

INTRODUCTION

Indian Administrative Service [I.A.S.]
 Indian Foreign Service [I.F.S.]
 Indian Police Service [I.P.S.], the Three All India Services created so far
 and the Precursor of the said Services, is Indian Civil Service (*I.C.S.*) -
 Imperial Civil Service.

Lord Charles Cornwallis was the Commander-in-Chief of Defense Forces from 1786 to 1793 and in 1792, he defeated **Tipu Sultan**, the Ruler of **Mysore** and he reformed, modernized and rationalized Indian Civil Service and He is known as the '**Father of Civil Service in India**'.

Declared as "*Steel Frame*" of British Government in 1935 by the Former Prime Minister of United Kingdom, **Mr. David Lloyd George**.

ROLE OF CIVIL SERVANTS

During the Regime of Laissez Faire [French: "allow to do"]- Policy of Minimum Governmental interference in the Economic Affairs of Individuals and Society and the Government is restricting itself to the Spheres of the Maintenance of Law and Order, Defense and Foreign affairs.

During the regime of Welfare State

With the emergence of the Concept of **Welfare State**, particularly after the **World War II**, the activity of the Government has multiplied. So is the Role of Civil Servants- Super Citizens.

As an Instrument for Social Welfare-

The Welfare State is dedicated to the Welfare of People. It seeks to provide Minimum Facilities to all People, to remove Poverty, Hunger and Unemployment, and to bridge the gap between the Rich and Poor. It aims at establishing Social and Economic Justice.

Article 38 [1]- The State shall strive to promote the Welfare of the People... and Social Order in which Justice, Social, Economic and Political, shall inform all the Institutions of the National Life.

Article 39 [c]- the Operation of the Economic System does not result in the concentration of Wealth and Means of Production to the Common Detriment;

Article 37... nevertheless Fundamental in The Governance of The Country .

Social Welfare is the Right of Individual, not a Dole from the State.

An Eminent Political Scientist of India, Asirvatham observes, "The first important thing to remember is that Welfare is not a matter of Charity, but of Right. Secondly, if Welfare is to be Genuine Welfare, the ground for it should have been prepared by the various Agencies at work in the State. In the third place, if the Welfare State is to be a Blessing and not a Curse, it should not produce a Pauper Mentality on the part of it's Recipients."

CONSTITUTIONAL BACKDROP :-

The above is tune with the aspirations of the People of the Country as reflected in the National Movement waged for the Liberation from the clutches of the British Rule and is aimed at the establishment of an Egalitarian Society and to consolidate the said Objective, after the Declaration of Independence to the Country-

The Drafting Committee of the Constituent Assembly laboured for 2 Years, 11 Months and 17 Days for the drafting of the Constitution and it was adopted on 26th November 1949.

The Constitution of India contains- Parts – XXII ;
Articles – 395 and Schedules – XII

PREMABLE

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all it’s citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of

November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

To achieve the above Goals, the Country require the Clan of Civil Servants, who should be an Imaginative, Dynamic, Effective, Committed, Objective, Independent, Fair, Reasonable and Non-Political and dedicated to serve for the betterment of the Common Man.

Civil Service should strengthen Cohesion and National Unity. The Values of Integrity, Impartiality and Merit remain the Guiding Principles of Indian Civil Services..

The **Civil Service** is the Permanent Executive Branch of the Republic of India. The Civil Service System is the backbone of the Administrative Machinery of the Country.

Indian Civil Servants have been colloquially called as "BABUS", while Indian Bureaucracy is called "BABUDOM"/"RULE OF BABUS"

We are ruled by Parliamentary Democracy as propounded in the Constitution.

In any Parliamentary Democracy, the ultimate responsibility for running the Administration rests with the Elected Representatives of the People, through the Ministers. But a handful of Ministers cannot be expected to deal personally with the manifold Problems of Modern Administration. Thus the Ministers lay down the Policy in the letter and spirit of the Statutes enacted by the Legislatures conferring Executive Power, **Parent Act or Primary Law** and it is for the Civil Servants to carry out this Policy by framing Rules, Regulations, Orders and byelaws **[Subordinate Laws or Subsidiary Laws or Child Legislation]**

The Executive Decisions are implemented by the Indian Civil Servants, who are the Employees of the Government of India or of the States.

With the herculean task placed on their Shoulders, what are the Safeguards provided to the Civil Servants pertaining to the Tenure of their Service.

Chapter-1 of Part XIV of the Constitution providing Protection to the Services of the Civil Servants : -

Art. 309. Recruitment and conditions of Service of persons serving the Union or a State 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 the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act

This Article empowers the Parliament or the State Legislature to make Laws to regulate the Recruitment and Conditions of Service of Persons appointed to Public Services and Posts in connection with the affairs of the Union or the State, as the case may be. It also authorizes the President or the Governor to make Rules for the above Purposes until Provision in that behalf is made by or under an Act of Parliament or the State Legislature.

The following are the relevant Acts and Rules:

- (i) The All India Services (Conduct) Rules, 1968
- (ii) The All India Services (Discipline and Appeal) Rules, 1969.

The All India Services (Discipline and Appeal) Rules and the All India Services (Conduct) Rules were made by the Central Government in exercise of the Powers conferred by Sub-Section (1) of Section 3 of the All India Services Act, 1951, which was enacted under Article 312 of the Constitution.

- (iii) The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.
- (iv) The Andhra Pradesh Civil Services (Conduct) Rules, 1964.
- (v) The Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960.
- (vi) The Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989.

Article 310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defense or any civil post under the Union holds office **during the Pleasure of the President**, and every person who is a member of a civil service of a State or holds any civil post under a State holds office **during the Pleasure of the Governor** of the State. (2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defense service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Doctrine of Pleasure – an integral part of Common Law, is imported from England and it is based on Principle of Public Policy so as to make the Civil Servants not only responsible to the Government but also to the People and as per Common Law, Civil Service **is not a Contract**, as such, a Civil Servant is not entitled to move Court of Law to enforce Conditions of Service and hence, his Services can be terminated at any moment even without assigning any reason.

It is not so in India – Articles 310 and 311, offering procedural safeguards.

Limitations on Doctrine of Pleasure

Article 14 – Prohibits any Discriminatory and Arbitrary Termination of Service

Article 15 – Prohibits Termination of Service on ground of Religion, Race, Caste, Sex or Place of Birth or any of them

Article 16 – Obligates Equal Treatment and bars Arbitrary Discrimination in Public Employment.

Article 311 of Constitution “Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.–

(1) No Person, who is a Member of a Civil Service of the Union or an all-India Service or a Civil Service of a State or holds a Civil Post under the Union or a State shall be dismissed or removed **by an Authority Subordinate to that by which he was appointed.**

(2) No such Person as aforesaid shall 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:** Provided that where, it is proposed after such Inquiry, to impose upon him any such Penalty, such Penalty may be imposed on the basis of the Evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of 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 remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, **it is not reasonably practicable to hold such inquiry;** or (c) where the President or the Governor, as the case may be, is satisfied that in the **interest of the security of the State it is not expedient to hold such inquiry.**

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause

(2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank **shall be final.**”

The Procedure laid down in Article 311 is intended to assure, first, a measure of security of tenure to Government servants, who are covered by the Article and secondly to provide certain safeguards against arbitrary dismissal or removal of a Government servant or reduction to a lower rank. These Provisions are enforceable in a Court of Law. Where there is an infringement of Article 311, the Orders passed by the Disciplinary Authority are void ab initio and in the eye of Law “no more than a piece of waste paper” and the Government Servant will be deemed to have continued in Service or in the case of reduction in Rank, in his previous Post throughout.

Doctrine of Pleasure as envisaged under Clause 1 of Article 310 is applicable to Civil Services and Posts held under the State and it has No application to various Constitutional Posts, such as Judges of S.C. and H.C’s, Chairman and Members of P.S.C., Chief Election Commissioner and Comptroller Auditor General of India.

Articles 310 and 311 apply to Government Servants, whether Permanent, Temporary, Officiating or on Probation.

Article 320 – (3) (c) – provides in all Disciplinary Matters effecting Civil Servants, Union or State Public Service Commission, as the case may be, is to be consulted.

Observance of the Principles of Natural Justice: -

Any Order that may be passed or Enquiry that may be conducted by the Authority concerned shall follow the **Principles of Natural Justice**, which have evolved from the need of Man to protect himself from the **Excesses of Organized Power** and Earliest Form of Natural Law can be seen in Roman Philosophical Expressions (Jus Naturale).

Natural Law does not mean the Law of the Nature and it is another name for **Common-Sense Justice** and it is **not codified and is based on Natural Ideals and Values**, which are Universal.

The Principles of Natural Justice are considered the basic **Human Rights** because they attempt to bring Justice to the Parties naturally.

Giving **REASONED DECISIONS** is a postulate and Principle of Natural Justice.

Basic Pillars of Principles of Natural Justice

Two Core Points in the Concept of Principles of Natural Justice

1. **AUDI ALTERAM PARTEM** - Hear the other Party, or the Rule of Fair Hearing, or No One should be condemned Unheard= Art.21.
2. **NEMO IN PROPRIA CAUSA JUDEX, ESSE DEBET** - No One should be made a Judge in his own Case/Cause.

These two are the Basic Pillars of the Principles of Natural Justice. No System of Law can survive without these two Basic Pillars.

The Concepts of Justice in terms of Social, Economic and Political can be seen in the Preamble of the Constitution, are based on the Principles of Natural Justice.

JUDICIAL DECISIONS: -

The implications of Article 311 of the Constitution have been dealt by the Supreme Court in the following Cases-

- (i) Purushotham Lal Dhingra Vs. Union of India : AIR 1958 SC 36,
- (ii) Khem Chand Vs. Union of India :AIR 1958 SC 300 and
- (iii) Union of India and another Vs. Tulsiram Patel : **AIR 1985 SC 1416**
- (iv) Union of India and another Vs. MM Sharma : Civil Appeal
No.2797/2011
[arising out of SLP (C)
No. 9032/2011]
CC No.4808/2011
30-03-2011

The Supreme Court in the above Cases, gave an Exhaustive Interpretation of the various Aspects involved in the Operation of Article 311 of the Constitution and they provide the Valuable and Authoritative Guidelines in dealing with Disciplinary Cases Administrative Authorities.

Administrative Service Tribunals Act 1985.

In October 2013, the Supreme Court of India, in the Case of *TSR Subramanian & Ors vs Union of India & Ors* ¹"WRIT PETITION (CIVIL) NO(s). 82 OF 2011" delivered on 31st October 2013¹ ordered the Government of India and State Governments to **ensure minimum fixed tenure** to Civil Servants. The Court asked Senior Bureaucrats to write down the Oral Instructions from Politicians so that a record would be kept of all the Decisions.

“Minimum assured **Service Tenure** ensures Efficient Service Delivery and also increased Efficiency. They can also prioritize various Social and Economic Measures intended to implement for the Poor and Marginalized Sections of the Society” – last two lines of Para No.30 of the said Judgment.

We, therefore, direct the Union State Governments and Union Territories to issue appropriate directions to secure providing of **minimum tenure of service** to various Civil Servants, within a Period of **three months**- Para No.30 of the said Judgment.

The Civil Service Day is celebrated on 21 April every Year.

Is there any Objective behind it ?

To take a solemn Pledge to rededicate and recommit themselves [Civil Servants] to the cause of the People and it gives an Opportunity for introspection and thinking about Future Strategies to deal with the Challenges being posed by the Changing Times.

Do you know, a Person named SR Sankaran ?

SR Sankaran, a Personification of Simple Living, Honesty and Integrity, Unassuming but Strong, Modest yet Firm and Affable, the Diminutive Civil Servant, was a Role Model, who showed what an IAS Officer could do for the Marginalized Sections of Society.

He stubbornly refused to don the Normal Bureaucrat's Attire of the Delhi Winter (he was always uncomfortable with anything formal or heavy) and jocularly described this was his way of sympathizing with the **“Wollenless Millions of Delhi”**.

‘Marginalization, Development and Resistance: Essays in Tribute to SR Sankaran’ Volume-1 was released by Ch. Hanumantha Rao, Former Member, Planning and Finance Commission.

He passed away on 7th October 2010.

The above is vital because the Civil Servants are working under the Constitution of the Republic of India, which is Dynamic, capable of delivering Justice to the Needy in accordance with the felt Needs of the People in the changing Times.

Transparency is one of the Hallmarks of Democracy.

Democracy requires an informed Citizenry and Transparency of Information.