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COMPARATIVE STUDIES OF GLOBAL ADMINISTRATIVE SERVICES AND ITS LEGAL IMPLICATIONS IN DIFFERENT COUNTRIES WITH SPECIAL REFERENCE TO IMPACT OF LEGISLATIVE INTENT AND TRENDS IN INDIAN CIVIL SERVICES IN PRESENT DAY SCENARIO.

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ABSTRACT

Legislative commitment has been an important factor in ensuring the success of Civil Service and its reform initiatives in several countries during the last seven decades. Legislative support provides not only a legal framework for Civil Service reform but ensures the continuity of these reforms. Such legislation plays a pivotal role in describing and establishing the core principles which Civil Servants should imbibe. It also provide a clear unified framework within which the Civil Servants can perform their roles and discharge their responsibilities. A new law is often needed to create and empower institutions which would ensure that the Civil Servants discharge their duties while upholding the principles enshrined in the Constitution. A Civil Service law can also provide the basis for bringing about necessary reform in the Civil Service. In this context, an Administrative Law serves three important purposes. First, it provides the necessary explanations for the proposed reform initiatives. When the Bill is introduced in the legislature, there is extensive debate as a result of which issues are clarified and doubts are set at rest. Second, when the reforms are given legislative cover, there is political support and the political parties become committed to the changes. Third, Civil Servants normally take notice of legislation and in this case the Civil Service legislation sends down the important message to the Civil Servants that the reforms are permanent in nature.

Key Words: Civil Service, Legislative Framework, Accountability, Transparency, Good Governance, Senior Executive Agencies/ Services, Constitutional and Administrative Law, Ministries/Departments, Organization, Management/personnel, Opportunity to be held, etc.

A. INTRODUCTION

An Administrative Law describes and establishes the core principles, values, and characteristics which create the distinctive culture and ethos of the Civil Service. Drafted properly it can provide a clear and unified framework within which the Civil Service can carry out its distinctive roles and responsibilities. It also provides a legal basis for the legislature to express the important values and culture it wants in the Civil Service. It becomes an unambiguous statement to those within the Civil Service and to the people of India of what is expected of the Civil Servants. In addition, the legal framework makes Administrative Law not just one initiative of the government in power, but a lasting initiative towards better performance and accountability. The experience of these countries suggests that with the adoption of the executive agency model the capacity of the Civil Service has been strengthened to deliver effective Public Services. Substantial benefits have accrued from the implementation of the model but there have been costs too. Discussed below is an assessment of the benefits and costs. The greatest benefit is that the Civil Servants working in the agencies have been given autonomy flexibility and incentives to achieve results by relaxing the traditional centralized control over the use of financial and human resources. This is a real benefit because centralized controls emphasize inputs rather than results and often get in the way of performance. In exchange for greater flexibility and autonomy the executive agency model has introduced stringent performance requirements and enhanced accountability.

B. OBJECTIVES OF THE STUDY.

- To study on practical implication of the judicial decisions explaining the extent and scope of judicial control in Government's relation to Civil Service matters.
- To study on the role of administrative system for promoting transparency and people's participation.
- To study on the decision making, implementation and evaluation of projects programmes and public policies for Good Governance.
- To identify the strategy that could be formulated for maintaining balance between the interest of the Civil Servants and that of the fundamental interest of the society that conflict with each other.

C. CONCEPTUALIZATION OF RESEARCH PROBLEM:

The pertinent issues of focus as enumerated below, set the parameters of the study in the context of research problem.

- ❖ By and large the Civil Service in India has lost its neutral and anonymous character and even though there are still some upright Civil Servants they are getting marginalized in the process of governance.
- ❖ Increasingly, corrupt practices have become prevalent in the higher Civil Service and public perception of higher Civil Servants as a class is not edifying

- ❖ Some Civil Servants develop an unhealthy nexus with power brokers and do not hesitate to resort to questionable means to get good postings in India or abroad.
- ❖ The Vigilance Organization in States and the Central Bureau of Investigation in Government of India have created such a fear psychosis that civil servants are afraid of taking bold decisions in the public interest i.e. decisions involving expenditure of big amounts of money and important commercial decisions. There is a need to enforce the 'Single Directive to protect honest officers who take bold decisions in the public interest even though they might be guilty of technical violations of procedure in taking such decisions.
- ❖ After 15 years of service a rigorous review should be made of performance of higher Civil Servants to weed out the corrupt and the inefficient.
- ❖ Article 311 of Constitution is meant to protect honest and efficient Civil Servants and not to shield the corrupt and the inefficient Article 311 of the Constitution should be amended to remove corrupt officials from service and give them an opportunity to defend themselves in a post decisional hearing only after their removal from service. If the Civil Servant is exonerated in the post-decisional hearing he may be restored his entire service benefits including arrears of pay and allowances.
- ❖ Civil Servants should be politically neutral to inspire.
- ❖ There must be trust and mutual respect between the Minister and the Civil Servant as without them unity of action in the higher echelons of government will be difficult to achieve.
- ❖ Making the Civil Service e-governance friendly. To provide a clean, honest and transparent government. Antiquated rules and procedures in government must be discarded and new simplified ones be put in place. Such an exercise is absolutely essential for introduction of e-governance.

D. RESEARCH METHODOLOGY

The Methodology adopted in this study is doctrinal and empirical one. Case study method and statistical data analysis are the basis of Empirical of this research. Data collected from both primary and secondary sources which is based on Constitution of India, official reports of Law Commissions, Reports of the findings of various committees, All India Reporter on service matters etc. and leading legal bulletins. Besides a detailed survey and analysis of plethora of judicial decisions rendered in this regard by the Supreme Court and a number of High Court are to be made. Reports as available in the form of Books, Journals, Manuals Periodicals Articles and public opinion which constitute the pool of Secondary Sources used.

E. REVIEW OF THE LITERATURE.

A brief review of the literature relating to the present study has been detailed as follows –

Harold .J. Laski's valuable treaties entitled "Parliamentary Govt. in England" & "The Growth of Administrative Discretion" gives a wonderful account of the Home Civil Service of England . Similarly Herman Finer's "The British Civil Service" is also a classic source of "The Role of the Civil Service in the Modern World". We also find good research in Herman Finer's classic treatise on "The Theory and Practice of Modern Government", where he has attempted indepth analysis with comprehension, original research & first hand observation highlighting the crucial problems of the Civil Service mainly aimed to get, keep, manage, and inspire in the service of the state enough of the best minds and characters of the living generation. Constitutional and Administrative Law by John Alder and Constitutional Law by E.C.S. Wade & Godfrey Philips has tremendous impact on Civil Service & Civil Servant. Other books on Indian Constitutional Law like Durgadas Basu's shorter Constitution of India and the Introduction to Constitution of India have a chapter each on the services under the Union and the State, Dr. Basu gives importance to Civil Service and interpretation, recruitment and conditions of Service to be regulated by legislation subject to the provisions of the Constitution. The most respectable book on Constitutional Law of India by H.M. Seervai has given a wonderful account of what the role of Civil Services citing quotations from Sir Warren Fisher, Permanent Head of the British Treasury, Sardar Vallabhbhai Patel and from Shah Commission's Report. Seervai's treatise gives an excellent account of Article - 309 to 311, 313 and other articles in Part – XIV of the Constitution. Another important book that is found to be very close to the subject of the research study is "The Civil Servant under the Law and the Constitution" by Dr. N. Narayan Nair, The roles governing the conduct of the Civil Servant and legislations that control Civil service, aimed at enhancing disciplined efficiency and fair service conditions. It also examines the position of the Civil Servant and the significant features of the problem pertaining to the Civil Servants under the Law and the Constitution. Other books close to my topical area of research study is Prof. Narendra Kumar's "Law Relating to Government Servants and Management of Disciplinary Proceedings". Prof. Kumar has in a very simple language highlighted Service law pertaining to certain controls like 'the pleasure doctrine under Article 310 system of Confidential Reports, disciplinary proceedings such as suspension, removal and dismissal from service and reduction in ranks etc. In order that these control mechanisms are not arbitrary constitutional and other provisions are enacted for the protection of the Civil Servants which they can enforce through the Courts. Report of the Law Commission of India on various topical legal issues concerning my research has also been studied and their significant findings have been integrated into my research. Research findings of Indian Bar Review have also been studied to integrate important research concerns. Internet Depository on my research area is a significant source of legal research and various inputs would necessarily be used in my topical research area. Justice Rama M. Jois in his work "Service under the State" influences most simple level as a source of overall understanding of Civil Services law and Civil Services jurisprudence. It is an authoritative exposition of adjudicative law as well as a critique of it helping context

its future renovation. The discourse on the rights of Civil Servants is anchored in the text and of article 311 of the Indian Constitution. This provision is unique in World Constitutionalism. Every act of affirmation of the rights of the Civil Servant is also an act of State Power, strengthening it all the way. Adjudicative law empowers the individual at the same time substantially disempowering the State. It is this inversion which possess the basic enigma of the Indian judicial process. Similarly Ejaz Ahmed's The All India Services Manual, published by Ashoka Law House New Delhi, is a best source of relevant case laws & notes on Government of India resolutions.

F. BRITISH CIVIL SERVICE: PERMANENT EXECUTIVE The services are the life-blood of administration. In England with a Parliamentary system of Government the administration with regard to the making of general policies and programmes is run and controlled by the Cabinet which is completely responsible for all intents and purposes to the House of Commons. But actually the Ministers being amateurs newcomers untrained and inexperienced have failed to run the administration efficiently. Under such circumstances the British Government in order to establish efficiency of administration has appointed numerous officials who remain permanently in office under all types of Cabinets. All such officials are appointed for permanent tenure by British Crown on merit basis through the competitive examinations. All these officials who are meant to carry out the policies and enforce the orders of the Government impartially and honestly irrespective of party affiliations may be collectively defined as permanent Civil Service in England. Such permanent officers keep themselves above party politics. They cannot be easily removed unless a definite charge is proved against them in a court of law. Defending the establishment and continuation of Civil Services in Britain Sir Ivor Jennings comments "The State exercises new and wider functions which require quite a different technique of government from that switched is nineteenth-century conditions. The destruction of Laissez-faire does not imply the destruction of the methods used for the administration of private and criminal law because the old functions remain and nothing suggests that the methods used for their execution were fundamentally wrong. These methods are not appropriate however for social insurance planning housing and other twentieth-century functions."¹

1. Iver Jennings: The British Constitution, P. 138.

According to Prof. Graham Waller the Civil Service in England is "One of the great political inventions in the nineteenth century England".

F.1 ORIGIN OF CIVIL SERVICES - The Civil Service in its present form is the product of the past more than one hundred years. In the past no importance was attached to the ability intelligence and merit of persons in making appointments. The departments were free to choose their own staffs and political nepotism and favouritism was ripe. Such appointments after some time became the matter of high criticism in England. The intelligentsia of England began to revolt against this defective system of Civil Service appointments. Owing to this criticism for the Civil Service Commission of three members

was set up in 1855 to organize recruitment to the service. The method of open competition was substituted for the practice of obtaining Civil Service appointments by favour. Today the British Civil Service is, generally considered to be one of the best in the world.

F.2 ORGANISATION OF CIVIL SERVICES

Civil Servants divided into four main divisions in accordance with their status and dignity of office in England. In 1920 the Re-organization Committee reported that “The administrative and clerical work of the Civil Services may be said broadly to fall into two main categories. In one category may be placed all such work either is of a simple mechanical kind or consists in the application of well-defined regulations decisions and practical to particular cases in other category the work which is concerned with the formation of policy with the revision of existing practice or current regulations and decisions and with organisation and direction of the Business of the Government These are as under : Assistant Secretaries etc. As Finer has put “They are responsible for transmitting the impulse from their political chief from the statutes and declarations of policy through the rest of the service and out of the public.² They are responsible for advising Ministers on general policies of government to help them in tackling the intricate problems which arise in England and to supply an up to date information to the Government for making the best laws of the country. Besides this the administrative class officers help the ministers to perform all parliamentary functions like the preparation of various reports and speeches to reply the questions and cross-questions in Parliament. In brief this class is an embodiment of expert opinion and technical knowledge which becomes the foundation and basis for the Cabinet ministers to run the actual administration of England. Sir Warren Fisher, has underlined following codes on which the Civil Servants are in their respective administrative capacities : “Determination of policy is the functions of the Ministers and once a policy is determined it is the unquestioned and

2. Herman Finer: Theory and Practice of the Modern Government: p. 770.

unquestionable business of the Civil Servants to strive to carry out that policy with precisely the same good will whether he agrees with it or not. This is axiomatic and will never be in dispute. At the same time it is the traditional duty of Civil Servants while the decisions are being formulated to make available to their political chiefs all information and experience at their disposal and to do this without fear or fervor irrespective of whether the advice thus tendered may account or not with the ministers initial views. The presentation to the Ministers of relevant fact the ascertainment and marshalling of which may often call into play the whole organisation of the departments demands of the Civil Servant greatest care. The presentation of inferences from the facts equally demands from him all the wisdom and all detachment he can command. Sir Jennings comments that the functions of the Civil Servants are ‘to advise to warn to draft memoranda and speeches in which the government’s policy is explained and expressed to take the consequential decisions which flow from a decision on policy to draw attention to

difficulties which are arising or likely to arise through the execution of policy and generally to see that the process of government is carried on in conformity with policy laid down.³ In the modern age of democracy the ultimate responsibility for controlling the administration of England lies with the Cabinet Ministers. The Cabinet makes the general policies and programmes on the basis of which the British administration is to be run. But in actual practice the whole administration of the British Government is controlled not by the ministers who are untrained amateurs and inexperienced but by the Permanent Civil Servants having a perfect and up-to-date knowledge and experience about the various departments of the Government. Commenting on the role of administrative section of the Civil Servants Finer writes that the work is merely secretarial they are the young shoots who may twenty years hence be permanent heads of the departments a very closely associated with it.⁴ In fact, the Permanent Civil Servants are the real rulers of England and the Cabinet Ministers being new comers inexperienced amateurs and untrained political persons are puppets in their hands. Prof. Bagehot is critical of the Civil Services when he says, The trained officials hates the mere untrained public. He thinks that they are stupid ignorant reckless.⁵ Being permanently in office the Civil Servants acquire adequate knowledge and experience of their work which makes everyone specialized in his own department. On the other hand ministers come and go because they have to depend upon the fluctuating and ever changing views of the electorate. Moreover, the ministers are to devote most of their time for party's organizational work which renders them helpless to acquire the required special knowledge for running the administration. On the other hand the day-to-day business of the State must go on and this is carried on by Civil Servants.

3. Sir Iver Jennings: Cabinet Government : pp. 116

4. Herman Finer: The Theory and Practice of Modern Government. p. 770.

5. The Bagehot, The English Constitution P. 172.

The Permanent Civil Servants are the "Reservoir of experience and knowledge" who furnish the Cabinet and the Parliament with all the exact information and facts. Without the Permanent Civil Servants "the British Government would be only a collection of rules and regulations suspended in mid air without any motive force or effect upon the minds of the people. Moreover, a minister the political head of a department is a layman. He does not understand the technical intricacies of departmental work. The British War Office has been headed at times by a philosopher or a journalist the admiralty by a merchant or a barrister and the Board of Trade by a University Professor (Munro) Permanent officials who possess a long experience of their work are very helpful to the Minister who has to rely a great deal on them for facts and details. Since the Minister is amateur he can seldom challenge the secretary of his department who possesses a high standard of ability, efficiency and caliber. Thus it is pointed out that in England the Permanent Civil Servants rule and not the ministers. Powers of bureaucracy (Civil Service) appear to have increased tremendously. The Minister being a layman is a tool or a rubber stamp in the hands of permanent officials who are very able and experienced. They possess a far deeper knowledge of administrative work than does a minister. They very cleverly present facts to the Minister and thus influence the policies to be decided by him. In most cases the Ministers accept the views of the permanent

officials and sign quietly on the dotted line. It is concluded therefore that real administration in England is carried on by the Civil Servants and not by ministers. This contention has much truth but not the whole truth. It is a fact that permanent officials influence the policies of a minister but it is to say that he is their tool. A minister with a forceful personality is conscious of his political life in the country his position in the Cabinet and his responsibility to Parliament as such he cannot afford to be influenced too much by his permanent staff in formulating his policies. There had been ministers like Lloyd George Churchill and Attlee who changed the very outlook of a department and introduced innovations and new blood in their departments. Public life experience in Parliament and general education enable the minister to tell the department what the public won't stand. According to Prof. Laski Bureaucracy (Civil Service) is the term usually applied to a system of government the control of which is so completely in the hands of the officials that their power jeopardized the liberties of the ordinary citizens. If so British Civil Service is not bureaucracy in the strict sense. No doubt it is efficient and experienced. It places before the Cabinet and Parliament a lot of information and material which is required in deciding policies and in making laws. But Civil Servants are not the masters of the whole show they do not dominate the administration. The Minister who heads a department is responsible to Parliament. He has to answer searching questions regarding any injustice and wrong done to a private citizen. He is afraid of public reaction. Civil Servants are aware of the delicate position of their political chief. They know if he is trouble they will also be put into trouble. The British Civil Service is a part of a democratic and responsible form of government in which abuse of power is not tolerated. Ministers and Civil Servants co ordinate their activities in order to run the administration efficiently. That has been the experience of all Cabinets in England. Thus, there is no danger of Civil Service ruling the country over and above the Cabinet.

F.3 ROLE OF THE PERMANENT CIVIL SERVICE

The work of the Civil Service falls broadly into two main categories. In one category may be placed all such work as either is of simple mechanical kind or consists in the application of well defined regulations decision and practice to particular cases in the other category the work which is concerned with the formation of policy with the revision of existing practice or current regulations and decisions and with the organisation and direction of the business of the government. The top administrative class which performs the activities enumerated in the second category plays a pivotal role in the administration of the country. The minister who heads a department is an amateur. He is a politician. He is appointed not because he possesses expert knowledge of the work of the department but for other considerations. The Civil Servants are experts. They possess besides technical knowledge a vast fund of practical experience. The minister therefore has to depend on the advice of the Civil Servants who are a sort of permanent brains trust. They advise and assist the minister concerning the work of the department and find solutions to various administrative problems arising outside the normal routine of the department. Although policy making is the responsibility of the minister even in this field he is dependent upon the permanent under secretary whose knowledge and experience provide the necessary factual foundation for policy determination. Warren Fisher⁶ has described the role of Civil Servants in the

following words : “Determination of policy is the function of ministers and once a policy is determined it is the unquestioned and unquestionable business of the Civil Servants to strive to carry out that policy with precisely the same goodwill whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of Civil Servants while decisions are being formulated to make available to their political chiefs all the information and experience at their disposal and to do this without fear or favour irrespective of whether the advice thus tendered may accord or not with the ministers initial view. The presentation to the minister of relevant facts the ascertainment and marshalling of which may often call into play the whole organization of the department demands of the Civil Servants the greatest care. The presentation of inferences from the facts equally demands from him all the wisdom and all the detachment he can command.

F.4 DELIVERING PUBLIC SERVICES IN UNITED KINGDOM

In the 1980s, the Thatcher government’s Financial Management Initiative Programme took up a number of scrutinies of government departments to determine their efficiency.⁷

6. Government of UK (1985a).

7. Government of UK (1985b)

The Report of one such scrutiny of management across the government – Improving Management in Government : The Next Steps – suggested three priorities for reform:

1. Work of each department must be organized in a way that enhances the effective delivery of policies and services.
2. Management of each department must ensure that its staff has the relevant experience and skills needed to do the tasks that are essential to effective governance.
3. There must be sustained pressure, on and within each department, for continuous improvement in the value of money obtained in the delivery of policies and services.

In consonance with these priorities, the Next Steps Report recommended that executive functions of the government, as distinct from policy advice needed to be carried out by distinctive units called executive agencies. At the heart of this new approach was the need to reorient systems and attitudes in the government to focus on delivery of public services and flowing from this on the needs of the recipients of these services - the customers whether outside or inside government.⁸ The Report pointed out that real improvements in governance could be brought about only if Civil Servants were held to account for results – a sense of ownership and personal identification was essential to improving performance.⁹ The Next Steps Report suggested that establishment of executive agencies offered the most practical way of organizing work to deliver public services. An executive agency was defined as a discrete area of work with a single named individual – a chief executive – in charge with personal

responsibility to the minister. The Next Steps Report suggested that establishment of executive agencies offered the most practical way of organizing work to deliver public services. An executive agency was defined as a discrete area of work with a single named individual – a chief executive – in charge with personal responsibility to the minister. The agency was structured around and focused on the task to be completed. The minister allocated resources and set annual performance targets for the results to be achieved. The minister delegated managerial authority to the chief executive who decided how best to run the organisation and get the work done with available resources.¹⁰ Acting on the Next Steps Report the government began setting up executive agencies in the late 1980s. There are now 140 executive agencies running on the lines outlined in Next Step covering 76 per cent of the Civil Service (almost 390,000 Civil Servants). These agencies deliver a great variety of services ranging from customs and excise collection employment service and benefits vehicle and driver licensing issue of passports child support research¹¹ and development to whether forecasting and prison management.

8. OECD (1999).

9. Ibid.

10. Ibid.

11 Ibid

Despite the wide variety of public services they deliver the executive agencies have a number of common characteristics.

1. Defined responsibilities and clear aims and objectives set out in a published framework document.
2. Day-to-day responsibility for running the agency delegated to its chief executive with personal responsibility and managerial authority for the job to be done.
3. The chief executive answering directly to the minister.
4. Key performance targets covering quality of service financial performance and efficiency set by ministers and announced to Parliament.
5. Performance against these targets reported each year and published in the executive agency's annual report and in the annual Next Steps Report.
6. Basis of ministerial accountability remaining unchanged by agency status. Those working in the agency (including the chief executive) remain Civil Servants reporting to ministers who are accountable to Parliament. The chief executives are recruited on the basis of open competition. More than half the chief executives are from outside the Civil Service. They are appointed on a fixed-term contract and given substantial operational autonomy both in terms of management of finances and manpower. They are free to hire and fire staff. The agencies are authorized to give performance-related pay and negotiate with the unions the extent of performance-related pay component. The mandate of the agency is described in a framework document which spells out the policy framework the agency's missions and objectives and the resources and other operating constraints under which the agency is to function. The departmental minister approves the annual budget and performance targets of the agency. The chief executive is held personally responsible for the targeted performance. The annual report of the agency provides information

on achievements against targets. The accounting of the agency is on an accrual basis. Ministerial responsibility is limited to policy and not operations of the agency. Parliamentary questions are answered by the chief executive and not by the minister. All agencies publish annual reports and framework documents setting out their aims and objectives and outlining their responsibilities. In addition, the Cabinet Office publishes an annual Next Steps Review summarizing the performance of the executive agencies and providing comparative data. What has been the impact of the functioning of executive agencies? There has been significant improvement in service delivery outcomes. For example, in the Benefit Agency, the output per member of staff increased by more than 20 per cent in the first two years of its conversion into an agency. Income support claims took on an average more than five days to clear in 1990. In 1992-93 the average time taken to pay such claims was three-and-a-half days. In 1993 the Employment Service met its target for setting up new claims to benefit more than 94 per cent of the cases compared to less than 87 per cent of the cases in 1990-91.¹²

12. Das (1998) pp. 114-115.

The waiting time for driving tests was reduced from 13 weeks to less than six weeks.¹³ The passport agency improved its turnaround time for processing applications from 24 to seven days.¹⁴ The creation of executive agencies has led to a more sustained focus on performance in relation to both quality of service for the customer and to efficiency strengthening of accountability and greater transparency.¹⁵ People working in the agencies feel that the agency form has brought about significant benefits in terms of improved efficiency greater transparency clearer focus on the task and on the client base that the agency serves and finally greater scope for managers to manage without being hidebound by service-wide rules or hampered by routine high-level interventions on detailed matters.¹⁶ In 2002 the government commissioned a comprehensive independent review¹⁷ of the functioning of 92 executive agencies across the government. The review concluded ... executive agencies brought about revolutionary changes in the culture processes and accountabilities of these services delivered directly by central government .. The agency model has changed the landscape of the government. Extremely flexible it provides the most responsive and accountable framework for delivering executive functions from within the central government ... The agency model has been a success.¹⁸ The Treasury and Civil Service Committee of the House of Commons reviewed the working of executive agencies and observed that their implementation has brought about an overall transformation in Government.¹⁹ The Committee came to the conclusion that the Next Steps agencies represent a significant improvement in the organisation of Government and that any future Government would want to maintain them in order to implement its objectives for delivery of services to the public.²⁰ The creation of executive agencies was characterized both by the Head of the Civil Service and by experts giving evidence to Parliament as the most significant change in the structure of the Civil Service since the Northcote-Trevelyan reforms of the nineteenth century.²¹

F.5 SENIOR EXECUTIVE SERVICE IN UNITED KINGDOM

The Senior Civil Service was created on 1st April 1996. It is a group of senior managers and advisers who while employed and managed by their own departments have a broader identity as part of a cohesive group at the top of the service and are covered by a common framework. The framework has a number of important features.

13. Ibid
14. Ibid
15. Government of UK (1994a)
16. Ibid
17. Alexander et. al (2002)
18. Ibid
19. The UK Government (1995)
20. Ibid.
21. OECD (1999)

1. a central framework of nine overlapping pay grades
2. a common job evaluation system
3. a personal formal written contract and
4. a senior common appraisal system

While filling up the vacancies in the senior Civil Service wide and open competition is the norm. In recent years more than 30 per cent of vacancies at top three levels of the service have been openly advertised outside the service.²²

F.6 UNITED KINGDOM CIVIL SERVICE CODE

The United Kingdom Civil Service Code as presented to Parliament, November 2010 Presented to Parliament pursuant to section 5 (5) of the Constitutional Reform and Governance Act 2010²³

F.7 CIVIL SERVICE VALUES

1. The statutory basis for the management of the Civil Service is set out in Part 1 of the Constitutional Reform and Governance Act 2010.
2. The Civil Service is an integral and key part of the government of the United Kingdom. **1.** It supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil Servants are accountable to Ministers. **2.** Who in turn are accountable to Parliament?
3. As a Civil Servant, you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values : integrity, honesty, objectivity and impartiality. In this **Code:**
 - ❖ **‘integrity’** is putting the obligations of public service above your own personal interests,
 - ❖ **‘honesty’** is being truthful and open,
 - ❖ **Objectivity** is basing your advice and decisions on rigorous analysis of the evidence and

Impartiality is acting solely according to the merits of the case and serving equally well Governments of different political persuasions

4. These core values support Good Government and ensure the achievement of the highest possible standards in all that the Civil Service does. This in turn helps the Civil Service to gain and retain the respect of Ministers, Parliament, the public and its customers.

22. Commonwealth Secretariat, 1996

23. Sources: <http://www.civilservice.ov.uk>

5. This Code sets out the standards of behavior expected of you and other Civil Servants. These are based on the core values which are set out in legislation. Individual departments may also have their own separate mission and values statements based on the core values including the standards of behaviour expected of you when you deal with your colleagues..

Integrity

6. You must:

- ❖ fulfill your duties and obligations responsibly,
- ❖ always act in a way that is professional and that deserves and retains the confidence of all those with whom you have dealings.
- ❖ carry out your fiduciary obligations responsibly (that is make sure public money and other resources are used properly and efficiently).
- ❖ deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability
- ❖ keep accurate official records and handle information as openly as possible within the legal framework, and
- ❖ Comply with the law and uphold the administration of justice.

7. You must not:

- ❖ misuse your official position for example by using information acquired in the course of your official duties to further your private interests or those of others.
- ❖ accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity or
- ❖ Disclose official information without authority. This duty continues to apply after you leave the Civil Service.

Honesty

8. You must:

- ❖ set out the facts and relevant issues truthfully and correct any errors as soon as possible and
- ❖ use resources only for the authorized public purposes for which they are provided.

9. You must not:

- ❖ deceive or knowingly mislead Ministers, Parliament or others or
- ❖ be influenced by improper pressures from others or the prospect of personal gain.

Objectivity

10. You must:

- ❖ provide information and advice including advice to Ministers on the basis of the evidence and accurately present the options and facts,
- ❖ take decisions on the merits of the case and
- ❖ take due account of expert and professional advice

11. You must not:

- ❖ ignore inconvenient facts or relevant considerations when providing advice or making decisions or
- ❖ frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from action which flows from those decisions. Impartiality.

12. You must:

carry out your responsibilities in a way that is fair just and equitable and reflects the Civil Service commitment to equality and diversity.

13. You must not:

- ❖ Act in a way that unjustifiably favours or discriminates against particular individuals or interests.

Political Impartiality**14. You must:**

- ❖ serve the Government whatever its political persuasion, to the best of your ability in a way which maintains political impartiality and is in line with the requirements of this Code no matter what your own political beliefs are,
- ❖ act in a way which deserves and retains the confidence of Ministers, while at the same time ensuring that you will be able to establish the same relationship with those whom you may be required to serve in some future Government and
- ❖ comply with any restrictions that have been laid down on your political activities.

15. You must not:

- ❖ act in a way that is determined by party political considerations or use official resources for party political purposes or
- ❖ allow your personal political views to determine any advice you give or your actions Rights and responsibilities

16. Your department or agency has a duty to make you aware of this Code and its values. If you believe that you are being required to act in a way which conflicts with this Code, your department or agency must consider your concern, and make sure that you are not penalized for raising it.

17. If you have a concern, you should start by talking to your line manager or someone else in your line management chain. If for any reason you would find this difficult, you should raise the matter with your department's nominated officers who have been appointed to advise staff on the Code.

18. If you become aware of actions by others which you believe conflict with this Code you should report this to your line manager or someone else in your line management chain, alternatively you may wish to seek advice from your nominated officer. You should report evidence of criminal or unlawful activity to the police or other appropriate regulatory authorities. This Code does not cover HR management issues.

19. If you have raised a matter covered in paragraphs 16 to 18 in accordance with the relevant procedure and do not receive what you consider to be a reasonable response you may report the matter to the Civil Service Commission. The Commission will also consider taking a complaint direct. If the matter cannot be resolved using the procedures set out above, and you feel you cannot carry out the instructions you have been given, you will have to resign from the Civil Service.

20. This Code is part of the contractual relationship between you and your employer. It sets out the high standards of behaviour expected of you which follow from your position in public and national life as a Civil Servant. You can take pride in living up to these values

F.8 EVALUATION OF CIVIL SERVICE IN UNITED KINGDOM

The British Civil Service is considered to be one of the best in the world. It maintains the highest possible standards of efficiency and integrity. Herbert Morrison says We are proud of the British Civil Service As a whole they are efficient public spirited incorruptible very rarely does a British Civil Servant get convicted of bribery corruption nepotism treachery or favouritism. Almand and S. Verba also speak in the same tone the British people have got accustomed to a reasonably high standard of honesty and competence among their public servants. Criticism of British Civil Service. However, writers like Ramsay Muir are critical of the British Civil Service. It is said that bureaucracy thrives under the cloak of ministerial responsibility. It is the Permanent Civil Service that dominates the administrative financial and legislative activities of the Government. The ministers simply lay down policy they have neither expert knowledge nor time to look into the daily working of their departments. The growth of delegated legislation and administrative adjudication has considerably enhanced the power of the Civil Service.

G. CIVIL SERVICES IN THE UNITED STATES:

Owing doubtless in part to the spoils systems so strongly established in the Jacksonian era, the United States lagged far behind other nations in standards of Civil Service competence and probity. Agitation for reform began shortly after the Civil War. In 1871, Congress authorized the President to prescribe Regulations for admission to public service and to appoint the Civil Service Commission which lasted only a few years. The scandals of President Grant's administration lent weight to the arguments of reformers George W. Curtis, Dorman B. Eaton, and Carl Schurz. President Hayes favored reform and began to use competitive examinations as a basis for appointment to office.²⁴.

24. This includes, of course servants of the legislature and the course.

The assassination of President Garfield in 1881 by a disappointed office seeker precipitated the passage of the Pendleton Act in 1883, reestablishing the Civil Service Commission after a nine-year lapse. The commission draws up the rules governing examinations for those positions that Congress places in the classified Civil Service. All Presidents since Cleveland have expanded the classified list and the great majority of federal employees during peacetime are now classified. In 1939 the merit system was extended to sections of state administration receiving federal grants. The Hatch Act of 1940 forbade campaign contributions by officeholders, with the intention of divorcing the Civil Service from politics. A 1993 revision of the Act allows most Civil Servants to engage in political activity on their own time.²⁵ Appointive power is shared by the President, who appoints the heads of all government departments and may remove his appointees at will by Congress which control its own employees and by the Civil Service Commission and departmental appointing officers in whose charge are vacancies in the classified service. Important changes were made in the structure of the U.S. Civil Service as a result of the reports issued (1949, 1955) by the two commissions known as the Hoover Commission.

The organisation of the Government bureaucracy was streamlined by the creation of the General Service Administration combining the operations and activities of some 60 Government agencies.²⁶ The Pendleton Act of 1883 had initially brought only 10 per cent of the federal employees under the merit principle. Today, nearly 90 per cent of the federal government civilian employees are covered by the merit principle.² Both the U.S.A. and India are Federal States. But the United States was a system with a Presidential form of Government, based on the doctrine of separation of powers with checks and balances while the Indian Government does not follow the doctrine of separation of powers in its true sense. Now two Federations are alike. Inevitable therefore there are other differences between the federal system in India and the one in the United States of America. The Civil Service in America claims to be democratic in as much as theoretically it is possible to enter the Civil Service in its lowest grade and reach the top. The top grades are as a rule manned by political appointees²⁸. In 1980 the number stood at 2.9 million. One should bear in mind that in the United States the terms 'Civil Service' and 'merit system' are inter-changeable. The United States has adopted the position classification method,²⁹ where in all governmental positions are clustered into 18 grades. (India follows the rank classification method) Grades are the sole determinants of pay Grades 1 to 4 include clerical and lower-level technical workers. Grade 5 to 12 are termed 'administrative grades and cover a wide range of workers called 'college graduate type'³⁰

25. Therefore called the "classified" civil service

26. The US Civil Service Commission Annual Report (1947)

27. The Patronage may be judged from the lists on pp.43-55.

28. A. W. Macmohan and J. D. Millett, Federal Administrators (New York, 1939)

29. Ibid, p. 467

30. General Management of the Executive Branch pp. 38-39.

though a formal college degree is not compulsory. Young administrative personnel generally enter grade 5 but some may start at a higher grade. Grades 13 to 15 are 'supervisory' and 16 to 18 'management'. The bulk of the Civil Service is clustered in the lower and middle grades. Two-fifths of the total Civil Servants are in grades up to 5 and 70 per cent are in Grades 1 to 9. Only 10 per cent are in grades 13 to 18. The following table shows grade-wise strength of the American Civil Servants according to the figures of 1967 when the total membership of the Civil Service was 1.1 million.³¹ these names strictly on the basis of merit, leaving exercise of sufficient discretion to the appointive agency. The Civil Service Reform of 1978 enacted during the Carter administration carried out a major reform of the Federal Civil Service. As a result, the Commission was abolished in 1978 and the functions performed by it have been entrusted to two new and separate agencies - the Merit System Protection Board and the Office of Personnel Management. The Board is endowed with both appellate and investigatory responsibilities. The Office of Personnel Management³⁸ is an independent agency functioning under the President's direction. It is responsible for recruitment examination training and promotion of federal employees. It undertakes personnel investigations implementation of affirmative action programmes and employee development programmes formulates basic policy and supervises personnel activities throughout the executive branch of the government. In India, university graduates compete for the Indian Administrative Service and other higher services. In the US their counterparts appear for the Professional and Administrative Career Examination (PACE) conducted by the Office of Personnel Management.³² The PACE is a competitive examination which provides opportunities for university graduates and others with long work experience to occupy positions at middle-management levels (grade 5, 7, or 9) in the federal Civil Service. The examination consists of a written test and an interview and covers a number of topics and tests several skills all aimed at identifying persons who possess abilities and characteristics required for a professional career in the Civil Service. PACE is an attractive examination which thousands of college graduates in the US take for recruitment and is an attempt towards professionalisation of the Federal Civil Service. The United States presently imposes severe restrictions on the political activities of the federal Civil Servants. The second Hatch Act passed in 1940 extended these restrictions to state and local government employees working on projects supported by federal funds. The Hatch Acts, in short, prohibited partisan political activities of the Civil Servants and thus established an efficient personnel system based on meritorious performance rather than political service. The Civil Service in the USA is an 'open' one in sharp contrast to the 'closed' system in India.³³ Recruitment to the US Civil Service takes place at various levels of the hierarchy even though most of the higher Civil Servants enter at the lower levels.

31. Announcement No. 75 October, 1947 U. S. Civil Service Commissions

32. General Management of the Executive Branch pp. 38-39.

33. L.D. White and his Government Career Service (Chicago, 1936).

It is equally true for some of the top posts to be filled by in- and- outers that is by persons who join the Civil Service for a fixed term of three years or so and then join the private sector. Such appointments are generally politically sensitive to political leadership. On the whole, the US Civil Service

cannot be regarded as an elite service –as is the Civil Service in India Great Britain France and Japan. It does not carry a high level of social prestige in the country. The Civil Service in the USA is caught between short-term political appointments and permanent career service. The co-existence of the two has perhaps prevented the dominance of the career service in policy formulation and implementation. Career Service directly and closely concerns itself with programmes and their agencies. In 1978 the Congress enacted the Civil Service Reform Act thereby creating a ‘professional policy establishment’ in the shape of what has come to be known as the Senior Executive Service (SES) combining both political appointees and career service personnel. Finally, one is not very sure whether the SES has succeeded in removing the tension between political appointees and the career servants. It is suspected that this has caused politicization of the executive branch.

G.1. SENIOR EXECUTIVE SERVICE IN USA

The SES in the US was created in 1979. It is administered by the Office of the Personnel Management. Unlike other countries which have established the SES the US service includes both professionals (90 per cent) and political appointees (10 per cent)³⁴ The US SES was created to :

1. improve the pay and status of senior officials
2. create a service wide senior personnel system with increased opportunities for mobility management training and career development.
3. reduce tensions between political appointees and career officials and
4. trade off enhanced remuneration packages linked to performance evaluation criteria against secure Civil Service status foregone upon entering the programme.³⁵

The concept of the SES in the US differs from the traditional Civil Service models in that it is possible to rise through the Civil Service ranks to attain SES status or to enter laterally from outside the government.³⁶

H. CIVIL SERVICE IN AUSTRALIA: - DELIVERING PUBLIC SERVICES

In Government’s Civil Service Reform Agenda identified a range of initiatives that might serve to improve public accountability for performance increase competitiveness and enhance leadership in the government. These initiatives included devolved responsibility to the agency level giving agencies

34. US Office of Personnel Management (2004)

35. Ibid

36. Nunberg (1994) p. 28

flexibility to decide on their own systems for rewarding high performance and streamlined administrative procedures. The Public Service Act 1999 which was an element in the Government’s Public Service Reform Agenda laid down how executive agencies were to be established, defined the responsibilities of the heads of the executive agencies, prescribed how the head would be appointed

and his remuneration and other conditions of service, and provided for submission of an annual report by the agency to Parliament through the agency minister.

H.1. THE LEGISLATIVE FRAMEWORK IN AUSTRALIAN CIVIL SERVICE:-

In Australia, legislative commitment was a critical success factor of Australian public sector reforms over the last 20 years. Prior to the reforms the basic laws regulating the structure responsibilities and management of the Australian Public Service (APS) were the two successive Public Service Acts of 1902 and 1922. In 1996, the government decided that much more was required to be done to enable the Civil Service function efficiently and competitively and best practices in overseas Civil Services and in the private sector. An extensive review and consultation process of a new legislative framework was developed which was ultimately passed as the 1999 Public Service Act.³⁷ While retaining the essentials of a career Civil Service and the focus on merit selection as in the Acts of 1902 and 1922 the new Act made significant changes in a number of key areas.³⁸

1. For the first time, it contained a declaration of APS values.
2. A legally enforceable code of conduct was articulated, setting out the standards of behaviour expected of those working in the Civil Service.
3. Specific provisions were included affirming the merit principle, prohibiting patronage, favouritism and affording protection for public interest whistle blowing by APS staff.
4. Staffing powers previously assigned to the Public Service Commissioner and delegated to the heads of public service agencies were fully developed to them. They were given all the rights duties and powers of an employer in respect of their Civil Service employees with authority to engage terminate and determine their employment terms and conditions.
5. Departments and public or statutory authorities were made into agencies.
6. The heads of public service organisation once called permanent heads then departmental secretaries were called 'agency heads' and this term applied to the variously designated heads of statutory agencies which had Civil Service employees.
7. Career staff who were commonly described as permanent were now referred to as 'ongoing' staff.
8. Employees recruited for shorter periods or specific tasks were called 'non-ongoing employees.'

37. Nethercote (2003) p.35

38. Ibid. P. 36

H.2 SENIOR EXECUTIVE SERVICE IN AUSTRALIA

The Australian SES was created in 1984. It was given legislative cover in 1999 with the enactment of the Australian Public Service Act. Section 35 (2) of the Public Service Act provides.

The function of the SES is to provide a group of APS (Australian Public Service) employees each of whom, within his or her Agency.

- a. provides one or more of the following at a high level

- i. professional expertise
 - ii. policy advice
 - iii. management
- b. promotes cooperation with other Agencies and
- c. by personal example and other appropriate means promotes the APS Values and compliance with the Code of Conduct.

Adoption of the SES in Australia was based in part on the model of the SES in the US which had been set up six years earlier. The premise underlying the introduction of SES in Australia was that there should be no significant difference between executives in the public and private sectors and hence the public sectors executives should be managed similarly. Based on this premise it was felt that public sector performance could be improved by linking it with pecuniary rewards and sanctions in the context of a formal performance appraisal system and that in following the principle of management autonomy the best managers needed should be recruited for the public sector. As a result all SES vacancies became open to applicants outside the APS as well as to serving officials. Arrangements for staff selection development mobility promotion and tenure were designed specifically to meet common requirement at senior levels.³⁹

I. CIVIL SERVICE IN NEWZEALAND

In New Zealand for example it is argued that Civil Service reforms could have been implemented under the existing legal provisions with required amendments instead of fresh elaborate legislations. However, three important reasons have been cited for adopting a new legislative route. First they provided the necessary explanation for the proposed reforms. When these Bills were introduced in the legislature there was extensive debate as a result of which issues were clarified and doubts were set at rest. Second, when the reforms were given legislative cover there was bipartisan political support and both the major political parties were committed to the changes.

39. Nethercote (2003) P. 78

Third, Civil Servants normally give due importance to laws and in this case these legislations sent an important message that the reforms were there to stay.⁴⁰ Public Service reforms in New Zealand were ushered through various legislative measures the most important of them being the State Sector Act, 1988. Prior to the introduction of the State Sector Act the Public Service was a single entity all employees regardless of which department they were working for were part of one Public Service and were employed by the State Services Commission. The Commission appointed the departmental permanent heads and controlled the pay conditions and promotions of all staff as well as accommodation organizational structures and office systems including computing services. The Public Service was a

career service with incentives to encourage and reward long service.⁴¹ The State Sectors Act 1988 was designed to introduce into the Public Service many of the positive features and incentives of the private sector. The key principle was that managers if they were permitted to make all input decisions pay appointments organizational structures production systems etc. would respond by accepting personal accountability for producing substantially higher quality outputs the goods and services provided for the Government and other users. Specification would be critical both suppliers and purchasers would need to be certain about the quality quantity timing and price of the goods and services to be traded.⁴² The main purpose of this legislation are to ensure that employees are imbued with the spirit of service to the community promote efficiency in the State services and other agencies ensure responsible management maintain appropriate standards of integrity and conduct ensure that every employer⁴³ in the State Services is a good employer. The Act creates the statutory position of the states service commissioner.

I.1. THE LEGISLATIVE FRAMEWORKS OF THE CIVIL SERVICE REFORM IN THE NEWZEALAND.

The State Sector Act which was enacted in 1988 provided the basis for Civil Service reforms. The key provisions of the State Sector Act were as follows :⁴⁴

1. Each government agency was headed by an apolitical chief executive who was to be appointed on a contractual basis for a period of five years.
2. To ensure the apolitical nature of chief executive appointments, the State Services Commission an independent body was given the power to appoint them. The Act changed the role of the commission to employers of chief executives and advisor to government about management of the state sector

40. Adopted from S. K. Das, Civil Service Reforms and Structural Adjustment, P. 51.

41. Wdo2.pdf (extract on 18.09.08)

42. <http://www/cvc/govt.display/document.asp/docid/2384> page – 36

43. <http://www/cvc/govt.display/document.asp/docid/4332> page – 8

44. Das (1998) pp.92-96.

3. The Act made departmental chief executives fully accountable for managing their organizations. The chief executive became the employing authority for the staff under his control.

4. The Act clarified that the chief executives heading government departments were directly accountable to their respective ministers for departmental performance. The departmental minister and the chief executive entered into a performance agreement every year.

5. The performance agreements detailed the services to be provided by the chief executive during a financial year. These services were described as outputs and the assessments of the chief executives performance was to be based on the production and delivery of outputs as specified in the agreement. Assessment was to be done by the State Services Commission.

6. The auditor-general was asked to audit the statement of service performance for each agency in order to comment on whether the services agreed upon in the performance agreement were provided.

On the whole what these legislations both in Australia and New Zealand achieved is that they set out the directions for change. They enabled the required administrative and financial flexibility to be provided to Civil Servants. The employment framework was transformed in these countries providing the Civil Service with the freedom necessary to achieve results. They also created the conditions for the emergence of a cohesive Civil Service welded together by shared values rather than by process and regulations. In other words, the governments in these countries modernized their Civil Service to be compatible with the requirements of the twenty-first century.

I.2. SENIOR EXECUTIVE SERVICE IN NEWZEALAND

With the introduction of public sector reforms the departments and agencies started hiring senior staff from the open market on fixed contracts at market competitive salaries with the result that conforming to private sector norms the loyalty of the newly recruited staff came to lie with the individual departments and agencies rather than with the public service as a whole. In order to combat the threat of departmental atomism and the potential erosion of public service ethos the SES was created. It is a select cross-departmental corps appointed by the individual chief executives of the executive agencies but with the approval of the state services commission. The member of the SES are retained on fixed term contracts with centrally determined salaries for a period up to five years.⁴⁵

45. Nethercote (2003) p. 78.

J. CIVIL SERVICES IN FRANCE:

France is a republic with a strong presidency. The President is elected for a term of seven years and he appoints the Prime Minister who is in charge of the work of the government and directs the policy of the nation. The Constitution of 1958 which is presently in operation is both parliamentary and presidential. The government is made responsible to the National Assembly. The Civil Service in France includes a large work force. In France teachers including university professors and lecturers are classified as Civil Servants which is not the case in countries like India and Great Britain. In 1988 the total strength of the French Civil Service was 1.9 million in addition there are temporary part time and contract based public employees who in 1988 numbered 0.3 million.

J.1. STRUCTURE AND CLASSIFICATION:

As in India, France has adopted a vertical classification of its Civil Service. Civil Servants are clubbed in four categories - Category A, Category B, Category C and Category D corresponding to the level of responsibility entailed and basic academic requirements postulated for entering a particular corps. Category D as group D in India is the lowest in the administrative hierarchy and includes janitors cleaners etc. Category C includes skilled and semi-skilled workers clerical personnel typists etc. and is superior to Category D. Category B includes first line supervisors comprising administrative secretaries higher executive officers etc. The topmost Civil Servants engaged in policy making and supervision are grouped in category A which includes the ENA and the Ecole Polytechnique⁴⁶ graduates on one side and other graduates sometime referred to as the 'A' Category on the other such as the administrator civil and the attaches. The size of each category is given in the following table, the figures being of the year 1988.

TABLE – 1

Category	Number	Percentage
Category A	546,974	28.0
Category B	620,803	31.8
Category C	668,511	34.2
Category D	117,739	6.0
Total	19,54,027	100.0

46. Origines de la France Contemporaine, Regime Moderne Government, p. 146.

France does not have a unified Civil Service it is stratified and fragmented as in India. The higher Civil Service in France comprises three components - the administrative generalists the technical generalists and scientists. The Indian reader does not need an explanation of the term 'administrative generalists' since the Indian Administrative Service falls in : this category and is an example. But the French public administration would not permit these generalists to move freely all over the administrative space. In departments which are of a technical and scientific nature, France observes the policy of manning middle and senior level positions by 'scientific generalists'. These are Civil Servants who have undergone a common course of instruction at the state - run technical 'GradeEcole'⁴⁷(Ecole Polytechnique) and a spell of specialization in Technical schools called 'Ecoles D' Applications' (which are separate from Ecole Polytechnique). The compulsory training at the Ecole Polytechnique is not designed to produce specialists or pure engineers in different fields of technology of persons who immediately put their knowledge to application in a plant or a research laboratory. Rather, the object of their training is to produce administrators well versed in science and mathematics and capable of communicating with perfect ease and confidence with engineers and specialized technicians and enlisting their cooperation. They are trained to assume responsibilities of management.⁴⁸ Though France has over 1,500 cops all are not of the same level of gravity or

significance. The most prestigious are what are known as the Grands Corps de L Etat which are six or eight in number. The most coveted careers in the French Civil Service lie in the grands corps and the most prestigious among these is the corps de conseil d'etat on par with the Inspectorate General of Finance. The conseil d'etat is the supreme administrative court in France. Besides, its consultation on a proposed legislation is mandatory. The annual intake is four to six, which invariably go to the toppers at ENA. Promotion in the corps is time bound and is based strictly on seniority. This tends to make its members absolutely independent and impartial. Members of this corps get posted not only in the Conseil d'etat but also in other organizations – public, semi-public, even private. The Corps de Inspection General des Finances is the second choice ENA graduates. The annual intake is five to six persons. It specializes in budgeting and financial management. Most of the key positions in the finance ministry are manned by these corps. The Corps des Cour des Comptes assist the parliament and government to supervise the execution of financial laws. Their responsibility is to ensure public expenditure in accordance with appropriator authorization they check public accounts carrying out a legality check. Their functions are similar to the ones performed by the Comptroller and Auditor General of India. It is generally the third choice of the ENA graduate. The Corps Diplomatic is like the Indian Foreign Service and its members are appointed to France's Diplomatic missions abroad. The Corps des Prefectural⁴⁹

47. Ibid, p. 10-11.

48. Administration (Imprimerie Nationale 1947) and the series continuing the Revenue entitled promotions.

49. Review de Ecole Nationale d Administration (Paris, May 1946) p. 55.

makes available officers for the post of sub-prefects in the departments (or districts). The prefect is an office of great honour and visibility in the district: he is the spokesman and representative of the states in his area of operation. Their position is similar to that of the District Collector in India.

K. CIVIL SERVICE IN SWEDEN

As noted earlier separation of policy and operational functions into ministries and agencies has been a hallmark of Swedish government for over 200 years. There are about 300 agencies for public services delivery and approximately 99 per cent of government employees work in the agencies while the remaining 1 per cent work in the ministries.⁵⁰ A director general heads the agency and is appointed on a fixed term of seven years. Majority of the director generals have public sector background although there are quite a few from the private sector. The agencies in Sweden are totally autonomous free from any control and regulation by the central government. As Blondal observes the managers in the agencies enjoy great flexibility with a focus on what they do not how they do it the focus is now on outcomes and outputs.⁵¹ The director general is held accountable for results. Accountability is achieved through the ministries specifying desired results in a Letter of Instruction which includes a review of how the agency's work contributes to the government's desired outcomes a specification of objectives and targets and how the agency should report back on the results achieved and specification of any special

assignment that the agency is commissioned to carry out.⁵² The agencies report their results in the annual report that includes a report on performance. As the Ministry of Finance guidelines stipulate. “the agency shall comment on its work performance in relation to the objectives and in accordance with the reporting back requirements specified in the Letters of Instruction .. The agency shall in particular comment on the performance reported in relation to the objectives of its work that the government has specified in the Letter of Instruction or some other decision. The particulars in the performance accounts shall be based on documented data and measuring methods.”⁵³

K. CIVIL SERVICE IN JAPAN:

The Germans originally influenced the Civil service in Japan but after the Second World War the country was ruled by the allied powers from 1945-1952 thereby influencing its nature and character. What Japan has at present is a Civil Service completely indigenous and rich in efficiency, devotion and professionalism. It possess a high degree of competence is imbued with a sense of mission and is capable of steering national affairs to the goal of progress and prosperity. It is deeply conscious of its

50. Blondal (2001), pp.27-58.

51. Ibid p. 49.

52. Das (2006) p.110.

53. Blondal (2001) p.53

identity and reflects easy self-confidence in its actions. Moreover, it embodies all the desirable attributes of the Japanese society such as work ethics, motivation, organizational loyalty, camaraderie etc. In view of Japan's heightened economic stature in the world the Civil Service is gradually internationalizing its perspective.

K.1. POLICY MAKING IN JAPAN: CONSULTING STAKEHOLDERS

Policymaking requires information about the preferences of those who are affected by policies and about the impact of policies that have already been implemented. Regardless of how brilliant or experienced the policy makers in the government are they need input and feedback from the society. The legacy of central planning is a testament to the importance of this aspect. Knowing the preferences of stakeholders enables policymakers to structure policies that are feasible. Unless a policy obtains sufficient support from stakeholders it is not likely to succeed. The issue here is one of credibility. Lack of support would make the policy less credible and would lead to a self-fulfilling prophecy. Deliberation councils in Japan have provided the means for having extensive dialogue and consultation on policy issues with stakeholders. These councils are formal organizations and are established by ministries in the government. They provide the forum for Civil Servants and stakeholders – business, labour consumers academia and the media – to discuss current trends and debate on policy proposals. The councils have played a very useful role in Japan. They have helped civil servants to gather information about world markets, technology trends, and the impact of regulations in Japan and abroad in order to synthesize the information into action plans and more importantly to evolve blueprints for public policy through mutual, transparent consultations.⁵⁴

The background material for deliberation on a proposed policy is prepared by the research group of the concerned ministry and placed before the council. On the basis of discussions in the council a report on the proposed policy is prepared and released to the public to explain the objectives of the new policy. In cases where the policy blueprint has been deliberated in the council the Diet approves the policy proposal almost automatically. According to a survey undertaken by Nikkei Business⁵⁵ there are 215 deliberation councils involving some 4700 persons serving on these councils. Some of the important ones are the Economic Reconstruction Planning Council the Industrial Rationalization Deliberation Council the Economic Council and the Administrative Reform Council. Almost all the ministries have deliberation councils. What is important to note is that the functioning of these deliberation councils has led to the creation of nodes of policy network in the civil society that is institutions connecting the civil service and Civil Society⁵⁶ and these nodes are embedded in the policy network in transparent consultative processes.

54. Das (2001) P. 187

55. Kim (1995) p. 518 n.

56. Karzenstein (1987) p. 35

K.2. EVALUATING POLICY

Australia, New Zealand, Japan and several other countries have set up mechanisms for policy evaluation. The idea is to evaluate policy carefully when it is first proposed and also evaluate periodically the relevance and costs and benefits of policies in force. Although review of policy has traditionally been the preserve of the individually ministry dealing with the subject some of these countries have found it useful to have an inter-disciplinary agency specializing in policy evaluation to do this on a continuing basis and train the ministries and departments in sophisticated policy analysis. For instance in Japan, the Ministry of Public Management, Home Affairs and Posts and Telecommunications tries to ensure uniformity rigour and objectivity in policy analysis throughout the Japanese government and seek broader consensus in the light of experience in policy evaluation. Policy evaluation criteria are necessity efficiency effectiveness equity and priority and the use of these criteria is expected to throw up alternatives to the proposed new policy as well as existing policies and practices. Some critical questions that can be asked Is the policy results-effective. Is there an alternative better policy⁵⁷

K.3. CIVIL SERVICE MANGEMENT IN JAPAN

In Japan, it is the national personnel authority that determines pay scales tenure and promotion policies of Civil Servants administers examinations and makes appointments. As a World Bank report states Japans Prime Minister names only his ministers, and except in a few cases one of his two Vice-Ministers in each ministry the National Personnel Authority is responsible for the rest.⁵⁸ It is in fact the existence and effective functioning of the national personnel authority that has insulated the Civil Servants from political pressure in Japan.⁵⁹

K.4. DELIVERING PUBLIC SERVICE IN JAPAN:

Japan started implementing the executive agency model in April 2001.⁶⁰ Although separation of policymaking from operational responsibilities and public service delivery had long been on the agenda of the Liberal Democratic Party (LDP) it was difficult to implement the separation because of resistance from powerful civil servants in the ministries. In fact, since its formation in 1955 until its splintering in 1993 the LDP was committed to high growth policies. In this the LDP and the Japanese Civil Service shared a common concern.

57. Khandwalla (2007) p. 85.

58. World Bank (19993a) p 170

59. Das (1998) p.77

60. Yamamoto (2006) pp. 35-44.

The LDP granted substantial autonomy to the Civil Service to shape and carry out comprehensive and long term pro-growth policies.⁶¹ But within the Civil Service those working in the ministries were not prepared to give any kind of autonomy to public service delivery organizations. However, when a survey reported that less than 20 per cent of the population rated the activities of the government reflecting the needs of the people the LDP made the adoption of the executive model an election issue in 1996.⁶² Once it came to power the LDP enacted a law creating executive agencies calling them Independent Administration Institutes (IAIs) By 2004, 105 IAIs had been set up and 224,000 Civil Servants were working in these agencies.⁶³ The chief executive of the IAIs is appointed by the departmental minister. The chief executive is free to appoint staff on contract and pay them performance related remuneration. The government gives an operating grant and a subsidy for capital expenditure to each agency and the agency is allowed to spend the grant without any restriction by the ministries. The departmental minister sets goals for each agency for a period of three to five years stipulating the budgetary outlay and targeted improvement in the efficiency and quality of services. The agency prepares a plan within the framework indicated by the minister and gets it approved. The agency is given full managerial autonomy to implement the plan. In exchange for the autonomy the chief executive is made accountable for results. The evaluation committee in the administrative ministry evaluates results achieved by the agency and in turn the Commission on Evaluation of policies and Evaluation of IAIs in the Ministry of Public Management scrutinizes the findings of the evaluation committee.⁶⁴

L. THE EXISTING LEGAL FRAMEWORK FOR CIVIL SERVICES IN INDIA

Part XIV of the Constitution of India Article 308 onwards - makes provisions for dealing with the Civil Services. In terms of Article 309, the appropriate Legislature (Parliament or the State Legislature) is empowered to legislate to regulate the recruitment and conditions of service of persons appointed to the

Public Services and post them in connection with the affairs of the Union or of any State. The proviso to Article 309 states that it shall be competent for the President or the Governor as the case may be to make rules relating to the recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the Union and the State respectively until provisions in that behalf are made by or under an Act of the appropriate Legislature.

61. Yamamura (1995) p. 111

62. Yamamoto (2006)

63. Ibid.

64. Ibid pp 96-97

“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 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.”

The proviso reads : In terms of the above proviso a number of Rules have been made from time to time by the Union and State Government and these essentially govern and regulate the public services in India.

Articles 310 of the Constitution provides that all members of the Civil Services of the Union and the All India Service hold any Civil Post at the pleasure of the President and all members of the Civil Services of a State do so at the pleasure of the Governor of the State. Article 311 provides certain safeguards regarding dismissal, removal or reduction in rank of persons employed in civil capacities. Article 312 provides for Constitution of the All India Services. Article 318 to 323 deal with the Union Public Service Commission and State Public Service Commission. Article 320 stipulated that it shall be the duty of the Union and the State Public Service Commission to conduct the examinations for appointment to the services of the Union and the services of the States respectively. It further stipulates that the UPSC or the State PSCs shall be consulted on all matters relating to methods of recruitment to the Civil Services and on the principles to be followed in making appointments to the civil services and posts in making promotions and transfers from one service to another. Article 323 lays down that it shall be the duty of the Union Public Service Commission to present annually to the President a report of the work done by the Commission and on receipt of such reports the President shall cause a copy thereof together with the Memorandum explaining as respects the cases if any where the advice of the Commission was not accepted the reasons for such non-acceptance to be laid before each house of Parliament. Similar provision also exists for the State Public Service Commissions. Article 323 (a) authorizes the Parliament to set up administrative tribunals regarding disputes with respect to recruitment and conditions of service of persons appointed to public services. Parliament in exercise of its power under Article 309 of the Constitution has enacted the All India Services Act, 1951. This law authorizes the Union Government in

consultation with the State Governments to make rules for the regulation of conditions of service of persons appointed to an All India Service. Exercising the powers conferred by the All India Services Act, 1951 the Union Government after consultation with the Governments of the States have notified several rules like All India Services (Provident Fund) Rules, 1955 All India Services (Conduct) Rules, 1958. All India Services (Discipline and Appeal) Rules, 1969 etc. Similarly Rules have been notified governing different aspects of all the Central Services. From the above it is clear that the relationship between a Civil Servant and Government is defined by Statutes/ Rules. Different aspects governing the conditions of Service of Civil Servants are provided by different rules promulgated under Article 309 of the Constitution. The Second Administrative Reforms Commission is of the view that in the Indian context it is important to examine what is sought to be achieved by the contemplated legislation and what would be the salient features of the proposed Public Service Law. The Commission has recommended a slew of measures for reforming the Civil Services. Some of these measures would require a legislative backing which could be embodied into a new Civil Services Law. The recommendations made by the Commission could be grouped into the following: ⁶⁵

- a. A set of values for Civil Servants
- b. Redefining the relationship between the government and the Civil Servants
- c. Reforms in the recruitment procedures to the Civil Services
- d. Reforms in the procedure of placement as well as security of tenure – a new Institutional Mechanism.
- e. New terms and conditions of appointment
- f. Improving accountability mechanisms simplifying the disciplinary proceedings
- g. Creating new organizational structures in government.

The need for legislative backing for each one of these is examined in the following paragraphs.

L.1. REDEFINING THE RELATIONSHIP BETWEEN GOVERNMENT AND CIVIL SERVANTS.

The basic status of a Civil Servant is defined under Article 309, 310 and 311 of the Constitution and the laws and rules made there-under.

Article 310 provides : “Except as expressly provided by this Constitution every person who is a member of Defence Service or of a Civil Service of the Union or of an all India service or holds any post connected with Defence 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”.

Article 310 provides for what is known as “doctrine pleasure” as per which a member of the All India Service holds office during the pleasure of the President and a Government servant of a State holds office during the pleasure of the Governor. However, this “doctrine of pleasure” is subject to the provisions of Article 311 which lays down the procedure for imposition of dismissal and removal. The Second Administrative Reform Commission while examining issues related to the legal framework for fighting corruption in its earlier Report on “Ethics in Governance” had deliberated on the safeguards

available to Civil Servants under Article 311 of the Constitution. It had recommended the repeal of Articles 310 and 311 of the Constitution which contain provisions governing tenure of office of persons serving the Union or a State and dismissal removal or reduction in rank of persons employed in

65. Second Administrative Reform Commission, Chapter – 17, P.298.

civil capacities under the Union or a State respectively. The Commission was of the view that as Articles 309, 310 and 311 formed a continuum there was no need for persisting with Article 310 and 311 if the whole gamut of condition of service is codified separately as required by the substantive part of Article 309. Accordingly the Commission also recommended appropriate legislation under Article 309 to facilitate this. In the light of the above the Second Administrative Reform Commission is of the view that the status of a Civil Servants vis-à-vis the government could be spelt out in a new law to be enacted under Article 309. Safeguards based on the principles of natural justice should be provided under the new law. Article 311 seeks to provide security to public servants as well as certain procedural safeguards against arbitrary penal action dismissal removal or reduction in rank against them. The Safeguards are:

- a. No dismissal removal or reduction in rank by an authority subordinate to that by which the government servant was appointed.
- b. No dismissal removal or reduction in rank except after an inquiry in which the Government Servant has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.
- c. Where it is proposed after such inquiry to impose upon government servant 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. Article 311 (2) also provides that the safeguards regarding the disciplinary enquiry shall not apply where any action is taken against the government servant on the ground of conduct which has led to his/her conviction on a criminal charge or where an 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 where the President or 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. The underlying principle for stipulating that only the appointing authority or a superior authority shall impose certain major penalties is that the accused government servant should be entitled to the judgement of a senior authority which is expected to take a fair and objective view of the case. In the Commission's view this principle is well founded but mandating that only the appointing authority (or a higher authority) can impose certain major penalties ties the hands of public servants holding supervisory or controlling positions. This becomes even more pronounced as Public Servants may be asked to work in different departments and organizations and such organisation/departments cannot impose certain penalties even if grave misconduct is

established. Moreover, as a government servant progress in his/ her career he/she assumes higher posts and responsibilities. In such cases stating that only the appointing authority can impose certain major penalties appears anomalous. The Commission feels that it would be more logical to stipulate that major penalties of removal and dismissal should be imposed by an authority in the organisation

where he/she is working which is at least three levels above the post which the government servant is holding and all other penalties may be imposed by an authority which is at least two levels above the current post of the government servant. The Commission is of the view that the second safeguard - a mandatory enquiry should be continued as this has been held to be a part of natural justice. Similarly, the circumstances under which the enquiry could be dispensed with should also be included in the new law. The appointment of Civil Servants through the UPSC is both fair and objective. The same holds true for appointments of Group 'B' and 'C' employees through the Staff Selection Commission. The Commission has examined the issues relating to the recruitment procedure for both Group A employees as well as for Group 'B' and 'C' employees respectively. The Commission has recommended comprehensive changes in the recruitment procedures. However these reforms would not require any legislative changes as these could be carried out by executive orders. Government also appoints a sizeable number of persons at different levels without routing the selection process through the UPSC or the Staff Selection Commission. The Commission is of the view that it may not be possible to route all appointments through the UPSC or the Staff Selection Commission. But in the interest of efficiency in public administration and also to avoid any allegations of nepotism or patronage it would be advisable if all appointments even if they are for a short term are made after following a procedure that is fair just and transparent. This could be included in the new law. In order to make this provision effective it may be provided that an independent agency should audit the recruitments carried outside the UPSC and SSC system and advise government suitably. This audit should be done under the supervision of the UPSC. The same principle should be made applicable to appointments for various Agencies, Committees, Commissions Statutory and Regulatory Bodies.⁶⁶

L.2. IMPROVING ACCOUNTABILITY MECHANISMS - SIMPLIFYING DISCIPLINARY ROCEEDINGS

The Commission has examined the existing disciplinary proceedings of its Report on "Ethics in Governance" and also in this Report. The Commission has suggested that the process of enquiry should be simplified and the large number of stages in the process need to be reduced. It is felt that while the detailed procedure of enquiry could be spelt out in terms of Rules but it would be better if certain basic principles which need to be adhered to are outlined in the new law. This would ensure reasonable protection to all government servants while ensuring that the disciplinary process is expedited.⁶⁷

66. Ibid. P. 241.

67. Ibid. P. 213.

L.3. CIVIL SERVICE LAW IN INDIA

It is good to note that the Government of India plans to enact a Civil Service Law. The Draft Civil Services Bill 2009 was became a law. The purpose of the Bill is stated to be as follows :⁶⁸ To provide a statutory basis for the regulation of the Civil Services in India as enshrined in Article 309 and Article 312 of the Constitution of India to regulate the appointment and conditions of the service of Civil Servants to lay down the fundamental values of Civil Services the Civil Services Code of Ethics Civil Services Management Code to establish Civil Services Authority for facilitating review and to develop Civil Services as a professional neutral merit based and accountable instrument for promoting Good Governance and better delivery of services to the citizens.

L.4. THE CIVIL SERVICES AUTHORITY

The Draft Civil Services Bill (2009) provides for the creation of a Central Civil Services Authority. According to the Bill, says the Civil Services Authority will be established for facilitating review and to develop Civil Services as a professional, neutral, merit based and accountable instrument for Promoting Good Governance and better delivery of services to the citizens. Section 14 of the Bill enumerates the functions of the central authority as given below.⁶⁸aid and advise the Central Government in all matters concerning the organisation, control, operation and management of Civil Services and Civil Servants.

- a. Recommend to the Central Government the Civil Services Code of Ethics and Civil Services Management Code,
- b. Recommend to the Central Government the policies on the protections given to the Civil Servants.
- c. Recommend to the Central Government the policies for good governance in the Civil Service, transparency to be maintained by the Civil Servants in the discharge of their duties and the activities.
- d. Recommend to the Central Government changes to be made in the system and procedures in different departments and areas of governance by Civil Services,

68. Ibid. P. 213.

- e. Make recommendations to the Central Government on the grievance redressal mechanism for the Civil Servants
- f. Ensure adherence to the Civil Services Code and Act by the Cadre Controlling Authorities and
- g. Discharge such other functions as the Central Government may specify

In addition Section 14 (2) of the Bill provides: The Central Government shall consult the Authority in matters related to the formulation revision and interpretation of the Civil Services Code of Conduct & Ethics, Code of Protection of Whistleblowers and the Civil Services Management Code. The Central Authority shall before making any recommendation to the Central Government invite suggestions from the public and consider them. Provided that the Central Authority may make recommendations to the Central Government without inviting suggestions from the public if it considers it appropriate for reasons to be recorded.

The question that arises is: do we require such an Authority. We already have public service commission's both at the Central and state levels. Article 315 provides for a Public Service Commission for the Union and a Public Service Commission for each state. The functions of the public service commissions are set out in Article 320 which provides :⁶⁹

1. It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the States respectively. It shall also be the duty of the Union Public Service Commission if requested by any two or more States to do so to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
2. The Union Public Service Commission or the State Public Service Commission as the case may be shall be consulted –
 - a. on all matters relating to the recruitment to Civil Services and for Civil Posts.
 - b. on the principles to be followed in making appointments to Civil Services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such promotions or transfers.
 - c. On all disciplinary matters affecting a person serving under the Government of India or the Government of State in a civil capacity including memorials or petitions in such matters,
 - d. on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the government of an

69. Ibid. P. 214.

- e. Indian State in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his

duty should be paid out of the Consolidated Fund of India, or as the case may be out of the Consolidated Fund of the

- f. State on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or the Crown of India or under the Government of an Indian State in a civil capacity and any question as to the amount of any such award.
- g. And it shall be the duty of a Public Service Commission to advise on any matter so referred to them and any other matter which the President or as the case may be the Governor of the State may refer to them.

Although there are areas of minor overlap the objectives with which the Authority is being set up are very different from the purpose for which Article 320 was enacted. In any case the public service commissions are already overburdened with work relating to initial recruitment to various categories of the Civil Services and the delay in initial recruitment is a matter of serious concern. In addition the functions that are contemplated for the Authority are substantial in nature and would demand a different kind of orientation and outlook. That being the case the creation of the Central Civil Services Authority as envisaged in the Draft Bill is necessary. As far as the functions of the Authority are concerned it is clear from the provisions proposed that the Authority is not intended to be an enforcing agency but only an advisory body. This is not a good idea. The idea should be to create a high powered organisation that has colour. It is suggested that the following important functions should be entrusted to the proposed Authority in addition to the advisory and recommendatory functions as envisaged in the Draft Bill.⁷⁰

L.5. SENIOR EXECUTIVE SERVICE

An SES should be set up as the leadership cadre in the government for higher level policy advice managerial and professional responsibilities. It has also suggested that the appointments to the SES should be open to applicants from outside the Civil Service as well as serving civil servants. It is suggested that the Authority should be charged with the responsibility of advertising the vacancies in the SES invite applications from eligible persons both in open market and serving Civil Servants conduct interviews and select the best person for the job. The Authority could then process the cases for the

70. Ibid, P. 215.

approval of the appointment committee of the cabinet. While submitting its Annual Report to the legislature the Authority should invite the attention of the legislature to cases in which its recommendation has not been accepted. Senior Executive Service in Indian government in the form of the Indian

Administrative Service (IAS) but it is a career based SES. It is like a closed club Selected very early in their careers the members of the IAS are trained and nurtured to become an elite administrative cadre and positioned on an assured and accelerated career path. However the assurance of a secure career path has turned out to be its Achilles Heel. Since appointment to all the top positions are made from the IAS it has discouraged initiative by reducing competition. This has made the IAS as closed as a caste structure. In fact, the IAS has made it difficult not only for highly qualified persons outside the government but also for high performers from other services to get selected for top positions. Why did India opt for a career-based SES? The choice in favour of the system was made at the time of Independence when there was scarce managerial capacity in the country. At that time there was need to identify a few potential managers with high academic achievements and to train and nurture them. The idea was that high academic achievers can acquire soft skills and knowledge of the government via training and career management. In addition, it was believed that a managed system of rotation among important posts in the government would have created a group of generalist administrators who can quickly grasp the ropes of the organisation they are posted to. These and the sophisticated political judgement they acquire through working closely with the political executive were intended to create successful government managers at the top level. We need to recognize that these assumptions were made at a time when the tasks the Civil Service was called upon to perform were simple and repetitive and did not call for any particular expertise. The Civil Service functioned in a slower paced ambience where change if at all took place with weary reluctance and users of the government services had similar wants and needs. Things have changed now. We need to recognize the complex challenges of modern administration and the specialized requirements of emerging sphere of activities. Policymaking and implementation at the highest level involve intricate issues which need domain expertise long experience in the sector and deep insights. The members of the IAS are not able to provide these. They are also handicapped by the fact that they are rotated so often and so frequently between posts that they are not able to acquire even a passing familiarity with the subject they deal with. On the other hand with rapid expansion of knowledge increasing complexities in certain fields rapid expansion of the private sector a large amount of expertise has developed outside government. As if to compound the problem the empanelment system which is in operation in Government of India to choose civil servants from the IAS and other services to man positions at the top is fundamentally flawed. In this system only those officers who have superior career records are put on a panel of names and only persons on the panel are selected for top civil service assignments at the level of joint secretary additional secretary and

secretary to government. At the level of joint secretary and equivalent the Civil Services Board finalizes the panel for submission to the Appointments Committee of the Cabinet. In this work the Civil Service Board is assisted by a Screening Committee of Secretaries. For preparing the panel for additional secretary and secretary a Special Committee of Secretaries (SCOS) is constituted to assess the service records of the officers on a grade of 10 and gets the approval of the Appointments Committee of the Cabinet. The empanelment process suffers from several serious defects. It is based only on an assessment

of the Annual Confidential Report (ACR) of the officer. The process is completely non-transparent. It is made without either interviewing the candidates or testing them formally. Candidates are officially never informed about their empanelment or otherwise. The candidates who are not empanelled are not given any reason and have no right of appeal.⁷¹ The Surinder Nath Committee constituted to review the system of performance appraisal promotion empanelment and placement in respect of the All India Services had this to say⁷²: The weakness of the empanelment system are similar to those of the promotion system although a significantly higher proportion of officers fail to be selected for the panel Here again the sole dependence on the ACR from which owing to pervasive grade inflation it is difficult to distinguish between the performance levels of officers is the principal source of the problems. The result, once again, is that many officers in the panel are ill-equipped for the programme and policy formulation positions that they come to occupy. Yet another problem arises from the fact that the members of the Screening Committee, being all serving Civil Servants are not perceived to be sufficiently independent. Accordingly, unstructured influences are believed to prevail in the empanelment of otherwise undeserving officers. The empanelment process is also not seen as transparent in that the criteria for inclusion is not revealed leading to speculation on the extent to which pressures have been brought to bear on the Screening Committee. The empanelment process and criteria do not take into account the capacities of an officer to undertake policy-making and programme formulation roles and only evaluates officers on how they performed at lower levels (which in practice may mean how few mistakes they committed instead of what they actually achieved at the lower level. A final consideration is that the practice of promotion without competition i.e. automatic promotion in order of seniority subject to meeting (typically modest) a priori benchmarks of performance which has led to complacency among officers must be firmly eschewed.

71. Krishnan and Somanathan (2005) pp. 297-298

72. Surinder Nath Committee Report (2003) paragraph 8.2.1. 8.2.2 8.2.3 and 9.6

M. SUGGESTIONS-

THE LEGISLATION IN THESE COUNTRIES HAVE PROVIDED IN GENERAL FOR THE FOLLOWING ISSUES

1. A legal basis for the legislature to express the important values and culture it wants in the Civil Service.
2. A mechanism by which government decisions can be implemented.
3. A framework for setting out the role and powers of the heads of the agencies and departments and their relationship to the ministers in a clear and public way.
4. An unambiguous statement to those within the Civil Service and to the people what is expected of Civil Servants.
5. Public service standards and ethical values and how they should be applied
6. A framework of public accountability
7. Employment principles covering such areas as merit selection and equity in employment
8. The basis upon which employment powers are vested in the heads of departments and agencies.

N. ARGUMENTS FOR AND AGAINST:

From the reforms carried out in countries like Australia, New Zealand, and United Kingdom etc. it is evident that each country has adopted a different approach. Reforms in New Zealand were carried out through the instrumentality of a series of enactments – State Sector Act 1988 Public Finance Act 1989 Employment Contracts Acts 1991. The Australian Public Service Act brought in major reforms in Civil Services management in Australia. However, even though the UK carried out a series of reforms in public services the Civil Service Law is still being debated. There are arguments for and against having a new Public Service Law. However much would depend on what they said law proposes to achieve and what its main ingredients are. In the context of the **UK Civil Service Act Sir Richard Wilson former Cabinet Secretary summarized arguments both for and against** the law. He said the arguments are:

N.1 AGAINST THE BILL

- a. The Civil Service is an institution of great pragmatism that evolves over time and works best without being hamstrung by legislation.
- b. It is unwise to stir things up if you are unsure what demons you may accidentally unleash in the process.
- c. If it ain't broke don't fix it. For all the media comment so the argument runs things are still working well. What is it that suddenly requires a Bill?
- d. An Act would achieve nothing. Many of the things which would be in a Bill already have the force of law through Orders in Council. If there are issues they are issues about behaviour.

Legislation would add nothing except perhaps greater legalism in the relationship between Ministers and Civil Servants which would be a pity.

- e. A Civil Service Act would make no sense unless it was part of a larger piece of legislation which covered the constitutional position of Ministers themselves and of government in short a written constitution.

N. 2 FAVOUR OF THE BILL

- a. These arguments have weight but over the last decade the balance has gradually been tipping the other way.
- b. I myself do not think for a moment that an Act would solve everything. In particular it would be no guarantee of Good Behaviour. It would be modest and useful rather than earthshaking. But I would welcome it.
- c. An Act could provide a forward-looking framework for the continued development of the Civil Service.
- d. A Civil Service Act could play a positive role in providing a framework for clarifying the boundaries easing the rubbing points and providing a confident basis for accepting the kind of modernization. He had described without the fear that something important was being lost.
- e. Finally, an Act would bring the Civil Service more directly under the oversight of Parliament.

O. CONCLUSION

Particularly transformative are the changes brought about in Commonwealth countries such as the United Kingdom Australia and New Zealand with whom we have shared a common ancestry of Civil Service traditions more and structure the changes in these countries have been brought about in response to the demand that the Civil Service should be fully accountable to the community they serve reflect the hopes and aspirations of the citizens who pay for its upkeep and be responsive to democratic ethos. Civil Service is the instrument created for achieving the ends of public service. It is sad but true that wedded to their permanent privileges and prospects. This instrument in India has become an end in itself. As a result change and reform essential for efficient public service which is citizen oriented is resisted and to that extent the concept sovereignty of the people is jeopardized. The 2nd Administrative Reform Commission has advocated a total change a radical transformation. It has proposed a wide ranging agenda of reforms that includes reforms relating to recruitment training tenure domain competency creation of a leadership cadre incorporating some elements of a position based Senior Executive Service, performance management exit mechanism creation of executive agencies accountability for results a code of ethics and enactment of a Civil Service legislation with the implementation of the slew of reform initiatives proposed in this Report India will have a best practitioner world class

Civil Service.

1. That is valued by ministers and is a social of expert objective policy advice.
2. That delivers world class customer focused services day in and day out frequently in partnership.
3. That attracts the best talents from every area of the society.
4. In which the Civil Servants are honest objective impartial and act with integrity.
5. In which the Civil Servants are accountable result-oriented and transparent in their dealings.
6. In which the Civil Servants are proud of and passionate about their work committed to doing what they have to do with the pace that India needs and expects in the twenty first century and with the right professional skill and
7. Every part of which commands the confidence and respect of the Public it serves.

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