acting fairly is one of them. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens50.

To constitute bias there must be reasonableness of the apprehension of bias in the mind of the party. The purity of administration requires that the party to the proceedings should not have apprehension that the authority is

46 L N M Institute of Economic Development and social change Vs State of Bihar, AIR 1986 S C 1130
47 (1990) 2 S C C 48
48 State Bank of India Vs D C Agrawal, AIR 1993 S C 1197
49 State of Rajasthan Vs S K Dutta Sharma, 1993 Supp (4) S C C 61
50 K I Shephard Vs Union of India, (1987) 4 S C C 431
biased and is likely to decide against the party. But it is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased. The apprehension must be judged from a healthy, reasonable and average point of view and not an mere apprehension of any whimsical person. Vague suspicions of whimsical, capricious and unreasonable people are not our standard to regulate our vision. It is the reasonableness and the apprehension of an average honest man that must be taken note of 51.

Natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position-(a) to make representation on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet52.

In Nand Kumar Jham Vs. Food Corporation of India53 the court held that the appellate authority has passed the order without hearing the petitioner. The court is entitled to examine whether the principles of natural justice have been followed. Order violates principles of natural justice.

In A.C. Pradhan Vs. L.I.C.54, the court held the enquiry officer had examined the party and relied on the evidence given by him, but without making him available for cross-examination. This was in gross violation of principles of natural justice.

Omission to comply with the requirement of the rule of audi alteram Partem, as a general rule, vitiate a decision. Where there is violation of natural justice, the order is set aside.

justice no resultant or independent prejudice need be shown, as the denial of
natural justice is, in itself, sufficient prejudice and it is no answer to say that
even with observance of natural justice the same conclusion would have
reached”.

It has been asserted that part of the principles of natural justice is that
a party is entitled to know the reason for the decision apart from the decision
itself. In other words, party is entitled to know the reason, for the decision,
be it judicial or quasi-judicial or administrative.

The Supreme Court in Maharashtra State Board of Secondary and Higher
Secondary Education Vs. KS. Gandhi*, emphasized the need of recording the
reason not only in quasi-judicial but also in administrative decisions. The
Court observed that reasons are harbinger between the mind of maker of the
order to the controversy in questions and decisions or conclusion arrived at.
They also exclude the chance to reach arbitrary, whimsical or capricious
decision or Conclusion. The reasons assure an in-built support to the
conclusion or decision reached. When an order affects the right of a citizen or
a person irrespective of the fact whether it is a quasi-judicial or administrative
order and unless the rule expressly or by necessary implication excludes
recording of reasons, it is implicit that the principles of natural justice or fair
play require recording of germane and precise relevant reasons as a part of fair
procedure.

(4) Remedies: There are more than hundred labour enactments, Central and
State and they contain their own judicial (or quasi-judicial) and administrative
authorities to implement their provisions. These authorities are given different
names and are designated differently such as Commissioner, authority, Court,
Tribunals.

(a) Commissioner: Under section 15 of the Payment Of Wages Act, 1936 the State Government is empowered to appoint any Commissioner for Workmen's Compensation or any other officer with experience as a judge of civil court or as stipendiary Magistrate or Presiding Officer of a labour court or a tribunal, to be the authority to hear and decide for any specified area all claims arising out deductions from the wages or delay in payment of wages, of persons employed or paid in that area, including all matters incidental to such claim. The jurisdiction of the commissioner to deal with such cases is exclusive as matters lying within the jurisdiction of the authority are excluded from the jurisdiction of ordinary civil courts. Proceedings before the Authority began by an application which must be made within six months from the date of the unauthorised deduction. In suitable cases, the Authority can entertain an application even though presented after expiry of the prescribed period. The parties can appear through a legal practitioner, or an official of a registered trade union etc. The Authority is required to give a reasonable opportunity of being heard to the applicant and the employer. In other words they are bound to follow the rules of natural justice. Under section 18 of the said Act, the Authority has the poweres of a civil court in respect of taking evidence, enforcing the attendance of witnesses and compelling the production of documents etc. Any amount directed to be paid by the Authority may be recovered from the employer, as if it were a fine imposed by a magistrate. An appeal lies to the district court or the court of small causes against the order of the authority. These courts have power to refer questions of law to the High Court.

Section 20 the Workmen's Compensation Act, 1923 empowers the State Government to appoint Commissioner for workmen's compensation for different areas within the State. No formal qualifications for the Commissions
have been prescribed. The Commissioner has power to determine the liability of a person to pay compensation under the Act. In deciding any matter before him, the commissioner may take the assistance of one or more persons having special knowledge of any matter relevant to issues before him. In this way, the Commissioner can secure some expert knowledge regarding the problems he has to adjudicate upon. Usually the assistance of a medical expert is called for. The Commissioner is given all the powers of a civil court under the C.P.C., 1908 for the purpose of taking evidence on oath, enforcing the attendance of witnesses and compelling the production of documents and material objects. The proceedings before the Commissioner commence by filing an application; accompanied by the prescribed fee and stating the prescribed particulars. No application is to be made unless some question has arisen between the parties which they have been unable to settle by agreement. The parties are entitled to appear through a legal practitioner, an officer of an insurance company or a registered trade union, or, with the permission of the Commissioner, any other authorised person etc. Sections 27 and 30 provide that the Indian Evidence Act, does not apply to the proceeding, before him. However, the Commissioner is required to record briefly the evidence of every witness. Subject to the rules made by the Government, the Commissioner has power to award costs at his discretion. The Commissioner may recover as arrears of land revenue any amount payable by any person under the statute. A limited right of appeal in cases involving substantial question of law, and submission of question of law by the commissioner, if he deems fit, to the High Court.

Section 20 of the Minimum Wages Act, 1948 empowers the Appropriate Government to appoint any Commissioner for Workmen's Compensation or

57 Section 23 of the Workmen's Compensation Act, 1923.
58 Section 22 of the Workmen's Compensation Act, 1923.
59 Section 24 of the Workmen's Compensation Act, 1923.
any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of a labour Commissioner or any other officer with experience as a Judge of a Civil Court or as stipendiary Magistrate to be authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under Section 14, to employees employed or paid in that area. The application to the authority must be made by the workman or by a lawyer on his behalf, within six months of the date on which the minimum wage become payable, but the application may be admitted after six months when the applicant satisfies the authority that he has sufficient cause for not making the application within such period. The authority possesses all powers of a civil court for purposes of taking evidence, and enforcing attendance of witnesses and compelling the production of documents and it is to be a civil court for the purpose of section 195 and chapter. XXXV of the Code of Criminal Procedure, 1898 (now Code of 1973).

Sections 74 to 83 of the Employees' State Insurance Act, 1948 deal with adjudication of disputes and claims. The Act establishes the Employees' State Insurance Corporation for administering the scheme of health insurance for the benefit of industrial workers. It also provides for establishment by the State Government of employees' insurance courts to decide disputes and adjudicate on claims about various matters under the statute. The court is to consist of such number of judges as the State Government may think fit to appoint. Any person who is or has been a judicial officer or is a legal practitioner of five years' standing is qualified to be appointed as a judge of the court.
The proceedings before the court commence by an application in the prescribed form which is to contain such particulars and is to be accompanied by such fee as may be prescribed by the rules made by the State Government in consultation with the employees' State Insurance Corporation. A party is entitled to be presented by a legal practitioner, an officer of registered trade union or with the permission of the court, any other authorised person. It is required to follow the procedure as may be prescribed by rules made by the State Government. The court has all the powers of a civil court in the matter of enforcing the attendance of witnesses, administering oath, compelling the discovery and production of documents, and recording evidence, etc. The order of the court is enforceable as a decree of civil court. The court has power to submit any question of law for the decision of the High Court in a case pending before it. Any order of the court involving substantial question of law is also appealable to the High Court.

(b) Labour Tribunals: Industrial Disputes Act, 1947 is the most important piece of labour legislation for adjudication of labour disputes. The Act makes provision for the creation of three kinds of Tribunals: Labour Court, Industrial Tribunals and National Tribunals. The appropriate government (Central or State as the case may be) is authorised to constitute one or more labour courts for adjudication of industrial disputes relating to matter specified in the second schedule to the statute and Industrial Tribunals for adjudication of disputes specified in the second or third schedule. The Central Government is empowered to constitute one or more National Tribunals for adjudication of disputes which involve question of national importance or affecting industrial establishments in more than one State. These Tribunals get their jurisdiction to decide a case only when it is referred to them by the appropriate government. Each of these bodies is to consist of one person only known
presiding officer for said body. These authorities or Labour Tribunals have been empowered to follow such procedure as they may think fit. The Indian Evidenc Act, does not apply to proceedings of these Tribunals. But since they are quasi-judicial bodies, principles of natural justice are to be followed by them. They may, if they think fit, take the assistance of one or more assessors having special knowledge of the matter under consideration by them. An employee is entitled to be represented by an officer of the relevant trade Union and an employer by the officer of the relevant association of the employers. Parties may be represented by a legal practitioner only with the consent of each other and the labour Tribunal. The Tribunals have discretion to award costs subject to any rules made under the statute. As in the case of other Tribunals, the Labour Tribunals have the powers of a civil court with regard to enforcing the attendance of any person and examining him on oath; compelling the production of documents; issuing commissions for examination of witnesses, etc. At the conclusion of proceedings, the Tribunals are to submit their award to appropriate government within a specified time. Within 30 days of its receipt, the award is to be published by the Government. The award becomes enforceable at the expiry of 30 days of its publication, unless the Government is of the opinion that it is inexpedient on public grounds affecting national economy or social justice to give effect to the whole or part of the award and in such a case the Government may make an order rejecting or modifying the award. If no such order is made, the award becomes enforceable at the expiry of 90 days of an order has been made, then it has to be laid along with the award before the legislature as soon as possible and becomes enforceable at the expiry of 15 days of its laying. Judicial review is excluded and an award published by the government is not called in question in any manner whatsoever.

In 1950, a Central Labour Appellate Tribunal having four benches functioning at Bombay, Calcutta, Lucknow and Madras was set up with a view to provide a Central Appellate Authority to review the divergent and sometimes conflicting decisions of numerous Industrial Tribunals and to coordinate their activities. The Tribunal was manned generally by retired High Court judges and could hear appeals, inter alia, involving substantial question of law. This Tribunal functioned only for six years and then a feeling gained ground that the Tribunal took an unduly long time to dispose of appeals, and unnecessary expenses were involved as important matters would in any case go to the Supreme Court under Article 136 of the Constitution. Therefore, the Tribunal was abolished in 1956. The Tribunal did act as a corrective to decisions of Industrial Tribunals and its hasty abolition in 1956 removed the restraining influence over the decisions of Industrial Tribunals and created a vaccum. The vaccum has however, been filled by the Supreme Court under Article 136. With its abolition the Court has liberally heard appeals from the Labour Tribunals. A large number of appeals have come before the Court after the abolition of Labour Appellate Tribunal and it has emerged as a major policy making and law making organ in the area of labour Law.

(5) Judicial Control of Labour Tribunals: The proceedings conducted by the Industrial Tribunals are judicial proceedings and the decisions and awards are subject to the writ jurisdiction of the High Court under Article 226 of the Constitution. The Tribunal is also subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution. Article 136 of the Constitution vests the Supreme Court with discretion to entertain appeals.

62. Clause (1), which had been substituted by the 42nd Amendment Act, 1976, has been revised by the 44th Amendment Act, 1978. Clause (5), inserted by the 42nd Amendment Act, has been omitted by 44th Amendment Act, 1978. Article 227 has thus been restored to its original Text.
against the orders of Tribunals by granting special leave.

A very important aspect of Article 136 is that it empowers the Supreme Court to hear appeals from a tribunal in any cause or matter. In the modern era of 'Social Welfare' State, there is a vast extension in Governmental operations, activities and responsibilities so much so that it is known as the administrative age. Many functions undertaken by a modern Government give rise to opportunities for adjudication and thus India along with other democratic countries has come to have a host varied adjudicatory bodies outside the regular judicial hierarchy. Though the Indian Constitution makes provision for a well ordered and well regulated judicial system, yet it will be wrong to assume that the courts monopolise the entire business of adjudication. Side by side with the courts, a plethora of bodies and officials also carry on adjudicatory functions under powers conferred on them by legislation and determine innumerable classes of application, claims and controversies between the administration and individuals, or between the individuals themselves. Most of these adjudicatory bodies are characterised as "quasi-judicial", indicating thereby that these are not courts "pure and simple", but partake of some features of both courts as well as the administration. "Quasi-judicial" indicates a process which is both judicial as well as administrative at one and the same time.\\n
In Durga Shankar Mehta Vs. Raghuraj Singh, the Supreme Court define 'Tribunal in the following words:

"-----The expression 'Tribunal' as used in Article 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies. provided they are constituted by the State and are invested

64. (1955) S.C.R 267.
with judicial as distinguished from administrative or executive functions”.

In Bharat Bank Vs. Employees65, the Supreme Court observed that though Tribunals are clad in many of the trappings of a court and though they exercise quasi-judicial functions, they are not full-fledged courts. Thus, a Tribunal is an adjudicating body which decides controversies between the parties and exercises judicial powers on distinguished from purely administrative functions and thus possesses some of the trappings of a court, but not all.

The use of the word 'Tribunal' in the Article 136 assumes a special significance, for it indicates that the Supreme Court can hear appeals from the decisions of such bodies as may not be courts in the traditional sense. The statutes creating these bodies may at times provide for some form of judicial Control over them, but many a time, the statutes provide no such control; on the other hand, some statutes even go to extent of declaring decisions by these bodies "final", thus barring a recourse to courts, under ordinary legal processes, by an individual suffering from a sense of grievance against a decision of such an adjudicatory body. The great merit of Article 136 is that, irrespective of any statutory provision to the contrary, the Supreme Court can control these adjudicatory bodies by hearing appeals from their decisions and pronouncements. Without some kind of judicial control there is a danger that tribunals might degenerate into arbitrary bodies, which would be foreign to a democratic Constitution. This the heart of the matter and the reason why the Supreme Court should exercise jurisdiction over Tribunal66.

66. Supra note 61 at 135-136
The Supreme Court's approach, in this regard, has been conditioned by two main considerations: (i) the Court's power under Article 136 is extraordinary and discretionary and should, therefore, be used in exceptional circumstances: and (ii) this power should be exercised whenever there is a miscarriage of justice. Though the Court is having very wide power under Article 136 yet, the prequisites or its interference to set right the decisions of Tribunals can generally be categorised as follows:

(1) The Tribunal acts in excess of its jurisdiction or fails to exercise a patent jurisdiction\(^67\)

(2) It has acted illegal;\(^{68}\)

(3) There is an error of law;\(^{69}\)

(4) The Tribunal has erroneously applied well accepted principles of jurisprudence.

(5) The order of Tribunal is erroneous\(^{70}\)

(6) The Tribunal acts against principles of Natural justice\(^{71}\) or has approached the question in a manner likely to result in injustice;

(7) There is a patent error of law in Tribunal decision\(^{72}\).

These categories are not exhaustive but are merely illustrative.

It may be interesting to note that so far the Supreme Court has been rather liberal in granting leave to appeal from Labour Tribunals. In case of

\(^{67}\) J.K. Iron and Steel Co Vs Mazdoor Union, A.I.R. 1956 S.C 231.
\(^{68}\) Sangram Singh Vs. Election Tribunal, A.I.R. 1955 S.C 425
\(^{69}\) Hindustan Antibiotics Vs Workman, A.I.R. 1967 S.C 948.
\(^{70}\) Bhikaji Keshao Vs. Brij Lal Nand Ial, A.I.R. 1955 S.C 610
\(^{71}\) J.K. Iron and Steel Co Vs. Mazdoor Union, A.I.R. 1956 S.C. 231
\(^{72}\) Kays Concern Vs. India, A.I.R., 1976 S.C. 1525
these Tribunals, the Court has not confined itself to questions of jurisdiction, of Natural justice, or patent error of law, but has assumed somewhat wider functions to settle important principles of industrial law73.

In workmen of Meenakshi Mills Ltd. Vs. Meenakshi Mills Ltd.,74 it has been argued that if the appropriate government or the Authority is held to be exercising functions which are judicial in nature, then it must be held to be functioning as a tribunal for the purpose of Article 136 of the Constitution and an appeal would lie to the Supreme Court against such order. The Court held that although the appropriate government or authority is required to act judicially while granting or refusing permission for retrenchment of workman under sub-section (2) of section 25-N, it is not invested with the judicial power of the State and it can not be regarded as a Tribunal within the meaning of Article 136 and no appeal would, therefore, lie to the Supreme Court.

Mere rejection of Special Leave Petition can not be construed as seal of approval as a decision of Supreme Court so as to oust the jurisdiction of High Court in hearing matters under Article 226 of Constitution. If the Supreme Court, in its discretion, refused to grant Special Leave to appeal, then there is no appeal75. The doctrine of merger or fusing the judgement of the lower court in that of the appellate court does not apply to such a situation.

The contention that the workman was doing no other work than that of a sprayman which was not disturbed by the High Court, that in fact the workman was doing the work of duplicator of designs as well as a tracer and sprayman. It is a finding of fact and can not be disturbed by the court under

Article 136 of the Constitution\textsuperscript{76}.

In State Bank of Bikaner and Jaipur Vs. Ajay Kumar Gulati\textsuperscript{77} where appeal was preferred by the employer, State Bank of Bikaner and Jaipur, against the Judgement and order of the Delhi High Court giving certain directions with respect to the scope of disciplinary enquiry to be conducted against the respondent-employee, the court observed:

"we are not prepared to agree. The High Court has given reasons for the direction has given, in supercession of the orders of the notified disciplinary authority. We are unable to say that the view taken by the High Court is not a possible view. Acting under Article 136, we do not think it advisable to interfere with the order of the High Court, even we find that another view of the matter is possible"\textsuperscript{78}.

Though the Court takes the formal position that it does not sit as a regular court of appeal over labour Tribunals, yet the fact remains that, in practice, it has emerged as the Supreme law maker, and a senior policy making partner, in area of substantive industrial law. The court has taken the view that certainly in the area of labour law is very essential as it is a significant factor in the socio-economic development of the country. If the numerous labour tribunals are left free to interpret and apply the law, great uncertainty would arise as there is no central form to introduce uniformity of approach amongst these bodies. The Supreme Court has taken upon itself the task of defining, ascertaining, refining and laying down a uniform system of labour law.

\textsuperscript{76} 1 Swadeshi Cotton Mills Vs Labour Court Kanpur, 2 Ghayas Ahmed Khan Vs Swadeshi Cotton Mills, (1995) II L.L.J S.C 637
\textsuperscript{77} 1996 (3) S.L.J 38 S C
\textsuperscript{78} Id at 47.
Article 227 confers on all High Courts power of superintendence over all courts and Tribunals within their territorial jurisdiction. The High Courts have such a power on all subordinate courts and Tribunals.

In regard to jurisdiction over Tribunals, the amendment of Article 227 made by the 42nd Amendment has been superseded by the 44th Amendment Act, 1978. Hence the jurisdiction of the High Court over Tribunals has been restored and the old case law will apply.

Briefly speaking the High Court may quash the order or decision of an inferior tribunal on the following grounds:

(a) That the impugned order or decision is without jurisdiction, or against the principles of natural justice, or involves non exercise of jurisdiction, or grave dereliction of duty or flagrant violation of the law as distinguished from a merely erroneous decision of fact or law or patent irregularity in procedure or an error of law apparent on the face of the record or that the finding is 'perverse', being founded on no material whatever.

(b) That the exercise of the jurisdiction under Article 227 does not amount to exercising the power of appeal or revision on question of fact or of law, not affecting jurisdiction.

In Jila Sahakari Kendriya Bank Vs. Labour court where the Labour court...
Court, on a proper consideration of evidence, recorded a categorical finding at the employer-bank, with a view to reduce the pay, passed the termination order while in reality the services were never terminated nor any fresh appointment given. Labour Court has held that it was a case of illegal deduction. The Court held that the Labour Court has given a categorical finding, and the criticism that impugned order is perverse or with jurisdiction is wholly unfounded and rather uncharitable. The scope for interference under Article 227 is extremely narrow and no grounds have been made out for interference.

In Commanding Officer, INHS and Gopinath Vs. Y.C. Sharma, Commanding Officer, INHS, the respondents contended that they were working in the canteen and doing various jobs like cook, attendant etc. and therefore wages should be fixed as scheduled employee. According to petitioners, the respondents were only part-time workers and their working hours were for 5 hours per day. Petitioners further contended that they are making no profits. It is meant for patients in the hospitals and respondents therefore, are not covered by the Minimum Wages Act. The court said that the learned trial judge has carefully considered all the contentions raised before him and the finding recorded by him do not suffer from any illegality. There is no error apparent on the face of the record which calls for interference. In Pfizer Limited Vs. Mazdoor Congress and other where appeals by special leave from the judgement of the Bombay High Court whereby the petition under Article 227 of the Constitution, filed by respondents, was allowed and orders of the Labour Court and the Industrial Court which upheld the termination of their services was quashed with a direction to the appellant to give all consequent benefits to the said respondents.

85 (1995) II L.L.J. (Bombay) 891
Challenging the correctness of the said decision, learned senior counsel for the appellant submitted that the concurrent finding of fact arrived at by the Labour Court and the Industrial Court, to the effect that the appellate had committed no unfair labour practice, aught not to have been set aside by the High Court exercising limited jurisdiction under Article 227 of the Constitution. He further submitted that if the facts of the case are examined the only conclusion which would be arrived at was that the appellant company had acted bona fide and the action of terminating the services of respondents was in accordance with its Standing Orders and did not amount to any unfair labour practice as contemplated by the said Act.

The learned senior counsel for respondents on the other hand while supporting the judgement of the High Court submitted that the decision of the Labour Court and the Industrial Court was perverse and, therefore, the High Court was justified in granting relief to respondents. The court held that the High Court clearly erred in allowing respondents to make out a new case and then in coming to a conclusion which is clearly untenable. The orders of the labour and Industrial Court did not call for any interference.

If there is an alternative legal remedy, it would not be proper for the High Court to entertain an application under Article 227. This is, however, not a rigid rule and in special circumstances the High Court may intervene even if there is an alternative legal remedy\(^7\).

A few points of distinction between Article 226 and Article 227 may be noted. The jurisdiction of the court under Article 226 extend to judicial, quasi-judicial and administrative bodies, but under Article 227 the jurisdiction extends only to courts and Tribunals. Under Article 227 the High Court may

\(^7\) Maneck Custodji Vs. Sarafazali, A.I.R. 1976 S.C 2446
interfere suo motu, but under Article 226 it will interfere on the application of a party. Further, under Article 226 the High Court merely annuls the decision, but under Article 227 it can do that and also issue further directions in the matter, and to this extent judicial review under Article 227 is broader than Article 226. Inspite of some of these distinctions between the two Articles, there does not appear to be any substantial reason for enacting Article 227 so far as administrative bodies (Tribunals) are concerned.

Article 226 empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari—(a) for the enforcement of any of the rights conferred by Part III, and (b) for any other purposes. Under the first part, a writ may be issued under the Article only after a decision that the aggrieved party has a Fundamental Right and that it has been infringed. Similarly, under the second part, it may be issued only after a finding that the aggrieved party has a legal right which entitles him to any of the aforesaid writs and that such right has been infringed.

Article 226 confers on all High Courts very wide powers in the matter of issuing writs which they never possessed before. There are only two limitations placed upon the exercise of these powers by a High Court under this Article: (a) that the power is to be exercised "throughout the territories" in relation to which it exercises jurisdiction (b) that the person or authority to whom the High Court is empowered to issue the writs "must be within those territories" and this implies that they must be amenable to the jurisdiction of the court either by residence or location within those territories.

In Chandigarh Administration Vs. Manpreet Singh it was held that under Article 226 the High Court does not sit or act as an appellate authority over the action of subordinate authorities or Tribunal. The jurisdiction is supervisory in nature. It can strike down impugned rule and direct the authorities to reframe it but cannot itself reframe it.

The power of the High Court to issue the writs under Article 226 can be exercised for a twofold purpose, viz., the enforcement of (a) Fundamental Rights, as well as (b) non-fundamental or ordinary legal rights.

The jurisdiction thus conferred on a High Court is to protect not only the Fundamental Rights but even any other legal right as is clear from the words any other purpose.

Mandamus will issue to command a Tribunal to dispose of an application, where it fails to deal with it within a reasonable time. Mandamus will lie to compel a statutory tribunal to perform its legal duty, e.g., to record its reasons or findings on material facts, where the relevant statutes requires it to do so.

In State Bank of Bikaner and Jaipur Vs. S.B. of B. and J. Employees' Association the court observed that it is not that this court in exercise of its jurisdiction can issue a mandamus to a statutory authority of the kind envisaged in Article 12 of the constitution, but can issue it to enable a person or body performing public duty and that such public duty for the writ to be enforceable need not be created or imposed by statute. It may sufficient for the duty to have been imposed by charter, common law, custom or even contract.

89 (1992) 1 S S C 380
Certiorari is available when a Tribunal acts without or in excess of jurisdiction. It also available against a quasi-judicial decision on the additional ground that the decision is unconstitutional, e.g., where the decision offends a fundamental right. In H.S. Vasanta Senaiah Vs. T.D.C., K.S.R.T.C. the Karnataka High Court observed:

"In our opinion, the Labour Court erred in law in attributing that fault to the petitioner-appellant. Under Article 226, this Court has got power to entertain the petitions and to grant the relief, where, in its opinion, the order appears to be illegal or suffering from error of law apparent on the face of record or the order appears to be suffering from error of jurisdiction and the like, the doctrine of alternative remedy does not by itself create a bar in the courts exercising jurisdiction under Article 226."

The jurisdiction of the Industrial Tribunal under section 33-A of the Industrial Disputes Act, 1947, depends upon the existence of the conditions mentioned in that section. Similarly, the question whether the employees before the Tribunal are "workmen" or whether the dispute is an "industrial dispute" within the meaning of the Industrial Disputes Act, is a jurisdictional issue, the finding on which is open to scrutiny in a writ of certiorari.

While it is true that the jurisdiction of review is limited but under Article 226 of the Constitution, it is the duty of the court to prevent miscarriage of justice. If the court is satisfied that the judgement has resulted

93. (1995) II L L J (Karnataka). 835
94. Id. at 839
in miscarriage of justice, depending upon the facts and circumstances of each case it will be open to the court to recall its earlier order.

Where an order by a statutory authority is wholly without jurisdiction and where there is no question of any inquiry into facts and the matter arises as a pure question of law, it is open to this court to decide the question of jurisdiction straight way, without driving the parties to the alternative remedy.

Certiorari will lie where a judicial or quasi-judicial authority has violated the principles of natural justice even though the authority has acted within its jurisdiction, and even though the legislature has provided a 'finality clause' in the relevant statute.

The power of a High Court under Article 226 in not confined only issuing writs; it is broader than that for a High Court may also issue a suitable direction or order for enforcing a legal right. It may even grant a declaratory relief when writ is not a proper remedy.

Recently the seven judge Constitution Bench of the Supreme Court in L. Chandra Kumar case ruled that Parliament could not divest Constitutional Courts of the power of judicial review even by way of a constitutional amendment.

The court held in a unanimous judgement that power of judicial review over legislative action rested in the High Courts under Article 226 and the apex Court under Article 32 of the constitution was an integral and essential feature of the Constitution and formed part of its basic structure.

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96 M/S Allied Sales Corporation Vs A P Shops and Establishment Act (1996) II L L J (A P ) 516
97 Ravi Vs Union of India A I R 1994 S C 1558
98 L Chandra Kumar Vs Union of India, A I R 1997 S C 1125
99 L Chandra Kumar Vs Union of India, 1997 (3) SCALE 40
An analysis of the laws and the administration thereof in the field of labour shows that it suffers from a number of maladies. The exercise of quasi-judicial power by the various authorities created by law to secure justice to the labour has not been very successful. This failure to attain the objective of socio-economic justice becomes evident when we examine the ground realities in this area. Various steps have been taken by the State to attain the objective of a fair deal to the labour. An analysis of the working of the machinery created and worked for this purpose shows various difficulties and for the sake of clarity an examination thereof is undertaken as below:

The main objective is to provide adequate monetary and other benefits which will secure a life worth living to this section of the society. For this purpose the following major legislative measures are taken by the State:

(1) Recruitment: In the early days of organised industry in India, factories and plantations found considerable difficulty in recruiting the necessary labour due to the reluctance of the workers to leave their villages and work in distant towns or plantations under strange environments. This forced the employers to recruit labour by all sorts of means, which they could adopt, and the systems of recruiting labour through intermediaries and through contractors come into existence. This continues even to this day. This recruitment of labour through intermediaries has been a marked feature of several Indian industries for a long time. The task of engagement of the workers is performed by middlemen or jobber known in different parts of India and in different industries by different names, such as Sardar Mistry, Mukadam, Tindal, Chowdhry, Kangany and the like. In a large factory there are jobbers, head jobbers and woman jobber.
In view of the evils of contract labour system, pointed out by several Committees, Enquiries and Conferences, steps had been taken to regulate the system and abolish it wherever practicable. The scope and definition of 'worker' in the Factories Act 1948, the Mines Act, 1952, Plantation Labour Act, 1951, the Beedi and Cigar workers (Condition of Employment) Act, 1966 was enlarged to include contract labour. Under the Employees' State Insurance Act, 1948, health insurance benefits were extended to contract workers. The Dock workers' (Regulation of Employment) Act, 1948, protected the employment, wages, and welfare conditions of specified categories of contract labour. The provisions of Minimum wages Act, 1948 applied to contract labour in scheduled employment. The various Industrial Relations Acts are passed by various States to cover contract labour. The workmen's Compensation Act already applied to contract labour also.

In spite of the measures mentioned above, the evils of contract labour system continued as the provisions in various Acts regarding contract labour, were evaded by the employers. On the basis of the various surveys, the Contract Labour (Regulation and Abolition) Act, 1970 was passed. The Act aims at the abolition of contract labour in respect of such categories as may be notified by the Appropriate Government in the light of the criteria laid down for the purpose and the regulation of service conditions of contract labour where such abolition is not possible.

It may be pointed out that many industries with the object of building up a permanent labour force, give preference for employment to the sons and relatives of their existing employees. It is argued that such people get easily accustomed to factory discipline and are more amenable to management.
However such system is full of dangers. In practice such a preference leads to favouritism, nepotism and even to communalism and racialism and many inefficient hands get the job.

In some factories there is a direct system of recruitment. The general procedure for direct recruitment is exhibition of a notice at the factory gate that so much labour is required. Then the General Manager himself or any other official or the Labour Superintendent comes to the gate and selects the necessary labour. Sometimes the recruitment for fresh recruits is brought to the notice of those already working in the factory, who advertise it among their friends and relations. A large number of applicants thus comes to the factory gates on the following or the appointed day.

However, these methods are generally effective only for securing unskilled or substitute workers. Recruitment of skilled and semi-skilled labour is more difficult and is made either by promoting more efficient workers or by inviting applications and making a direct selection after some trade test if necessary.

(2) Conditions of employment and labour: With the advent of Trade Unionism and collective bargaining new problems of maintaining industrial peace and production for the society were created. It was then considered that the society had a vital interest in the settlement of terms and conditions of employment of industrial labour and thus the settlement of labour problems become tripartite and the State representing the society entered on the scene.

The importance of making a law defining precisely the conditions of employment was emphasised during discussions in the Tripartite Labour Conference. To give effect to the new ideology the Industrial Employment
(Standing Orders) Act, 1946 was enacted by the Central Government. It is obligatory upon all the employers covered by this Act to define conditions of employment under them. The conditions of employment must also be made known to workmen employed by such employers.

The Factories Act is a labour welfare enactment codified with a view to regulate working conditions in the factories and to provide with the health, safety and welfare measures. Thus the main object of the Act as is evident from the provisions of the Factories Act, was to ensure proper, safe and healthy working conditions in the factories so that the workers may feel interest and charm in going to being afraid of bodily strain and without fear and danger of infection and accidents. In order to ensure safe, healthy and sanitary working conditions including rest intervals and measures of their welfare, the Act makes provision for the appointment of Inspectors to see that the objects of the Act are achieved and benefits are ensured to the workers.

(3) Wages and Compensation: The total earnings of workmen consist of basic wage, dearness allowance and bonus. Dearness allowance has relation to cost of living index of different industrial centres and hence, is not uniform. Similarly bonus is not uniform and depends upon the profits declared by an industry. The basic wage rates have been fixed by various award of adjudicators and Industrial Tribunals and the minimum wages under the Minimum wages Act of 1948.

Freedom from want and security against economic fear is one of the fundamental needs of our country. The Constitution affirms to all people of India, inter alia, social and economic justice, but this has yet to be secured by
peaceful, social and legislative steps. It is the function of an ideal welfare state to give to every citizen the opportunity of earning his living and freedom from fear—fear specially of economic ruin which can involve physical and even moral ruin.

In order to provide social security to the working people various legislative steps have been taken in our country like other countries of the world.

The security of the wages is provided under the Payment of Wages Act, 1936. A series of amendments have been made in order to keep pace with the changing circumstances and necessities of labour class. The Act has been drastically amended in 1982 with a view to extending its protection to a large number of persons and making the provisions of the Act more effective and beneficial.

The general principles of workmen's compensation had almost universal acceptance and India was then nearly alone amongst civilised countries without legislative measures embodying those principles. For a number of years the generous employers had been in the habit of giving compensation voluntarily, but this practice was by no means general. The growing complexity of industry in the country, with the increasing use of machinery and consequent danger of workmen, along with the comparative poverty of the workmen themselves rendered it advisable that they should be protected as far as possible from hardship arising from accidents. For this purpose the Workmen's Compensation, Act 1923 was passed.
The general scheme of the Act is that compensation should ordinarily be given to workmen who sustain personal injuries by accidents arising out of an in the course of their employment. Compensation will also be given in certain limited circumstances for disease. The actual rates of compensation payable are fixed and every case subject to a maxima.

Recently the provisions of the Act have been amended by the workmen's Compensation (Amendment) Act, 1995 with a view to provide economic security in a better possible manner. By way of omission, insertion and substitution the provisions of sections 2, 4, 4-A, 8,14, 18-A, 21,22,23,30 and Schedules I, II and III have been amended. The new sections 15-A and 15-B have been inserted after section 15 of the Workmen's Compensation Act, 1923. This amendment extends the benefits of this Act to the workmen concerned in the specified conditions.

These are some legislative measures taken for the betterment of the workers.

True worth of legislative measures can only be realised by providing a machinery for deciding the dispute arising therefrom which is suitable in such areas. Thus the existence of an effective working of the enforcement machinery is to be ensured by providing a suitable procedure and appropriate deciding authority.

The existing machinery of the court justice is primarily designed for private dispute between the two individuals. It is not appropriate for the enforcement of welfare legislative measures. This is due to two particular reasons:-
Firstly judges do not possess expert knowledge in any particular field to which a welfare legislative measure is to apply. Judges possess a general knowledge of laws and experience in settling different types of disputes.

Secondly the procedure prescribed for the resolution of disputes generally suffers from various defects. For example laws of evidence are technical and question of admissibility of evidence are central to the law of evidence. Generally the Code of Civil Procedure is applied by various authorities. Further the rules of natural justice developed in different areas of human relations are made applicable to welfare legislation also.

Parties in a dispute relating to legislative measures are the workers and the employer. The biggest employer is the State today as in almost in every area of human endeavor. We find public organisations which employ a very large number of people.

The result is the capacity to fight a case is very unequal in case of an employer and the worker. The resources at the disposal of the worker are very limited. He has no money for making the payment of the fees of the advocates and other attendant expenditure. The nature of procedure wherein adjournments are readily granted makes the dispute a very very long affairs. Capacity to wait of worker is very limited as compared to an employer particularly where a State run corporation or other organisation is a party to the dispute. In short unequal resources and unequal capacity to wait places the workers in a very advantageous position.

The need for speedy inexpensive commonsense justice is required. For this purpose our social welfare labour legislations should be amended so as to make it more effective system of the resolution of disputes in the field of welfare of workers.
(B) Civil Services

The civil servant is indispensable for the governance of the country in the modern administrative age. Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants. The constitution, therefore, seeks to inculcate in the civil servants a sense of security and fairplay so that he may work and function efficiently and give his best to country. Nevertheless, the overriding power of the government to dismiss or demote a servant has been kept intact, even though safeguards have been provided subject to which only such a power can be exercised. The service jurisprudence in India is rather complex, intertwined as it is with legislation, rules, directions, practices, judicial decisions and with principles of Administrative Law, Constitutional law, Fundamental Rights and Natural Justice. The role of the courts in this area is crucial as they seek to draw a balance between two needs of the civil service; the need to maintain discipline in the ranks of the civil servants and the need to ensure that the disciplinary authorities exercise their powers properly and fairly.

In contemporary India the civil servants are facing enormous difficulties such as political transfers, suspensions and compulsory retirement etc.

The civil services consist of the body of officials in the service of the Government of India. The members of the civil services hold civil post and are not members of the naval, military or air forces, and also do not occupy political offices, for instance, membership of a Council of Ministers. He is appointed by, or on behalf of the President to hold a civil post, and perform public duties; and usually but not necessarily, he is paid out of consolidated fund of India. There is no formal definition of 'post' and 'civil post'. The senses
(1) In Retrospect : India under British rule had developed, by the closing years of the nineteenth century, a well recognised civil services an essential feature of which was that control over it was vested in the executive. The members of the civil service of the Crown in India were governed both in the matter of their appointment and regulation of the conditions of their service, classification, methods of recruitment, pay and allowances, and discipline and conduct by rules made by executive. In the Government of India Act, 1919 specific provision was made enabling Secretary of State to make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay allowances, and discipline and conduct. The Act also provided that such rules might, to such extent and in respect of such matters as might be prescribed, delegate the power of making rules to the Governor-General in Council or to a local governments or authorise the Indian Legislature or local Legislatures to make laws regulating the public service. Thus the ultimate Control over the services vested in the Secretary of State in Council and, in fact, the Fundamental Rules' which governed all major matters relating to conditions of service were made by him. Even the Legislature in India derived their power by authority delegated to them by the Secretary of State. In the rules made by the Secretary of State in Council, Rule 55 was most important. The Rule laid down: 

"without prejudice to the provisions of the Public Service Inquiries Act, 1850, no order of dismissal, removal or reduction in rank shall be passed on a member of a service other than an order based on facts which had led to his conviction in a criminal court, or Court Martial

100 B. Shiva Rao, "The Framing of India's Constitution", a study, 708 (The Indian Institute of Public Administration, 1968, New Delhi).
unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity to defend himself—"

At the end of the first world war, the top echelons of the important services, especially those working under Provincial Governments, consisted of what were known as the "All India Services," governed a wide variety of departments. There were, in the first place, the Indian Civil Services and the Indian Police Service, which provided the framework of the administrative machinery. In addition there were the Indian Forest Service, the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineering (comprising an Irrigation Branch and Roads and Buildings Branch), the Indian Veterinary Service, the Indian Forest Engineering Service and the Indian Medical Service (civil). The initial appointments and conditions of service for all these services were made by the Secretary of State and each officer executed a covenant with the Secretary of State setting out the terms under which he was to serve. In addition to the All India services there were the central services under the Government of India and the provincial services in Provinces; lastly the Subordinate Service.

During the years following the inauguration of the 1919 Act it was decided that, as a consequence of the decision to effect the progressive transfer of power to Governments in India, the number of all India services, under the direct control of the secretary of State should be progressively reduced especially in those fields of administration that were transferred to ministerial control. It was now to be left to the Provincial Government to recognise in gradual stages the higher cadres of their services in the transferred

subject, and recruitment and control of the Secretary of State in council were accordingly discontinued. This policy resulted, by the early thirties, in the Indian Civil Service, the Indian Police Service, the Ecclesiastical Service being retained by the Secretary of State and the rest being converted into provincial services, safeguards being provided to secure the rights and privilege guaranteed to officers recruited earlier to the All India Services.¹⁰²

Government of India Act, 1935 formalized this position. The relevant provisions of that Act laid down that power to make appointments would be vested, in respect of Central Services in the Governor-General, and in the case of provincial Services in the respective Governors. Likewise, the power to regulate conditions of service of the members of these services was also conferred on the Governor-General or the appropriate Provincial Government. Provision was also made that Acts of the appropriate Legislatures might regulate the conditions of service of persons in the civil service. But the scope of such legislation was elaborately set out in the Report of the Joint Select Committee 1934. The Committee made it quite clear that the purpose of the Acts of the Legislatures would be to give general legal sanction to the status and rights of the services. The terms 'status' and 'rights' in the opinion of the Committee, covered firstly, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion; and secondly, protection against such arbitrary alterations in the organisation of the services themselves as might damage the professional prospects of their members generally. Safeguards were included

¹⁰² Joint Select Committee on Indian Constitutional Reform, Report, (1934), Para 277
in the Act laying down the procedures to be followed for dismissal, removal or reduction in rank of civil servants, and as a further safeguard a special responsibility was conferred on the Governor-General and the Governors for the protection of legitimate interests of the services. Power was also specifically vested in them to deal with the cases of individual Government servants in such manner as they considered just and equitable even if this departed from the rules or Acts applicable - so long as the case of the officer was dealt with in a manner more liberal than that provided by the rules.

Future recruitment by the Secretary of State was to be made to the Indian Civil Service, the Indian Police, and the Civil branch of the Indian Medical Service. For the Secretary of State's officers detailed safeguards were provided. Their salary, remuneration and rights in regard to medical attendance were to be decided exclusively by the Secretary of State. The number and character of the posts to be held by them were to be decided by the Secretary of State through rules prescribing detailed provisions specifying the individual posts under the Centre and in the State to which the Secretary of State's officers alone were to be appointed. A suitable provision was also laid down for safeguarding their rights in disciplinary matters.

103 Section 12(1) (d) of the Government of India Act, 1935 provides that in the exercise of his functions the Governor-General shall have the special responsibilities, that is to say - the securing to, and to the dependants of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

Section 52(1) (c) of the said Act provides that in the exercise of his functions the Governor shall have the special responsibilities, that is to say - the securing to, and to the dependants of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests.


On the basis of the grounds discussed above the Constituent Assembly considered the question of the public service. In the earlier discussion on the principles of the Constitution not much consideration was given to the provisions to be made in regard to the services. However the Union Constitution Committee included a specific recommendation that there should be All India Services whose recruitment and conditions of service would be regulated by federal law. The result of Independence and partition of the country was that our country suffered heavy reduction in the higher ranks of the services, especially in the cadres of the Indian Civil Services and the Indian Police. A considerable number of Europeans who were the members of these services chose to retire. A number of officers opted to serve the Dominion of Pakistan. The result coupled with the fact that recruitment to these services had also been considerably slowed down. The New All India Services were created to fill this gap.

Sri N. Gopalaswami Ayyangar was of the opinion that the establishment of All India Service would be desirable in cases where it was necessary to attract to the highest services the best material available in the country, transgressing provincial boundaries for the purpose of attracting this material.¹⁰⁶

The proposal of the Union Constitution Committee was adopted without any further discussion.

There were complete provisions for regulating recruitment and conditions of service of members of the various public services in the first Draft of B.N. Rau¹⁰⁷. This Draft followed the provisions of the Government of India Act of 1935 but adapted them to the circumstances of a Government working in complete responsibility to Legislature.

¹⁰⁶ C.A.D Vol IV P. 965
The Drafting Committee considered these provisions in January and February 1948 and made certain changes and omitted some provisions relating to defence services and simplified the provisions relating to the civil services. The Committee was of opinion that detailed provisions with regard to the recruitment and conditions of service of persons in defence services or those serving the Union or a State in a civil capacity should not be included in the Constitution, but should be left to be regulated by Acts of the appropriate legislature. The Draft Constitution as settled by the Drafting Committee contained three Articles. These Articles are mentioned in Select Documents III, 6, PP. 625-6.

108 Article 281 Article 281 says "In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule.

Article 282 (1) Article 282 says "(1) Subject to the provisions of clause (2) of this Article, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services and to posts in connection with affairs of the Union or any State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Provided that this clause shall not apply-

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

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

Article 283 Article 283 reads, "Until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."
These draft Articles sought in the first place to establish the basic position that both recruitment and conditions of service should not be within the executive jurisdiction of the Government, but should be made expressly subject to legislative control and the rules in force immediately before the commencement of the Constitution were kept alive only for an interim period until the Legislatures passed the necessary laws. They also protected civil servants from arbitrary dismissal, removal or reduction. These major penalties could not be imposed except after they were given a reasonable opportunity of showing cause against the action proposed to be taken; this requirement could be waived in two circumstances; where dismissal, removal or reduction in rank was ordered on the ground of conduct which led to a conviction on a criminal charge, and where it was not practicable to give a Government servant this opportunity. The Drafting Committee's reason for this simplified provision was that it should be left to the legislatures to regulate all matters relating to the services. In this regard, Dr. Ambedkar in his letter to the President of the Constituent Assembly said:

"The committee has refrained from inserting in the Constitution any detailed provisions relating to the services; the committee considers that they should be regulated by Acts of the appropriate legislature rather than by Constitutional provisions, as the committee feels that the future legislatures in this country, as in other countries, may be trusted to deal fairly with the services".

The Drafting Committee, at this stage, laid the whole responsibility for safeguarding the rights of all members of the services on legislative action taken by the appropriate Legislatures in pursuance of the relevant entries in the legislative lists.

109. Select Documents III, 6, articles 281-3 P. 516.
When the Draft Constitution as settled by the Drafting Committee was circulated, various comments were received from the Ministry of Home Affairs and from the judges of the Federal Court and Chief Justices of the High Courts. On receiving comments, the Drafting Committee decided that a new chapter relating to district Judges and the subordinate judicial service should be included in the chapter in the constitution relating to the judiciary. The Ministry of Home Affairs was very emphatic that provision in specific terms should be included in the Constitution for the setting up of the Indian Administrative Service and the Indian Police Service as all India Services. The Ministry also suggested the inclusion of a clause to the effect that every person who was a member of a Secretary of State's Service (formerly Known as an all India Service) the new Indian Administrative service or the Indian Police service should be entitled to the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary measures and tenure of office (or rights as similar thereto as the changed circumstances would permit) as he was entitled to before the commencement of the constitution. These suggestion were considered by the Constitutional Adviser who recommended their acceptance with some amendments.

The amendments made in the Draft Constitution in the light of above suggestion were considered by the Assembly on September 7 and 8, 1949. As against three Articles introduced in February 1948, the Drafting Committee now proposed the adoption of six Articles providing for a variety of matters. There was a criticism on these Articles. A considerable discussion was taken place on some of these Articles. Dr. Ambedkar had satisfactory answered. In the light of satisfactory answers and explanations the Assembly adopted all the Articles as suggested by the Drafting Committee.
At the revision stage the Articles on the services were renumbered as Articles 308 to 314.

(2) Under the Constitution:

The provisions relating to services under the Union and the States are laid down in Part XIV of the Constitution. The most important provisions relating to civil servants are envisaged in Articles 309, 310 and 311.

Article 309: Recruitment and conditions of Service: Recruitment is a comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not unknown.

The power of the Government under Article 309 of the Constitution to make rules, regulating the condition of service of Government employees could in no way be fettered by any agreement even if such agreement was proved.

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110, Article 309: Subject to the provisions of this Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of such Act.

111 Narayanan Vs State of Karnataka (1994) Supp.(1) S.C.C. 44
Article 309 empowers Parliament and the State legislature to regulate the recruitment and the conditions of service of the persons appointed to public services and posts under the Union and States, respectively. Until provision is made by an appropriate legislature (Parliament or State legislature) under this Article, the President and the Governors may make rules for regulating the recruitment and conditions of service of persons appointed to such services and posts. The rule making power of the Government (President or Governors) is identical with that of the legislature. The Constitution lays down certain general provisions. It does not provide detailed rules for recruitment or conditions of services of the Union or of the State. The power is left to respective legislatures (Entry 70 of List I and 41 of List II). The power of appointment belonging to the Executive will thus be subject to the legislative control. In Mubarak Vs. Banerjee it was held that it is not necessary for the exercise of the legislative power under Entry 70 of List I or 41 of List II that it must be made by a specific legislation under Article 309. Article 309 does not stand in the way of an appropriate legislature in laying down necessary conditions of service in any general law enacted by it, e.g., Section 86(3) of the Representation of the People Act, 1951.

The opening words of Article 309 subject to provisions of the Constitution, however, made it clear that the law-making power of legislature and the rule-making power of the executive must not contravene any provision of the Constitution such as Articles 14, 15; 16; 19; 299; 234; 310(1); 311(1) or 311(2).

113 Ram Avtar Vs State of U P, A I R 1962 All 328
114 A I R 1958 All 323
The Constitution itself provides the mode of appointment and Conditions of service of certain officers in connection with the affairs of the Union and the States, e.g., the Attorney General of India and certain classes of public servants, e.g., the staff of each House of Parliament and of a State legislature, officers of the Supreme Court, persons serving in the Indian Audit and Accounts Department, officers of High Court. Hence Art. 309 shall have no application to these classes of Government servants.

The provisions in Article 309 are only enabling ones. They do not impose any duty or obligation on the legislature to enact only Act or on the President or the Governor to make rules with regard to conditions of service of civil servants. They do not also impose any duty or obligation on the Government to make rules with regard to civil services. Any recruitment or appointment done by the Government in exercise of its executive power relating to civil services can not therefore be said to be invalid merely because no rule or law has been made under Article 309. In Mallikarjuna Vs. State of A.P. and N.T.B. Vs. Karnataka P.S.C., the S.C. held that the court can not issue mandamus to the Government to make rules or to legislate under Article 309 nor issue any direction to the Government to adopt a measure which would involve an increase in expenditure.

When there is neither legislation nor rules, qualifications for civil services may be laid down by the Government by an executive order. Even after Rules are framed under Article 309, there is nothing to debar the Government to fill up gaps by administrative instructions on the matters in

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115 Mubarak Vs Banerjee, A.I.R. 1958 All 323. See also B Nagrajan Vs State of Mysore A I R 1966 S C 1942; State of Mysore Vs Pamanabhacharya A I R 1966 S C 602
116 A.I.R. 1990 S.C. 1251
117. A.I.R 1990 S.C. 1233
118. Ramesh Vs State of Bihar A.I.R. 1978 S.C. 327
respect of which the Rules are silent though the Rules cannot be amended or supersedsed by administrative instruction nor can they be superimposed by any thing inconsistent with the Rules\(^{119}\).

An administrative policy or instruction can be made or changed by the Executive, without any formality. The court can not interfere with the formulation or change of administrative policy of the Government unless it violates some provisions of the constitution, such as Article 14, which requires that even an Administrative authority must act fairly and treat its employees equally. No change should, therefore, be made secretly or capriciously or on any ulterior motive. If these conditions are violated, the court may interfere, with suitable directions as to how fairness or equality of treatment could be achieved.

In Verma Vs. Union of India\(^{120}\), it was held that an administrative order may be reviewed; but if rights of parties are to be affected, rules of natural justice must be complied with. The decision taken after review is subject to judicial review like any other administrative decision.

In Indra Vs. Union of India\(^{121}\), the court held that executive orders made under Article 73 have for their operation and equal efficiency as an Act of Parliament or the Rules made by the President under Article 309. But statutory rules can not be altered by administrative instruction.

In Bhalnager Vs. Union of India\(^{122}\) the court observed that once the Union and the State Government frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rule framed under

\(^{120}\) A.I.R. 1980 S C 1461
\(^{121}\) (1992) Supp (3) S C C 217.
\(^{122}\) (1991) 1 S.C.C 544
Article 309 are solemn rules having binding effect. Governments should refrain from acting in a manner not contemplated by their own rules.

The proviso to Article 309 is a transitional provision empowering the executive to make rules having the force of law, relating to the above matters until the appropriate legislatures legislate on the subject. Further, until the powers conferred by the present Article 309 are exercised, the existing rules will continue to be in force, under Article 311, post, in so far as they are not inconsistent with the provisions of the Constitution.¹²³

In Iyengar Vs. State of Mysore¹²⁴ the Mysore High court held that the rules can be amended or varied by the President or the Governor as the case may be in view of section 21 of the General Clauses Act, so long as the appropriate legislature does not exercise its power under Article 309.

However, the Supreme Court in State of Madras Vs. Padmanabhacharya¹²⁵ stated that since the power of the President or the Governor under the proviso to Article 309 is not co-extensive with the power of the legislature under entry 70 of List I or entry 41 of list II in the Seventh Schedule to the Constitution, the President or the Governor has no power under the proviso to make a rule declaring that persons who were invalidly retired. The legislature however, can make a law effecting such validation.

In the case of Union territories, the rule making power under the Proviso to Article 309 has to be exercised by the President until Parliament legislates in that behalf.¹²⁶

¹²⁴ AIR 1961 Mysore 37 at 41
¹²⁵ AIR 1966 S.C 602 at 605
¹²⁶ Gobalousamy Vs Pondicherry, A.I R 1968 Mad 298 at 299
Article 309 gives, subject to the provisions of the Constitution, full powers to the government to make rules. In Roshan Lal Vs. Union of India127 it was held that the rules providing for terms of service can be altered unilaterally by the Government, and this is so because once appointed to his post or office, the government servant acquires status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which may be framed and altered unilaterally by the Government. The legal position of a government servant is more one of a status than of contract. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In C. Sankaranarayanan Vs. State of Kerala128, the nature of power to regulate the conditions of service of teachers in Government and Government aided schools was in issue. The Government had issued an order raising the age of retirement from 55 to 58 years after a memorandum submitted by the appellants in this regard. The rules framed under the Kerala Education Act of 1958 were amended accordingly. Subsequently, in suspension of its earlier order, the Government reduced the age of retirement to 55 years, and made the necessary amendments in the rules also. It was argued that the earlier order raising the age of retirement to 58 years was issued as a result of an understanding which could be considered as a binding contract or agreement between the Government and the teachers and, therefore, can not be unilaterally altered. The Supreme Court rejected this argument and held that the powers of the Governor under Article 309 to regulate the conditions cannot be fettered by an agreement or contract. The Court further did not accept also the plea of estoppel in such matters.

127. A.I.R. 1967 S.C. 1889 at 1894
In Sri C.R. Rangadhamaiiah Vs. Chairman, Railway Board\textsuperscript{129}, it was held that the President has under the Proviso to Article 309 of the Constitution power to promulgate rules with retrospective effect. This, however, is subject to the condition that the rules do not offend any of the Fundamental Rights conferred by Part III of the Constitution. It was held on the ground that the vested rights of the applicants in the matter of receiving pension and other retirement benefits have been affected by the retrospective operation of the amended rule. It is well settled that pension is a valuable right which a Government servant earns. It is neither charity nor bounty. Government servant acquires right to pension and other retirement benefits on the date he retires from service. Deprivation of such a valuable vested right after retirement is manifestly unreasonable, arbitrary and therefore violative of Article 14. In State of J and K Vs. Khosa\textsuperscript{130} it was held that rule which classifies existing employees for promotional purposes undoubtedly operates on those who entered service before the framing of the rule, it operates in future in the sense that it governs the future right of promotion of those who are already in service. The impugned rules do not recall a promotion already made.

As it has already been mentioned that the power conferred by Article 309 is subject to the opening words of the Article which govern not only the power of the legislature but also the rule making power conferred by the Proviso. Hence if any rule contravenes any of the provisons of the Constitution, e.g. Articles\textsuperscript{131} 14,15,16,19,299,234,310 (1), 311 (1) or 311 (2) the rule shall be void.

\textsuperscript{129} 1994 (2) S.L.J. (CAT) Bangalore 68 at 81.
\textsuperscript{130} A I R 1974 S.C. 1.
\textsuperscript{131} See Chapter IV of this work for the detailed discussion of Articles 14,15 and 16.
(a) Tenure of Office.

Article 310 of the Constitution accepts and adopts the Common law doctrine of pleasure, but the chances of its ill effect and misuse have been minimised by the provisions of Article 311. In Moti Ram Vs N.E. Frontier Railway, the Supreme court observed that there is no doubt that the pleasure of the President has lost some of its majesty and power, because it is clearly controlled by the provisions of Article 311, and so, the field that is covered by Article 311 on a fair and reasonable construction of the relevant words used in that Article, would be excluded from the operation of the absolute doctrine of pleasure. In P.L. Dhingra Vs Union of India, the Supreme Court observed that though the two qualifications are set out separately in Article 311, they quite clearly restrict the operation of the rule embodied in Article 310 (1). In other words, the provisions of Article 311 operate as proviso to Article 310(1). In State of Bihar Vs. Abdul Majid, the Supreme Court held that the rule of English law that a civil servant cannot maintain a suit against the State or against the Crown for recovery of arrears of salary does not prevail in this country and it has been negatived by the statutory law in India. The Government servants are entitled to relief like any other person under the ordinary law and that relief, therefore, is regulated by the C.P.C.

Clause (1) of the Article 310 provides that every person who is a member of a Defence Service or of a Civil Service of the Union or of an All India Services or holds any post connected with Defence or any Civil post under the Union, holds office during the pleasure of the President. Similarly, every person who is a member of a Civil Service of a State or holds any civil

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132 A.I.R. 1964 S.C. 600 at 609
133 A.I.R. 1958 S.C. 36 at 41
134 A.I.R. 1954 S.C. 245
post under a State holds office during the pleasure of the Governor of the State. The general rule of holding office during the pleasure of the President or the Governor, as the case may be, will operate subject to, except as expressly provided by this Constitution.

The Constitutional doctrine that the public servants hold office during the pleasure of the President or the Governors, as the case may be, has two important consequences. First, the Government has the right to regulate or determine the tenure of its employees at pleasure, notwithstanding anything in their contract to the contrary, provided that the mandatory provisions laid down in Article 311 have been observed. So long as the statutory inhibition, if any, are not contravened the civil servants have no right to complain of any cause of action against Government. Secondly, the Government has no power to restrict or give up its prerogative of terminating the services of its employees at pleasure under any contract made with the employee except to the extent recognised by clause (2).¹³⁵

The power of the Governor to dismiss at pleasure, subject to the provisions Article 311, is not an executive power under Article 154, but a constitutional power and is not capable of being delegated to the officers subordinate to him.¹³⁶ Later the Supreme Court in Sardari Lal Vs. State of Punjab,¹³⁷ also stated that the executive functions of the nature entrusted by certain Articles in which the President has to be satisfied personally about the existence of certain facts or state of affairs, cannot be delegated by him to any one else. In support of this view the court relied on the observation in Jayantilal Amritlal Vs. F.N. Rama,¹³⁸ that the powers of the President under

¹³⁶ State of U P Vs Babu Ram Upadya. A I R 1961 S C 751
¹³⁷ (1971) 1 S C C 411
¹³⁸ A I R 1964 S C 648
Article 311(2) can not be delegated. But, these propositions were described as not the correct statement and no longer good law after the decision in Shamsher Singh Vs. State of Punjab[^139], wherein the propositions reformulated:

(a) The distinction made in the Jayantilal Amritlal case between the executive functions of the President does not lead to any conclusion that the President is not the Constitutional head of the Government. (b) The President as well as the Governor, is the Constitutional or formal head and exercise his power and functions conferred on him by or under this Constitution on the aid and advice of his council of Ministers. (c) The President, as well as the Governor, in the exercise of his discretion under Article 310(1) acts on the aid and advice of the Council of Ministers and not required to act personally. It was, therefore, held that the appointment or dismissal or removal of persons belonging to judicial service of the State is not a personal function but is an executive function exercised within the rules made in that behalf under the Constitution. Thus it has now been clearly established that the pleasure of the Present or the Governor under Article 310(1) is exercised not in any personal capacity but as head of the Government acting on the aid and advice of the Council of Ministers[^140].

Clause(2) specially empowers the Government to enter into special contracts with new entrants, qualifying or limiting the application of the rule of dismissal at pleasure. It enacts that the President, or the Governor may, for securing the services of persons for compensation in the event of premature abolition of office or retirement not due to misconduct. It will be noted that such a contract can be made only with a new entrant, i.e. with a person who is not already a member of a Defence Service, of an All India Service, or of a Civil Service of the Union or of a State[^141].

[^141]: Supra note 135.
(b) Dismissal, removal or reduction in rank: The preceding Article 310 enacts the general principle that a Government servant holds office during the pleasure of the Government. The Article 311 places two restrictions on the prerogative of dismissal at pleasure. These are

(i) that person employed in civil capacities under the Union or State shall not be dismissed or removed by an authority subordinate to that by which they were appointed, and

(ii) no such person shall be dismissed or removed or reduced in rank except after an enquiry as provided in clause (2)

These two safeguards provided in this Article do not apply to all Government servants. They apply only to the persons who are members of a Civil Service of the Union or of an All India Service or of a Civil Service of a State or to the persons who hold a civil post under the Union or State. These safeguards are not applicable to members of defence forces or to any post connected with defence.

Article 311 provides:
1. No person who is a member of a civil service of the Union or an All India service as civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
2. No such person as aforesaid shall be dismissed or removed or reduced in rank except that it shall not be necessary to give such person any opportunity or making representation on the penalty proposed.

Provided further that this clause shall not apply:
(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or
(b) where the authority empowered to dismiss or practicable to hold such inquiry, or
(c) where the President or the Governor, as the case may be, is satisfied to hold such inquiry.

If in respect of any such person as aforesaid, a question shall be final
The Article makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts. In Porshotam Vs. Union of India\textsuperscript{143}, the Supreme Court has observed:

"Article 311 does not, in terms, say that the protection of that Article extends to only persons who are permanent members of the services or who hold permanent civil post - - - . In our judgement, just as Article 310, in terms, makes distinction between permanent and temporary members of the services or between persons holding temporary or permanent posts in the matter of their tenure being dependent upon the pleasure of the President or the Governor, so does Article 311, in our view, make no distinction between the two, classes, both of which are, therefore, within its protection, and the decision holding the contrary view can not be supported as correct"\textsuperscript{144}.

In S.L. Agarwal Vs. Hindustan Steel Ltd.\textsuperscript{145} the court held that an employee of a company incorporated under the companies Act such as the Hindustan Steel Ltd, is not a holder of civil post under the Union because the company is not a departments of the Government of India. Similarly employees of institutions such as Council of Scientific and Industrial Research which are sponsored and controlled by the Central Government but are registered under the Societies Registration Act do not get protection of Article 311. In 1975 the Supreme Court in Sukhdeo Singh's case\textsuperscript{146} held that statutory corporation

\textsuperscript{143} A.I.R. 1958 S.C. 36.
\textsuperscript{144} Id at 43-44.
\textsuperscript{146} Sukhdeo Singh Vs. Bhagatram, (1975) 1 S.C.C. 421.
such as the L.I.C., O.N.G.C and Industrial Finance Corporation are "State" under Article 12, yet to their employees also the protection of Article 311 is not available147.

In the light of the above discussion it is crystal clear that the Constitutional protection, offered by either clause(1) or clause(2) of Article 311, can not be taken away by any legislation short of amendment of the Constitution. Any law which seeks to do this even indirectly, must be held to be void.

In Saha's case148, it was held that where all the functions of a department of the State or Union Government along with posts are transferred to some University or Government Corporation, a situation is created where the employees remain holders of Government posts but activities are transferred to the newly created organization. Policy decision of the Government to convert a Government department to a Corporation cannot be questioned by the holders of Government posts. They cannot however, also be forcibly removed from Government service on account of this decision. Government can give an option to the holders of such posts either to be absorbed in some other department or to leave the service of the State and to opt for the service of the Government Corporation / undertaking in question. Once any such employee of the State opts for the service of the Corporation, he ceases to be in service of the State and is not entitled to retain lien in the Government.

147. Id at 447.
Suspension of a Government servant from service is neither dismissal nor removal and is not therefore within the scope of protection of Article 311 of the Constitution. But it has been held that suspension with retrospective effect is invalid. Likewise, termination or reduction in rank of a temporary servant brought about by abolition of the post would not attract Article 311(2).

(c) Power of the subordinate authority -

Clause (1) of Article 311 applies only if the following conditions are satisfied:

(1) That the person whose services are terminated is a member of a Civil Service or holds a civil post;

(2) That such termination amounts to 'dismissal' or 'removal'. Thus clause (1) need not be complied with where a person is discharged in terms of conditions of his contract of service similarly, where the penalty awarded is other than dismissal or removal, e.g., reduction in rank, or suspension, it may be awarded by an authority who is empowered in that behalf by the rules even though he is not the appointing authority. In Satinder Vs. State Bank of Patiala, the court observed that Article 311 (1) governs those belonging to certain stated services, it does not apply to bank employees.

Clause (1) of Article 311 makes it clear that the order of dismissal of a civil servant should be made by an authority who is not subordinate to the authority who appointed that civil servant. In Mahesh Prasad Vs. State of...
U.P.\textsuperscript{151} it was held that dismissal by an officer subordinate to the appointing authority is null and void. The term 'subordinate' refers to subordinate in rank and not in respect of function. It is not necessary that the dismissal or removal must be ordered by the very same authority who made the appointment or by his direct superior. There is a compliance with the clause if the dismissing authority is not lower in rank or grade than the appointing authority.

The dismissal will not be illegal where the order of dismissal is passed by appointing authority the order is merely communicated by some subordinate authority. The appointing authority can not delegate his power of dismissal or removal to a subordinate authority, so as to destroy the protection afforded by the Constitution, unless the Constitution itself authorizes such delegation by other provisions\textsuperscript{152}.

Appointing authority means the authority which actually appointed the officer to the service which he has terminated. Where there is change in the administration and the previous service is terminated and a fresh appointment is made, the appointing authority thereafter is the officer who makes the fresh appointment. If, however, the previous service is continued by an order of the new administration or by law, the appointing authority is the authority who corresponds to the authority who made the initial appointment. Where the power to appoint is vested by statutory provision in one authority, to be exercised on the advice of another, it is the former who is to be regarded as the appointing authority.

In Srinivasa Vs. C.A G.\textsuperscript{153} the court observed that what clause(1) of Article 311 requires is that the order of dismissal or removal must be made by

\textsuperscript{151} A.I.R. 1955 S.C. 70.
\textsuperscript{153} (1993) I. S.C.C. 419.
an authority not subordinate to the appointing authority. It does not require that the order initiating the inquiry or the inquiry itself must be made by the appointing authority himself or by some person not subordinate to him.

The provisions of Article 311 extends to all persons holding a civil post under the Union or a State, including members of the All-India and State Services. The expression civil post means an appointment or office on the civil side of the administration as distinguished from the post under the Defence Forces. The only persons who are excluded from the purview of Article 311 (1) are- (i) a members of Defence Service, and (ii) persons holding any post connected with defence.

The term 'post' denotes an office. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or position to which a person is appointed and which may exist apart from and independently of the holder of post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every appointment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. It has already been discussed the case of Sukhadeo Singh Vs. Bhaghat Ram, in which it was held that statutory corporation such as L.I.C., O.N.G.C. and Industrial Finance Corporation are "State" under Article12, yet to their employees also the protection of Article 311 is not available. The employee of such statutory corporation can not be said to hold a civil post under the State, so as to attract Article 311.

There is another reason why courts have refused to interfere with the termination of services of employees of statutory authorities, by the writ of mandamus. This writ issues only if there is any statutory duty or obligation which may be enforced against authority. In the absence of statutory limitations, employment under statutory authority is governed by the ordinary law of master and servant and the relation between the employer and the employee is contractual, so that mandamus will not lie to interfere with an order of removal made by such authority, in the absence of breach of statutory duty.\textsuperscript{155}

If the termination of service is in breach of a statutory obligation in compliance with which only the employment can be terminated, a writ under Article 226 as well as a suit for declaration will lie. But if the regulations do not impose any statutory obligation but merely embody the terms of the contract of employment, only a suit for damages for wrongful dismissal will lie, in case of such regulations.\textsuperscript{156}

A person, however, cannot be said to have a status of holding a civil post under the State merely because his salary or wages are paid from State funds or that State exercises certain amount of control over the post.

The other safeguard which the Constitution affords to a civil servant is that he shall not be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

\textsuperscript{155} U.P. State Warehousing Corporation Vs. Tyagi A.I.R. 1970 S.C. 1244 at 1255
\textsuperscript{156} Ibid.
Clause (2) of Article 311 applies only when an employee is dismissed, removed or reduced in rank, before the normal period of service, against his will and by way of penalty or punishment. It does not apply in case of any other punishment.

The form of the order or expressions used in the order are not conclusive on the question whether it is by way punishment. In Parshottam Vs. Union of India157 and Champak Lal Vs. Union India158, the court observed that penalty or punishment should be determined from the circumstances of each case by applying a two-fold test:

(a) Whether the Government servant, whose services have been terminated, had a right to the post or the rank;

(b) whether has been visited with evil consequences, e.g., forfeiture of the benefits already earned by him.

If either of these two tests is satisfied, it must be held that the servant has been punished, so as to attract Article 311 (2).

Premature termination of services of a Government servant holding a temporary post for a fixed term will also attract Article 311(2)159.

In Moti Ram Vs. N.E.F. Rly160, the Supreme Court has settled the controversy by drawing a distinction between two classes of Government servants, Viz., (a) those who have a right to or lien upon the post held by them; and (b) those who have no such right.

159. Supra note 157.
160. A.I.R. 1964 S.C. 600
Where a Government servant has the right to hold a post either according to contract or the conditions of his service, the mere fact of termination of his service will be deemed to be penal and Article 311 (2) will be attracted, whether such termination takes place assigning any reason or not. It follows, therefore, that the service of the following classes of Government servant can not be terminated without compliance with Article 311 (2):

(i) Termination of the service of a Government servant holding a permanent post, substantively, - prior to the age of superannuation, except by way of compulsory retirement, according to the rules.

(ii) Premature termination of the services of a Government servant holding a temporary post for a fixed term.

(iii) Termination of the services of persons in 'quasi-permanent' service otherwise than according to rule 6 of the Central Civil Service (Temporary Service) Rule, 1949.

In the foregoing cases termination of service will ipso facto amount to 'dismissal' or removal irrespective of any penal intention or additional penal consequence being involved, because the employee in question had a right to hold the post till the age of superannuation or some other specified time, as the case may be, and the deprivation of such right per se constitute a penalty.

But even in the above cases, Article 311(2) will not be attracted if (a) Government has a right to discharge or retire the Government Servant under the conditions of his service or terms of a contract, and (b) such discharge or

162. Supra note 160 at 610,612.
retirement does not involve any penal consequence by way of loss of salary, allowance, pension or other benefits already acquired by his past service \(^{164}\). In any case, the motive behind the order is immaterial \(^{165}\).

It has been also held that where the ground statedly mentioned for the termination of the service in such which is capable of being explained by the employee, opportunity should be given to him to do so under clause(2) \(^{166}\). The grounds of misconduct, physical or mental incapacity, neglect of his duty, absenting without leave and reasonable cause, and over-staying an expiry of leave, have all been held to be such cases.

(d) Position of Temporary Employee:

In regard to discharge of temporary employee, in some earlier cases it was settled that where a temporary Government employee is simply discharged in terms of his employment, without casting any stigma in order of discharge, the order could not be said penal, so as to attract Article 311 (2). But the recent view is different. In Jarnail Singh Vs. State of Punjab \(^{167}\) the court held that the express terms of the order of discharge are not conclusive on this point. Where the petitioner for some misconduct, the court would go behind the terms of the order of discharge and examine all the attendant circumstances, in order to find out whether the form of the order was only a camouflage for an order of dismissal for misconduct, which could not be made without complying with Article 311(2).

\(^{164}\) Balakotiah Vs. Union of India A.I.R. 1958 S.C. 232

\(^{165}\) Ibid.


In State of U.P. Vs. Kaushal**, a three-Judge Bench has summed up the two propositions and thus observed that—

(a) If on the perusal of the character roll entries or on the basis of preliminary enquiry on allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service where upon the services of the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary Government servant has not right to hold the post; his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms the contract providing for such termination or under the relevant statutory rules regarding the terms and conditions temporary Government servants.

(b) If the competent authority decides to take punitive action it may do so (only) by holding a formal inquiry by framing charges and giving an opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution.

(e) Adhoc appointment:

An adhoc arrangement is an appointment made for a particular end or purpose at hand without resorting to the rules or procedure for making 'regular' appointments.

Thus, where there is a leave or other temporary vacancy, it is open to the appointing authority to make an adhoc appointment for the particular purpose of filling it, so long as that appointment is otherwise, unexceptional. Such adhoc appointments are often made where there are no service rules to guide and control the discretion of the appointing authority. It may also be that

the service rules may themselves provide for the making of adhoc appointments. An adhoc appointee or promotee has no right to the post because by its very nature it is a stop-gap arrangement until a regular appointment or promotion is made and therefore, in that sense the incumbent holds a very precarious tenure and would, therefore, be liable to be discharged or reverted to make room for a regular appointee or promotee, pending which the adhoc arrangement was resorted to.

The discharge or reversal of an adhoc appointment even after he has continued for any length of time would not amount to dismissal or reduction in rank so as to attract Article 311(2), unless it is shown that it was intended to be a measure of punishment or the order cast any stigma on him or was otherwise mala fide, or it inflicts upon the delinquent civil consequences of a penal nature.

The burden of proof is on the employee to show that the termination is penal, in the sense explained above, and the clause(2) is attracted.

**Dismissal or removal**: The distinction between dismissal and removal lies in the consequences of the respective orders. Thus, while a person 'dismissed' is ineligible for re-employment under the Government, no such disqualification attaches to a person 'removed'. This difference is based upon Departmental Rule, but form the Constitutional stand point, the following elements are common to both:

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170. Supra note 168
(1) Removal or dismissal from service stand on the same footing and both bring about a termination of service, though every termination of service does not amount to removal or dismissal.

(2) Both are penalties awarded on the ground that the conduct of the Government servant is blameworthy or deficient in some respect.

(3) Both entail penal consequences, such as the forfeiture of the right to salary, allowances or pension already acquired.

(4) It follows that Article 311(2) would be attracted whether the order of termination is one of dismissal or removal (or amounts to reduction in rank)".

The form of or the term used in the order is not conclusive. The substance of the order should be looked into each case if in substance the order deprives him of his existing right to the post or visit him with evil consequences like forfeiture of benefits which he had already covered clause(2) would be attracted 173.

Further, clause(2) would be attracted only if the termination is against the will or willingness of the Government servant to continue to serve. If he voluntarily asks for permission to retire or quit the service, the clause is not attracted 174.

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Stigma: It is now settled that 'stigma' in an order of discharge of a temporary compulsory retirement or reversion from an officiating post, constitute a penal consequence, so as to attract Article 311(2). By stigma is meant an aspiration or reflection on the conduct or efficiency or the like of the Government employee. It would affect his future prospects a penal or evil consequence, and consequently clause (2) Article 311 applies.

There is a consensus of opinion that a stigma will require compliance with Article 311(2) only if it is expressly attached to the order of termination of service or reduction itself.¹⁷⁵

But where the order is itself contains no express word throwing any stigma on the Government servant, the question arises as to whether the court can delve into the connection files to discover whether some kind of stigma can be inferred therefrom. According to one view, it can not be do so.¹⁷⁶

The other view is that it can be so done. The earlier notings or opinions expressed must be considered to see whether the accusation amounting to stigma was a mere motive or was the foundation for the final order. If it was the former, clause(2) would not be attracted. If it was the latter, it would be attracted.¹⁷⁷

A stigma has been inferred from the following circumstances, so as to attract Article 311(2)¹⁷⁸.

(i) Where an order of reversion of a member of an All India Service from the Union to a lower post in a State was preceded by correspondence

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which stated that the petitioner did not come to the standard and gave him an option to accept a lower post under the Union.

(ii) where an order of compulsory retirement is made with the remark that the officer has outlived his utility;

(iii) where an order of discharge of a temporary employee is based on the finding of misconduct of the employee after an inquiry [which did not comply with the requirements of Article 311(2)];

(iv) an imputation that the employee has lost confidence in the employee.

On the other hand, there is no stigma

(i) where subsequent to the order of discharge and, in reply to his representations, the employee has been told that he could not be re-employed because he was an ex-convict;

(ii) where the order of discharge or reversion is preceded by an informal inquiry as to whether the Government servant is fit to be retained in the service or post to which he had acquired no legal right.

(iii) where an order of compulsory retirement, according to rules, is preceded by an adverse entry in confidential report;

(iv) where, there being no express words of stigma in an order compulsory retirement, the order is made under a rule which prescribes lack of integrity as one of the factors for consideration while making an order under the rule.

(v) where the letter which contained the proposal for compulsory retirement contained a stigma but the order itself did not contain any stigma;

179. Ibid. PP. 962-963.
(vi) where the order of reversion from an officiating appointment stated that the petitioner was found unsuitable for the higher post, similarly in the case of a probationer, discharge on the ground of unsatisfactory work and conduct would not per se constitute stigma.

Abolition of Post: when a post is temporary, the abolition of such post arises no problem because appointment to a temporary post confers no right upon the employee to hold that post180. In such cases Article 311(2) is not plainly attracted when such employee is simply 'discharged' on the abolition of post. But, if it is a permanent post, clause(2) would be attracted, because, on appointment to such post, the employee acquires a legal right to hold until any of certain contingencies take place181.

It is now settled from the judgements of K. Rajendran Vs. State of T.N.182; Gurdeep Vs. Union of India183; M.L. Kamra Vs. N.I.A;184 Dhanoa Vs. Union of India185; Ramanatha Vs. State of Kerala186; Shankaranarayana Vs. State of Mysore187, that even in the case of a permanent post Article 311(2) was not attracted, simply because abolition of a post for administrative exigencies could not be said to be a 'punishment' for some misconduct, and also because the creation and abolition of a post is the exclusive concern of the executive. The court thus upheld the abolition of the post of Election Commissioners within 3 months of their creation. The case, however, becomes

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different where the abolition of a post is mala fide and been resorted to as a mask for penal action in order to avoid Article 311(2).

Even though Government has the right to abolish a post, by executive order or by legislation, such action is subject to judicial review, on grounds of mala fides or unconstitutionality.

But the question whether such person who loses his job as a result of abolition of post should be rehabilitated by giving an alternative employment is a matter of policy on which the court has no voice.

Compulsory retirement: A compulsory retirement (or premature retirements), without any additional loss, does not attract Article 311(2), even though misconduct or inefficiency weighs with the Government in ordering compulsory retirement 189.

But the case becomes otherwise if some aspersion or stigma is expressly attached to the order itself, e.g. that the officer has outlived his utility 190; or the order of compulsory retirement is made after finding the delinquent guilty of the charges in a departmental proceeding.

In Dalip Singh's case 191, it was held that the retirement even before the age of superannuation, if it is ordered in pursuance of a policy retrenchment or other administrative reason and on payment of a proportionate pension, does not amount to 'removal' as there is not element of penalty involved except where he has a statutory right to continue upon a particular age. But

188. Supra note 185.
the observation in Dalip Singh's case, must now be read subject to the observations in Moti Ram's case\textsuperscript{192} that if a rule provides for compulsory retirement at any time, without providing for a minimum period of service after which only the compulsory retirement may be ordered, that rule itself must be held to be void for contravention of Article 311 (2) because such compulsory retirement, in the case of a permanent government servant, amounts to a 'removal'.

An order of compulsory retirement may be challenged on the following possible grounds:

(1) That it amounts to removal within the meaning of Article 311 (2) and is accordingly invalid for contravention of the requirements of that Article, e.g.; where it has been ordered as penalty in a disciplinary proceeding, or otherwise than under a rule providing for compulsory retirement on the age of superannuation.

(2) that the rule under when the order has been made is unconstitutional and invalid\textsuperscript{193}, e.g.;

(i) where the rule does not fix any age of superannuation but enables the Government to retire a Government servant at any time, without payment of full pension.

(ii) where the age of superannuation has not been reasonably fixed and is unreasonably short.

\textsuperscript{192} Moti Ram Vs. N.E.F. Rly. A.I.R. 1964 S.C. 600 at 617.

(3) that the order is ultra vires the provision of the rule under which it purports to have been made, e.g., that the condition precedent for the application of the rule had not been satisfied. Thus, where the rule requires that compulsory retirement can be ordered only, in the public interest, it is open for the petitioner to show that there was, in fact, no such interest, involved. But in the absence of malafides, the determination of the State Government in this behalf shall prevail and competent for the Government to order compulsory retirement on the ground of misconduct or inefficiency.

Superannuation: The term superannuation means that age on the attainment of which a Government Servant ceases to have a right to continue in Government service.

It is competent for Government to fix any age for superannuation and to raise or reduce it from time to time. There is no cause of action if an order raising the age is modified subsequently, thus affecting those who had benefited from the previous order. It can not be urged that enforcement of the reduced age amounts to removal.

There is no obligation to order retirement as soon as the age of retirement is reached. The power can be exercised any time thereafter, provided the requirements are fulfilled.

A permanent Government servant has a right to hold his post up to his age of superannuation but not beyond that. In State of Assam Vs. Premdhar, it was held that if a Government servant is retained in service after he has

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attained the age of superannuation, such retention would not confer upon him any right to continue in service, so that termination of his service, on any ground thereafter, cannot constitute 'dismissal' or removal. The reason is that such retention which is at the discretion of the Government, does not confer any legal right to continue in office beyond the age of superannuation and Government has the discretion to withdraw such retention at any time.

Government is free to enter into a formal contract for the employment of a person which is not in contravention of any Constitutional provision and if the employee is discharged in terms of that contract, Article 311(2) is not attracted197.

The above principles have been applied not only where there is a formal contract of employment or the conditions of termination of service are laid down in the order of appointment under which the Government servant entered into service, but also where the conditions are embodies in the departmental rules relating to the service in question which must be taken to be a part of the contract of employment. Some of the rules, for instance, provide that the service can be terminated on serving a notice198.

When a contract for a fixed term expires, it is open to Government to re-employ the officer on a fresh basis, and if the re-employment is made on different terms, the officer holds on the terms of such re-employment, even though the new terms were inferior. If however, after the expiry of the contractual period, no fresh engagement is made and officer continues to hold on without any period being fixed, he holds on as a 'temporary' Government servant, and Article 311(2) would be applicable to the termination of such

It is, however, not permissible to contract out of the provisions of the Constitution, including the provisions of Article 311(2).200

Reduction in rank: Reduction in rank means the degradation in rank or status of the officer, directed by way of penalty. It thus involves two elements -

(a) reduction in the physical sense, relating to his classification as a Government servant,

(b) such degradation or demotion must be by way of penalty.

To constitute reduction in rank within the meaning of clause(2), there should be reduction relating to his classification as a Government servant, and such reduction or demotion must be by way of penalty. Thus, where he is reduced to a lower post or rank or to a lower stage in the pay scale it would be reduction in rank.201

But, mere losing some places in seniority while remaining in the same cadre, would not be reduction in rank.202 So also, transfer from a post designated as Head of Department to a post not so designated, in the same cadre, would not be reduction in rank.203

Where a Government servant has a right to a particular rank, the very reduction from that rank will be deemed to be by way of penalty and Article

311(2) will be attracted, without more. Thus, an officer who holds permanent post in a substantive capacity, can not be transferred to a lower post, without complying with Article 311(2).

(f) Suspension: The basic idea underlying the word suspension is that a person while holding an office and performing its functions or holding a position or privilege, should be interrupted in doing so and debarred for the time being from further functioning in the office or holding the position or privilege.

Suspension may be --

(a) Pending departmental inquiry.

(b) Pending criminal investigation or trial

(c) As a substantive penalty.

(a) Suspension of a Government servant pending departmental inquiry into allegations against his conduct is resorted to for facilitating inquiry. Suspension pending inquiry is something temporary and does not involve punishment. It means a temporary deprivation of the officer's functions or the right to discharge his duties but does not amount to any lowering down or reduction of his rank or status. Nor does he cease to be member of the Government service. The real effect is that though he continues to be a government servant, he is not permitted to work and is paid only a `subsistence allowance', which is less than the salary and allowances to which he would have been entitled but for the suspension.

It follows that the requirements of Article 311 (2) need not be complied

with before making an order of suspension of this nature. Suspension can be made if the authority concerned on getting a complaint, considers that the alleged charge does not appear to be groundless, that it requires enquiry and that it is necessary to suspend the Government servant pending inquiry.

(b) The Rules of some Department also authorise suspension pending criminal proceeding against a Government servant, as soon as an accusation or investigation connected with his position as Government servant is made or he is arrested.

(c) Suspension may also be awarded as substantive punishment under Civil Service Regulations. It would then amount to removal within the meaning of Article 311, so that all the requirements of that Article must be complied with.

(g) Natural Justice: The expression 'reasonable opportunity' in Article 311(2) has been interpreted to mean natural justice. In Satyavir Vs. Union of India the Supreme Court observed:

"Clause 2 of article 311 gives a Constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a civil servant shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges.

The nature of this inquiry has been elaborately set out by this court in Khemchand Vs. Union of India, A.I.R. 1958 S.C. 300 and even after the Constitution (Forty second Amendment) Act, 1976, the inquiry required by clause (2) of article 311 would the same except that it would not be necessary --- be imposed upon him.

As held in --- the penalty proposed to be imposed upon an employee.

If an inquiry held against a civil servant under article 311(2) is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, the principles of natural justice would be violated; but in such a case the order or dismissal, removal or reduction in rank would be bad as contravening the express provisions of article 311(2) and there is no scope for having recourse to article 14 for the purpose of unvalidating it\textsuperscript{211}.

Prior to 1976, opportunity to be heard or to make representation had to be offered to the delinquent at two stages --

(i) At the inquiry into the charges; and

(ii) at the conclusion of the charges, before imposing punishment on the basis of the findings at the inquiry.

After the amendment of the Article 311 in 1976 by the (Forty second Amendment) Act, 1976 of the Constitution, the procedural safeguards are --

(i) that the person concerned should be informed of the charges against him and he should be given a reasonable opportunity of being heard in respect of those charges; and

\textsuperscript{211} Id. at 560.
(ii) that the penalty imposed after the inquiry should be one based on the evidence adduced during the inquiry, and it is not necessary to give the person any opportunity of making representation on the penalty imposed.

Accordingly, in case, governed by Article 311 an opportunity to defend has to be given to the civil servant at stage of inquiry of charges against him, and this is in accord with the rule of natural justice that no man should be condemned without hearing.

In Union of India Vs. Mohd. Ramzan Khan\(^{212}\) the Supreme Court observed that supply of a copy of the inquiry report along with recommendations, if any, in the matter of propose punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty Second Amendment has not brought about any change in this position.

Inquiry into charges must be in conformity with the requirements of natural justice, is ensured by the amended clause by using the words, reasonable opportunity of being heard in respect of the charges. In Jagdish Vs. State of M.P.\(^{211}\), the court said that the charges must be specific, with a statement of allegations on which they are based with such particulars and details as are necessary to give a reasonable opportunity of defence. The charges must be intimated to the delinquent and the delinquent must be given reasonable time and opportunity of meeting the allegations contained in the charge sheet. Hence, a Government servant cannot be dismissed on the basis of an admission made by him in a proceeding directed against some other Government servant, without holding a fresh inquiry directed against himself\(^{214}\).

The right of Government servant under clause (2), is to have a reasonable opportunity of being heard in respect of the charges. Once this opportunity is given, the obligation of the Government is discharged. If the delinquent admits his guilt, or does not avail of the opportunity, he cannot further complain that an elaborate inquiry has not been held.

The prosecution witnesses must be examine in the presence of delinquent, and he must be given a reasonable opportunity of cross-examining the witnesses who are examined for the prosecution for the departmental inquiry\textsuperscript{215}. In State of Bombay Vs. Nurul Latif,\textsuperscript{216} the court observed that it is true that the delinquent has the right to cross-examine a prosecution witness, but the inquiry officer has the right to stop irrelevant cross-examination, recording his reason. In State of M.P. Vs. Chintaman\textsuperscript{217}, it was held the opportunity to cross-examine prosecution witness must be effective. Hence, if documents which are relevant for the purpose of cross-examination are withheld, there will be failure of natural justice.

In regard to interrogation of the delinquent the general rule is that the delinquent should not be interrogated before some witness or witnesses have been examined in support of the charge. He must be given a fair chance to hear the evidence in support of the charges and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him\textsuperscript{218}. It would be a contravention of natural justice where the delinquent is asked to answer a questionnaire which includes questions which are perverse, or the examination of delinquent savours of an inquisition\textsuperscript{219}.

\textsuperscript{216} (1965) 3S.C.R. 135.
\textsuperscript{217} A.I.R. 1961 S.C. 1623.
\textsuperscript{218} Meenglass Tea Estate Vs. workmen, A.I.R. 1963, S.C. 1719 at 1720.
\textsuperscript{219} Associated Cement Co. Vs. Workman, (1964)3 S.C.R. 652 at 661.
Natural justice is denied where the delinquent is not allowed to call, or examine material defence witnesses or to examine himself. But the Inquiry Officer may refuse to call a witness whose evidence is irrelevant to the charges.

In the following cases it was held that there is no compliance with the requirement of natural justice --

1. Where the inquiry is not directed against the alleged misconduct of the Government servant in question but in a general investigation to find out who is responsible for an accident or the like, without any charge against any particular person, and the penalty is proposed on the basis of such investigation.

2. On the same principle, the proceedings are vitiated if the punishing or appellate authority makes a confusion and finds the petitioner guilty of the violation of a departmental Rule for which he was never charged.

3. No question of punishment arises until the charge is established and until then the competent authority must keep his mind open. Where the material on record, disclose that the disciplinary authority was ab initio determined to get the Government servant punished, the proceeding will be quashed.

4. If a public servant is held guilty of several charges and it is subsequently found that in respect of some of those charges the rules of natural

justice were not complied with or the findings were based on no
evidence, but there are other charges duly arrived at, the punishment
would not be quashed by the Court.\textsuperscript{224}

Since the inquiry stage under Article 311(2) is a quasi-judicial
proceeding, it follows that the Inquiry Officer must write a report, giving his
findings on the charges, with reasons. In Union of India Vs. Mohd. Ramzan\textsuperscript{225}
the Supreme Court observed:

"\textit{Wherever there has been an Inquiry Officer and he has
furnished a report to the disciplinary authority at the conclusion of the
inquiry holding the delinquent guilty of all or any of charges with
proposal for any particular punishment or not, the delinquent is
entitled to a copy of such report and will also be entitled to make a
representation against it, if he so desires, and non-furnishing of the
report would amount to violation of rules of natural justice and make
the final order liable of challenge hereafter\textsuperscript{a}.\textsuperscript{226}\}

There had been some difference of opinion on the question of the
consequences of non-supply of the Inquiry Officer's report to the dilinquent
employee. This controversy now settled by the Constitution Bench of the
Supreme Court in Managing Director, ECIL Vs. B. Karunakar,\textsuperscript{227}, as follows:

(1) An employee is entitled to a copy of the inquiry report even if the
statutory rules do not permit the furnishing of the report or are silent
on the subject.

\textsuperscript{224} State of Orissa Vs. Bidyabushan (1963) Supp.1 S.C.R. 648; Railway Board Vs.
\textsuperscript{226} Id. at 35.
(2) whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer’s report whatever be the nature of punishment.

(3) Failure to ask for the report can not be construed as waiver of the right. Report is to be furnished whether the employee asks for it or not.

(4) The law laid down in Union of India Vs. Ramzan, 228 is applicable to all employees in all establishment- Government, public or private.

(5) whether prejudice has been caused on account of denial of report has to be considered on the facts of a case. The relief to be granted to the employee would depend on the actual consequence of denial of the report.

(6) The ratio of Ramzan's case is prospective and is to be applied only to those orders of punishment which are passed by the disciplinary authority after Nov. 20, 1990.

(7) Orders of punishment passed before Nov. 20, 1990 where inquiry report was not furnished should not be distrubed and the proceedings cannot be reopened on the account.

Thus in this case the Supreme Court has held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive the copy of the Inquiry Officer's report so that he could effectively defend himself before the disciplinary authority. A denial of the Inquiry Officer's report before disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

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If any document, not being a secret document, which is necessary to enable the person to put forwards his defence or to cross-examination the prosecution witness, is not supplied to person, there will be denial of natural justice\textsuperscript{229}.

But non supply of document relating to one of serveral charges will not vitiate the proceedings if it does not prejudice the disposal of the rest of the charges\textsuperscript{230}. There is no right to a disclosure of confidential or secret documents, such as those of the Anti-corruption Department; it is sufficient compliance with the principles of natural justice if the substance of such reports is communicated to delinquent\textsuperscript{231}. But no disclosure of such report would be necessary if the report was made by the Government only to consider whether disciplinary proceedings should be initiated against the delinquent. Withholding of a document or report would not vitiate the proceeding if the finding against the delinquent does not rest upon it, or the delinquent never asked for it; there are charges which may sustain the punishment other than the charges in respect of which the documents have been withheld.

The natural justice is violated where one man bears and decides. In Amulya Vs. Bakshi\textsuperscript{232}, It was decided by the Calcutta High Court that a disciplinary proceeding would be vitiated if the inquiry officer acts upon evidence taken by some other person or if any of the members of the Inquiry Committee did not hear the evidence or part of it, owing to transfer or non-availability of the member who heard the evidence.

\textsuperscript{229} Sate of M P Vs Chintaman Rao. A I.R 1961, S C 1623 at 1628
\textsuperscript{230} D I G of Police Vs Amalanathan, A.I.R. 1966 Mad 203 at 216.
\textsuperscript{231} Punt Vs State of Bihar, A.I.R. 1957 Pat. 357 at 360 See also State of Assam Vs. Mahendra, A I R. 1970 S C. 1255 at 1261
\textsuperscript{232} A.I.R. 1958 Cal. 470
The above findings were overruled by the Supreme Court in Gernal Manager Vs. Jawala Prasad\textsuperscript{233}. In this case the court held that the disciplinary proceedings held under rr. 1709-1715 of the Railway Establishment Code are not vitiated if no de novo hearing takes place after the transfer or absence of some member of the Inquiry Committee and the report of the inquiry is given by the Committee including some member or members who had heard the witness.

One of the principles of natural justice is that no one should be a judge in his own cause. Hence, where the judge or tribunal has an interest in the cause or is biased against a party, the latter cannot be said to have been given a reasonable opportunity of defending himself by holding the trial or inquiry by such a tribunal\textsuperscript{234}.

Applying the above principle, it has been held there is a contravention of Article 311(2)--

(i) where either the inquiry officer or a member of the inquiry committee or the authority making the ultimate order gives evidence in the proceeding to establish the guilt of the person charged; or the inquiry is held by a person against whom the person charged has made allegations and who is, accordingly, interested in taking action against the latter, at any cost.

(ii) where there is an allegation against a superior officer, he should not hold the inquiry himself nor direct it to be held by an officer who is subordinate to him.

\textsuperscript{233} A.I.R. 1970 S.C. 1095.
(iii) Where the inquiry is held by a person who has already pre-judged the person charged.

(iv) where the Superior Officer, in ordering the inquiry, gives his adverse opinion against the accused, and the Inquiring Officer is influenced by such remarks of his superior, or the superior officer directly influences the Inquiry Officer.

Though the right to engage a lawyer is, as a rule, denied in a disciplinary proceeding, some of the departmental rules allow the delinquent to be assisted, at the departmental hearing, by a co-employee of his choice and in such cases, unless the Rules so provided expressly, Government can not refuse permission to delinquent's nominee to act as defence helper or require the delinquent to nominate more than one person out of which the Government can make a selection.235.

There is no right to be represented by a lawyer and the same does not violate principle of natural justice. However, where the case involves technical questions or a complicated question of law, or where the department is represented by a lawyer, natural justice would require that the delinquent should be permitted to be represented by a lawyer, if he asks for such representation236.

No general principle regarding representation by a lawyer valid in all cases can be enunciated. A decision has to be reached on a case to case basis on the situation particularities and the special requirement of justice of the case. Where the presiding officer is stated to be a man of law, justice would

235. Id. at 999-1000.
require that the other party who has no legal background is represented by a lawyer.\(^{237}\)

The rules of evidence are not applicable to quasi-judicial proceedings, so that an inquiry officer at a departmental proceeding may obtain materials from any sources, provided only any material information or material so obtained must be disclosed to the delinquent Government servant if it is intended to be relied upon, so that the latter may have an opportunity of meeting the inferences arising from such material.

It follows that the inquiry will be vitiated for violation of the rules of natural justice, if the materials collected at the back of the delinquent are either explicitly relied upon by the Inquiry Officer, or he is influenced by it in coming to his findings. In such a case, the fact that his finding is confirmed by an appellate authority can not validate the proceedings. The position becomes worse where the Inquiry officer is the Disciplinary Authority himself.\(^{238}\)

In State of U.P. Vs. Harish Chandra\(^ {239}\) the Court held that service record can not be taken into consideration unless the person is given opportunity to explain them.

The protection of Article 311(2) for giving, reasonable opportunity is not available in the following circumstances:

(1) **Proviso 2(a).** Where a person is dismissed or reduced in rank on the ground of misconduct which has led to conviction or criminal charges. This exception make an officer who was convicted on a criminal charge, liable to dismissal without any further proceeding under Article 311(2).

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It includes conviction under any law which provides for punishment for a criminal offence, whether by fine or imprisonment. No distinction is made between crimes involving moral turpitude and other crimes or statutory offences. Thus conviction for drunkenness would attract this proviso.

(2) Proviso 2(b). Where it is impracticable to give the civil servant an opportunity to defend himself but the authority taking action against him shall record the reasons for such action. In order to apply this protection to the order of dismissal, etc., the following conditions must be satisfied-

(i) This Proviso is attracted when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. It is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim or caprice.

(ii) The satisfaction must be that of the authority who is empowered to dismiss, remove or reduce the officer in rank and he must apply his mind to it. Where he simply carries out the orders of some superior authority and dismisses a subordinate outright, the validity of the order cannot be sustained on the ground that the power under the present Proviso was exercised.

(iii) The authority empowered to dismiss, etc., must record his reasons in writing for denying the opportunity under clause(2) of Article 311, before making the order dismissal etc. After an order in contravention of Article 311(2) is made and challenged, it cannot be contended that

the order is valid by reason of this Proviso.

(iv) The reasons recorded must show that it was not reasonably practicable to hold a disciplinary inquiry, and must not be vague or irrelevant.

(v) The power must be exercised bonafide, having regard to relevant considerations.

(3) Proviso 2 (c) : Where in the interest of the security of State, it is not expedient to give such an opportunity to the civil servant. In such cases the President or Governor might exempt the holding of an inquiry as required by Article 311(2). The satisfaction referred to in this clause of the Proviso is not circumscribed by any conditions.

In Bakshi Vs. Union of India241 and Kapur Singh Vs. Union of India242, the court held that the satisfaction however, need not be the personal satisfaction of the President or the Government. It is to be exercised in compliance with Article 166,243 because the power to take disciplinary action against a Government servant is the 'executive power' of the Union or State, as the case may be.
In a judgement of far reaching importance in Union of India Vs. Tulsiram Patel, the Supreme Court has held that the dismissal, removal, reduction in rank of a Government servant under the second Proviso of Article 311(2) without holding inquiry is in public interest and therefore, not violative of Articles 311(2) and 14 of the Constitution. The second Proviso to Article 311(2) expressly provides that the audi alteram partem rule of the natural justice shall not apply in the circumstances mentioned in the three clauses of the Proviso. This phrase leaves no scope for any kind of opportunity to be given to a Government servant. The object underlying the second Proviso is public policy, public interest and public good. When the principles of the natural justice has been expressly excluded by the second Proviso it can not be imported by resorting to Article 14.

In Jaswant Singh Vs. State of Punjab, the Court held that the respondents have failed to disclose to the court the material in support of the subjective satisfaction. The decision to dispense with the departmental inquiry can not be rested solely on the ipse dixit of the concerned authority. When satisfaction is questioned in a court of law, it is the duty of the respondent to show that the satisfaction is based on certain objective facts and not the outcome of the whim or caprice of the concerned officer. In the absence of any independent material to justify the dispensing with the inquiry envisaged by Article 311 (2) the order of dismissal can not be sustained. Accordingly, the appellant was directed to be reinstated in service forthwith alongwith all monetary benefits as to say, allowances etc., available to him from the date of his dismissal.

Both clauses (1) and (2) of Article 311 are mandatory. They constitute express provisions of the Constitution which qualify clause (1) of Article 310. Hence dismissal by an authority lower than the appointing authority, and dismissal without giving reasonable opportunity of showing cause, are equally void and inoperative, and therefore, actionable.

(3) Remedies available

The remedies may be divided into two parts namely-(1) Remedies before the passing of Administrative Tribunals Act, 1985 and (2) Remedies after the passing of Administrative Tribunals Act, 1985.

The position before the Administrative Tribunals Act, 1985 was that in a case of a wrongful termination of service in contravention of the Constitutional requirements in clause (1) or (2) of Article 311, the aggrieved Government servant was entitled to relief in a court of law like any other person, under the ordinary law in as much as the doctrine of 'service pleasure' has been subjected to Constitutional limitations in India. Such relief must be regulated by the Code of Civil Procedure. Therefore, when a Government servant has been dismissed in contravention of either clause (1) or clause (2) of Article 311, or of a mandatory statutory rule, or of the principles of natural justice, he would be entitled to bring a suit against the Government for the relief.

Prior to the Administrative Tribunals Act, 1985, an aggrieved Government servant could obtain relief from the High Court, in a proceeding under Article 226 on grounds appropriate to the writs available under that Article. For example-certiiorari, prohibition, Mandamus, and Quo warranto.

After coming into force of the Administrative Tribunals Act, 1985, all judicial remedies save those of the Supreme Court under Article 32 and 136 have been abolished and the pending proceedings before other courts, e.g.,
suits before the Civil Court or proceedings before the High Court under Article 226 stand transferred before the regional Administrative Tribunals.

In exercise of its powers under Article 323-A Parliament has enacted the Administrative Tribunals Act, 1985; establishing Administrative Tribunals to decide service disputes of Central Government employees. The Administrative Tribunals with main Bench at Delhi and additional Benches of different places were established and started functioning with effect from November 1, 1985. The Central Tribunal will be headed by a chairman and Vice-Chairman for each of the Benches and two other members. All courts in the country except the Supreme Court under Article 136 and Article 32 will cease to have jurisdiction in regard to service matters of Government servant.

The Act applies to all Central Government employees except-

(a) the members of naval, military, or air forces or any other armed forces of the union;

(b) any officer or servant of the Supreme Court or any High Court;

(c) any person appointed to the secretariat staff of either House of the Parliament.

In the case proceedings transferred to the Tribunal from Civil Court or a High Court, the Tribunal has the jurisdiction to exercise all the powers which the Civil Court could in a suit or the High Court in a writ proceeding could have respectively exercised, including the power to declare the unconstitutionality of a statute or a statutory rule. In a original petition the Tribunal may exercise any of the powers of a Civil Court, or a High Court under Article 226 in the same proceeding.
In Union of India Vs. Abbas\(^{246}\) the court observed that the C.A.T. is subject to the same constraints and norms which the High Court observes while exercising the jurisdiction under Article 226. It is not an appellate authority sitting in judgement over the order of transfer of an employee issued by the administrative authority. It cannot substitute its own judgement for that of the authority. The order of transfer can be questioned before a tribunal or court only where it is passed mala fide or in violation of the statutory provisions.

Similarly, C.A.T. has no jurisdiction to direct the concerned authorities to pass orders to clear efficiency bars of employees. It can not assume the role of an employer.\(^{247}\)

On the other hand, a Tribunal not being a court, has larger powers to do justice to the party aggrieved. Thus a Tribunal is not barred by the provisions of the Evidence Act. In order to discover the truth, the Tribunal may resort to the inquisitional procedure, provided no principle of natural justice is violated.

In coming to its decision, the Tribunal shall be guided solely by the principles of natural justice unfettered by anything in the Civil Procedure Code and shall have the power to regulate its own procedure.

Unless the Tribunal, having regard to the circumstances, of a particular case, choose to hear oral evidence, it shall ordinarily decide a case before it upon a perusal of documents and written representations and hearing oral arguments.

A Tribunal can exercise powers of review, without being fettered by the provisions of order 47. rule 1 of the C.P.C., though ordinarily it would apply its principles.

\(^{246}\) (1993)4 S.C.C. 357.
In S.P. Sampat Kumar Vs. Union of India\textsuperscript{248}, the Constitutional validity of Administrative Tribunal Act, 1985 was challenged on the ground that impugned Act by excluding the jurisdiction of the High Court under Articles 226 and 227 in service matters had destroyed the judicial review which was an essential feature of the Constitution.

A five Judges Constitution Bench of the court upheld the validity of the Act, except section 6(1) (c). The court held that though the Act has excluded the judicial review exercised by the High Courts in service matters, but it has not excluded it wholly as the jurisdiction of the Supreme Court under Articles 32 and 136 has been kept intact. The judicial review which is an essential feature of the constitution can be taken away from the particular area only if an alternative effective institutional mechanism or authority is provided.

However, section 6(1) (c) to the Act was held to be unconstitutional as it gave unfettered power of the Government to appoint the Chairman, Vice-Chairman and Administrative member of the tribunal. These appointments must be made by the Government only after Consultation with the Chief Justice of India and which must be meaningful and effective.

In State of Orissa Vs. Bhagaban Sarangi\textsuperscript{249}, the Supreme Court has held that a Tribunal (Orissa State Administrative Tribunal) is bound by the decision of the High Court.

Orders passed by the Tribunal can not be challenged before High Court under Article 226 or 227.

\textsuperscript{248}. (1987)1 S.C.C. 124.
\textsuperscript{249}. (1995)1 S.C.C. 399.
Appeal lies to the Supreme Court from orders of an Administrative Tribunal, by special leave under Article 136 on the grounds i.e., error of law, the order of Tribunal being ultra vires, the order of Tribunal being arbitrary or male fide.

There are certain other cases decided under Administrative Tribunal Act.

In Anand Kishore Vs. State of H.P. and others\(^2\) where two ex-constable, namely, Shri Anand Kishore and Parshotam Lal, filed an application under section 19 of the Administrative Tribunal Act, 1985 for quashing the orders dated September 8, 1987 passed by the Superintendent of Police, Shimla, whereby the applicant were discharged from service and also the appellate order dated Nov. 12,1987 passed by the Deputy Inspector General of Police and the order dated March 2,1988 passed by the Director General of Police, Himachal Pradesh, Shimla.

In revision, the Director General of Police vide his order dated March 2, 1988 found that the applicants had indulged in grave misconduct and had got mixed up with under trial of serious nature and later taken tea with the accused in restaurant. This act on part of the applicants amounts to have committed grave misconduct and these constables having less than three years service, the order passed under Punjab Police Rules 12.21 as applicable to Himachal Pradesh is legal and accordingly rejected the revision.

In this case the Tribunal has held that the impugned order itself shows that the same has been passed by way of punishment when it emphasises that the applicants took tea with the accused at his desire which is a very serious lapse and dereliction of duty of grave nature and such an act on their part is

unbecoming of good police officer and thereby they have proved inefficient and unfit for retaining in police service. But the order on the face of it attaches stigma on the applicant and as such they are entitled to show cause against the proposed action of discharge from service which having not been done in the present case, the impugned order of discharge is violative of Article 311 (2) of the constitution of India and is liable to be quashed.

In S.B. Ramesh Vs. Ministry of Finance, Government of India the applicant who joined service as Inspector of Income Tax on 18.3.1970 was promoted as Income Tax Officer on 24.3.1979. He was proceeded against, on the basis of a charge sheet dated 7.05.1987, alleging irregularities in the Income Tax assessment. However, the inquiry on that charge sheet has not progressed from 10.5.1990. In the meanwhile, he was served with another charge sheet dated 25.3.1988. The article of charges ran as follows:

"Shri S.B. Ramesh, Income Tax Officer, Group-B, Andhra Pradesh (now under suspension) has contracted a second marriage with Smt. K.R. Aruna, while his first wife, Smt. Anasuya is alive and the first marriage has not been dissolved. By this act, Shri S.B. Ramesh has violated Rule 21(2) of C.C.S. (conduct) Rules, 1964. In any case Shri S.B. Ramesh has been living with Smt. R.K. Aruna and has children by her. Thereby Shri S.B. Ramesh has exhibited a conduct unbecoming of a Government Servant and has accordingly violated Rule 3(1) (iii) of the C.C.S. (conduct) Rules, 1964".

It has been alleged in the application that the charge has been foisted on him, as a measure of revenge at the behest of directly recruited officers as the earlier charges could not be established. The applicant assailed the
impugned order mainly on the grounds that the enquiry has not been held in conformity with the principles of natural justice, as much as he has not been given adequate opportunity to defend himself and that the findings of the enquiry authority, which was accepted by the Disciplinary Authority that the applicant exhibited a conduct, unbecoming of a Government servant is absolutely perverse and based on no evidence or on evidence which can not be received on record, in accordance with law.

The Tribunal observed:

"We are convinced that the finding of the Disciplinary Authority that the applicant is guilty being based as no legal evidence is absolutely perverse and the impugned order is therefore liable to be set aside."^252

In K.P. Agarwal Vs. Union of India^253, a chargesheet under Rule 14 of the C.C.S. (C.C.A.) Rules were issued to applicant in which the charge framed against him was that while working as Officer Assistant in the Office of S.D.O. Phones (Central) Jaipur, he had approached client and without any authority had demanded an amount of Rs. 7,000/= as an illegal amount for installing a telephone at his shop and subsequently facilitated the wrongful shifting telephone from the premises of another client after receiving Rs. 5000/= from him and thereby contravened provisions of rule 3 of C.C.S. (Conduct) Rules. On the applicant's denying the charge, an inquiry was held. The Inquiry Officer held the charge against the applicant as not proved. The Disciplinary Authority, Division Engineer Phones (J.P.), however, disagreed with the Inquiry Officer and holding the charge against the applicant as proved but taking a lenient view of the matter imposed upon the applicant the penalty of stoppage of next

^252. Id. at 409.
The applicant in his application under section 19 of the Administrative Tribunal Act, 1985, has prayed that the charge sheet be declared illegal and without jurisdiction and the penalty order may be quashed being illegal.

The Tribunal observed:

"No doubt, the Enquiry Officer has held charge against the applicant as not established. However, the Disciplinary Authority had disagreed with the Enquiry Officer and has given detailed reasons for disagreement and for holding the charge against the applicant as proved. The reasons given by the Disciplinary Authority for disagreement with the Enquiry Officer are on the basis of evidence adduced during the enquiry. The findings of the Disciplinary Authority are not in any way unrelated to the evidence led during the enquiry and therefore, these can not be said to be perverse. This Tribunal does not function as an Appellate Authority. Its function is that of judicial review under which it can examine whether the process of making a decision was correct and not the correctness of the decision itself. -- Thus the charge has been held as proved against the applicant by the Disciplinary Authority on the basis of evidence with is relevant... The charge against the applicant was of accepting a sum of Rs. 5000/= from a private party in an illegal manner which was held as proved. We do not understand how the Disciplinary Authority has taken a lenient view in the matter and has imposed upon the applicant a penalty which is merely a minor penalty. Any how, we do not see any reason to interfere with the orders of the Disciplinary Authority and
Appellate Authority"²⁵⁴.

It is submitted that the elaborate provisions relating to services under the Union and the states indicate the great importance which the framers of our Constitution attached to the civil service. The success of the provisions made in Part XIV for the efficient working of a non-political Civil Service depends to a very large extent upon establishing a proper relationship between the Ministers and civil servants. Unless the Government is prepared to apply the corrective principles in the Minister-civil servant relationship effectively and with a determination to produce the desired results at different levels and within the several components of the Government, the agonising impact of the unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country.

Sardar Vallabhbhai Patel observed :

"Have you read that history? (the history of safeguards for the Indian Civil Service). Or you do not care for recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand on your pledged word; and, also, as a man of experience I tell you do not quarrel with the instruments with which you want to work ²⁵⁵. ---- Have morals no place in the new Parliament? --- Today, my secretary can write a note apposed® to my views. I have given that freedom to all my secretaries. I have told them 'If you do give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary'. I will never be displeased over a frank expression of opinion. That is what

²⁵⁴ Id. at 519.
the Britishers were doing with Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself.\(^{226}\)

Sardar Vallabhbhai Patel spoke with the authority of great administrator, and with the experience of the Union Home Minister, who had first hand knowledge of the working of the Civil Service under the very trying circumstances which followed on the partition of India.

With the independence of our country, the responsibilities of the services have become onerous. They may make or mark the efficiency of the machinery of administration, a machinery so vital for the peace and progress of the country. A country without an efficient civil service can not progress inspite of the earnestness of the people at the helm of affairs in the country. Whatever, democratic institutions exist, experience has shown, that it is essential to protect the public service as far as possible from political or personal influence.

In Roshan Lal Vs. Union of India\(^{227}\), considering the status of Government Servant the Supreme Court has observed:

"The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes Constitutional restrictions

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\(^{226}\) Ibid.

upon the power of removal granted to the President and the Governor under Article 310. But it obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned.\textsuperscript{258}

Under Articles 32 and 226, 227, the Courts enjoy a broad discretion in the matter of giving proper relief to any aggrieved person in case of infringement of Fundamental Rights and other legal rights. Within a few years of enactment of the Constitution this writ jurisdiction become so popular that the High Courts were flooded with petitions which they were unable to cope with.

Several expert committees consisting of retired judges of the Supreme Court and of High Courts recommended that creation of tribunals for dealing with Certain classes of cases as an alternative to the High Courts. The Supreme Court in some of its judgements made the same suggestions. Acting on these suggestions, Parliament inserted Article 323-A and Article 323-B which provide for the establishment of Administrative Tribunals for resolving service disputes and other tribunals for variety of matter relating to industrial and labour disputes, tax, foreign exchange, elections, land reforms and the like.

As the intention was to relieve the High Courts of the extra burden by

\textsuperscript{258} Id. at 1894.
Transferring part of the jurisdiction to the tribunals, these Articles permitted exclusion of the jurisdiction of all courts except the Supreme Court in all matters dealt with by the tribunals. All cases which fell within the jurisdiction of the tribunals were transferred to them soon after the establishment of the tribunals.

In a significant and for reaching judgement\(^\text{259}\) the Supreme Court had come out with Administrative Tribunals Act, 1985 section 28 and the power of exclusion of judicial review. A seven judge Constitution Bench of the Supreme Court held that the Parliament could not divest Constitutional courts of the power of judicial review amendment. The court clarified that tribunals created under Articles 323-A and 323-B of the Constitution were competent to test the constitutional validity of statutory provisions and rules. The court further held that section 28 of the Administrative Tribunals Act, 1985 and the 'exclusion of jurisdiction' clauses in all other legislations enacted under Articles 323-A and 323-B would be unconstitutional.

The court made it clear that the jurisdiction conferred upon the High courts under Article 226 and 227 and upon the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure.

The net result of this latest decision is that the tribunals have lost their status, but not jurisdiction. The High Courts have not regained their jurisdiction fully inasmuch as they cannot entertain any writ petition in the first instance. Earlier, after losing in a tribunal, the aggrieved persons could immediately approach the Supreme Court for special leave to appeal. Now, it will not be possible to go to the Supreme Court directly from a decision of a tribunal,

\(^{259}\) L. Chandra Kumar Vs. Union of India, 1997 (3) SCAL 40.
without first moving the High Court. In this respect the Supreme Court has curtailed its own jurisdiction under Article 136. Persons who are subject to the jurisdiction of tribunals have gained another remedy by way of a writ petition before the High Court concerned, but lost the opportunity of approaching the Supreme Court directly. What was earlier a two-tier litigation has now become a three-tier process\textsuperscript{260}.

The judges requested the Union Government to initiate action to set up a supervisory body after consulting all concerned, place all these tribunals under one single nodal Ministry preferably the Ministry of Law.

Actual experience of functioning of tribunals, unfortunately, was far from satisfactory. They lacked in competence objectivity and judicial approach. The failed to inspire confidence in public mind and were not successful in creating an 'effective alternative institutional mechanism' as intended while inserted Article 323. A in the Constitution.

The Arrears Committee observed:

"The overall picture regarding tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before experiment is extended to now areas of the field, especially if the Constitutional jurisdiction of the High Court is to be simultaneously ousted\textsuperscript{261}."

\textsuperscript{260} P P Rao, a senior Advocate of the Supreme Court," Pillar that holds basic structure", The Hindustan Times, New Delhi, 31 March, 1997, Page 12.

It is submitted that the decision in Chandra Kumar is a progressive step in the direction of independence of judiciary and must be welcomed by one and all as it seeks to restore jurisdiction and Constitutional status of High Courts and of the Supreme Court in the direction of re-enforcement of Rule of law. 262.

It is further submitted that on the question of appointment to the tribunals, the central Government should initiate action on the basis of the recommendations of expert bodies like the Law Commission of India and Malimath Committee263.