CHAPTER 7
PROBLEMS AND FINDINGS OF MY RESEARCH

In this Chapter, I would like to focus on the problems faced while undertaking the research, and thereafter throw light on research findings. One problem which I faced was the transfer of the civil servants, within the campus as well as outside the campus. Further, very busy life of the civil servants caused change of fixed date for interview or discussion with the civil servant. The Conduct rules of the civil servants also stood as the hindrance in the way to interview. Also, what I could see while doing the field work is that many civil servants were themselves not sure about Art. 311 of the Constitution. They were themselves not sure about their rights as enunciated in Art. 311.

My field of study was Assam Secretariat, where all total there are 147 civil servants, ACS as well as IAS officers. My interviewing shows that whether The Assam Service (Discipline and Appeal) Rules provide adequate protection to their rights or not, majority of the civil servants replied that these rules provide protection. If the procedures are followed effectively, the rights of the civil servants get protected. Some civil servants said during discussion that though the provisions are adequate, but the inquiry officer may delay the proceeding unnecessarily. Since the proceedings are quasi-judicial, the authorities except the court can’t dictate the things. Hence, a specific provision needs to be incorporated so that proceeding is automatically started against the Inquiry officer who unnecessarily delays the proceedings, as it amounts to violation of the rights indirectly. Majority of the civil servants opined that these rights are not adequate. Some of them opined that since the departmental proceedings are only quasi-
judicial in nature, all the procedures of an ordinary trial or proceedings in a court of law is not applicable in these proceedings, which may lead to violation of rights at times. Also, the rules need amendment due to the change of time and circumstances. The time-frame provided under this rule is not mandatory. It must be made mandatory. Years together is needed and thereby justice delayed in disciplinary proceedings, and there is a saying that justice delayed is justice denied. Also, no lawyer can be engaged and if the inquiry officer does not have legal background, then it creates problem.

The applicability of these rules by and large is uniform to all the civil servants under state civil service cadre. However, some officers serving in the state, casual employees and employees for whom special provisions are made under law are not covered. It was found that sometimes suspension is used as a kind of punishment to the officer and departmental proceedings are delayed inordinately keeping the officer in a difficult position.

Majority of the civil servants were of the view that disciplinary rules needed amendment to avoid chances of misuse of power of reporting authority. Some again said accountability of the controlling authority is ignored and only the faults of the subordinate authority are discussed. According to some, the officer who discharges their duty in good faith has no fear of being victimised. However, provisions of protection from victimization is also there. But, at times, in the name of service rules, conduct rules, there is scope for victimization. Due to wrong perception to a matter or due to non-compliance of vested interests of boss in the name of service rules, sometimes a civil servant may be victimized directly or indirectly. Few of them said that no such chance arises because the government employees are expected to follow
the rules and regulations. The authorities cannot use the rule arbitrarily against any employee.

Departmental proceedings are too cumbersome and hence the proceeding should be fastened up by constituting special committees in this regard. Departmental Proceeding ought to be fast, and if found guilty, then the officer concerned should be punished as per provisions of the act. For this a board should be constituted exclusively for the purpose so that all pending Departmental Proceedings can be closed effectively. Thus, majority of the civil servants opined that the main problem is delay in the proceedings. Sometimes it becomes so lengthy that the victim could not get the justice in their service tenure. They opined that it should be completed within a definite time-frame. The time-frame fixed for disposal of disciplinary proceeding must be fixed at six months and it must be strictly adhered to. Also, Departmental Proceeding should be purely on the basis of the allegations irrespective of any political and administrative influences. Also, the Inquiry Officer’s report indicates the facts of the case and it is not the only guiding parameter. It may be taken as guidance for decision by the disciplinary or appointing authority, further subject to opportunity for appeal etc., because, at times, the Inquiry Officer may also be biased although not generally biased.

The Annual Confidential Report is a part of mandatory appraisal of a government servant. Such appraisal is in existence in any organization to ensure efficiency and proper functioning of an official. Presently, self-appraisal formats have been devised and are given to a civil servant to fill up. The government servant is expected to highlight his own achievements in this format. Based upon this format, ACR is written, and therefore, it is not required to be replaced in the interest of ensuring efficiency of the government servants. Under Rule 10 of Assam Services (Discipline and Appeal)
Rules, 1964, provision has been made that where the Governor is satisfied for the reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed for imposing penalty upon a civil servant, a civil servant may be penalized without following the rules, which leaves enough scopes for arbitrariness and subjective decisions, as expressed by majority of the interviewed officers.

Transfer and postings are often influenced by political leaders. Actually, transfer and postings are part of occupational requirement and hazards. Therefore, this is a mandatory state of affair for a government servant on duty. However, empirical experiences reveal the fact that at times, transfers are given to a civil servant for simply non-complying with the superiors, with the ulterior motive of doling out mental anguish. There are many unseen and untold situations, where there is none to guide, for example, regarding disciplinary matters, situation like election etc. also, sometime officers have to face hidden penalties due to disagreement with senior boss who has inclination towards political party/boss. Moreover, the threat of transfer to any undesirable/remote place is a hidden/unspecified penalty according to some.

While raising a question on the scope of Art.311 of our Constitution, I found that it covers and provides clean guidelines, however, it needs accurate interpretation. Regarding the avenues of promotion of Assam Civil Service officers are sufficient to address the problems, particularly the welfare of the people as professed by the government, most of them replied that it is ‘insufficient’, saying that the promotional aspects are very less in Assam Civil Service and as such the motivation to work harder becomes less with the passage of time. At present, Assam Civil Service is consisting of three types of officers : Promotee, Amalgamatee known as Special recruittee and Direct recruits, and the direct recruits have to suffer the most. Thus, 95% opined that it is
insufficient, saying that under the present system, an officer of Assam Civil Service has
to languish in the same grade for a very long time in some cases upto 18-20 years. This
has adversely affected the morale of an officer which will definitely show in his
performance as a civil servant, which could transpire from the statements of almost all
the ACS officers interviewed.

Regarding the question relating to the role of civil servant in success or failure of
governmental policies, most civil servant expressed that success or failure of
government policies depends more on execution, because it is from paper to reality,
from fund to real benefit which lies in execution. Also, because every government
policy has its own merits and demerits and it can be successful only if implemented
properly by the administrators and in every scheme, if the implementing agency strives
to make the scheme successful, then people are definitely going to be benefited. But, at
times, the execution gets delayed or is prevented due to too many rules, regulations,
red-tapism, corruption, public opposition etc, which waste a lot of productive time and
prevent work from making any progress. Timely and proper execution of the schemes
are the governing factors for the success of the governmental policies. The efficacy of a
government, therefore, is judged by the degree of success achieved in the execution of
the policies. Some, however, said that both are important, formulation of the right
policy and proper execution for the purpose for which it is designed, both are equally
important. If a policy is wrongly formulated, it may be difficult to execute it
effectively, once it is the right policy, then there comes the point of successful
execution. The success as well as failure of any government policy depends both in its
formulation and also in its execution. If a policy is well formulated but the authorities
entrusted for its execution in the field is not competent enough it will never be well
executed. Regarding the question, whether the civil servants come across any political interference or working constraints in implementing the governmental policies and discharging their responsibilities, most of them replied ‘yes’, sometimes it happens, specially in selection of beneficiaries and also sites while awarding the benefits of some welfare oriented schemes/projects. At times, it does become difficult to work under pressure. They opined that there are lots of infrastructural difficulties as well as political pressures sometimes in discharging duties. If not obeyed the political dictation, and worked as per the rules, then awarded with frequent punitive transfers. Some said that in a democratic set-up, political interference in course of discharging the duties of government is an accepted fact and reality. At times, the interference can become impediments. But, the inbuilt governmental system ensures that these constraints can be overcome by proper application of mind along with the determined attitude to implement the policies in a judicious manner. However, few opined that the answer is ‘no’, saying that the corrupt officials are more prone to political pressure. The officials having courage to withstand political pressure once or twice in early career are generally respected and free from pressure thereafter. Some again said that though faced no such situation personally, but very often comes across such news of bureaucrats facing such problems. Thus, majority of them opined that they come across political interference.

Regarding the powers and protections vested on the civil servants, as to whether these are enough to discharge their duties and responsibilities successfully or not, some opined that it is enough, while many others said it is not enough, due to lack of co-ordination of the people and departments. Regarding the question, whether the civil servants feel that the rule-making power under Art. 309 puts the civil servants in
insecure position or not, some opined that the answer is ‘no’, saying that the rules framed under Art. 309 needs clearance of number of departments including APSC. Hence, rules are framed to regulate, not to put the officials in insecure position. Whereas, some said that it is ‘yes’. They said that it will depend upon the situation, as to how those rules are applied.

Regarding the question, that whether the civil servants think that Article 310 is discriminatory in its operation, due to its opening words – “except as otherwise provided by this Constitution”……because these wordings give protection to many officials whose term of office has been protected by the Constitution itself, while some were silent, some opined that the Constitution is the supreme law of the land and nothing can be done in this regard unless the Constitution is amended. Regarding the question that does the civil servant feel that they have definite rights in decision-making in policy formulation of the state, some said ‘yes’, some saying that being in a particular department for a long period of time, they played a role in decision-making. Some again said ‘no’, they said that since they are the executors of policy, they need not have rights in policy formulation if the theory of separation of powers is to be followed. Some again said that it is the legislature who make policy formulation of the state and take responsibility for formulating, co-ordinating and deciding upon policies. However, in keeping with the needs of the public grasped during the course of their duties, the public administrators have to assist the legislature in formulating, coordinating and deciding upon policies, such as through providing basic data and information for those policies, presenting multiple options etc. Thus, they said that policy formulation are the prerogatives of the executives. Very few went to the extent
of saying that policy formulation in Assam are politically oriented. Thus, here the answer is exactly 50%: 50% ratio.

Regarding my question, that whether the civil servants feel that the present era of coalition poses as an obstacle in the protection of civil servants rights, while discharging their responsibilities, very few said that at times it happens so, but majority opined that ‘no’ coalitions or not, their rights remain the same. Coalition simply brings checks and balances. Infact, the process of coalition has strengthened the hands of the bureaucrats in implementation of government policies. Some again opined that nothing to do with coalitions actually, officers are always victimized by their political bosses. Sometimes, it is seen that powers are misused in states which have single party government. The present scenario is that, any final decision taken by the bureaucrats never get green signal if it is not suitable to the political bosses. Thus, majority opined that nothing to do with coalition. Whether coalition or without coalition, the bureaucrats are supposed to serve the ministers. Coalition is simply a political process. Governance is a continuous process and civil service is a part of this process and it has to continue and deliver in all kinds of situations.

Regarding the question, that does the civil servant think that the recent Supreme Court verdict on fixed terms for the bureaucrats can insulate the bureaucrats from political interference, many said ‘yes’. They said it is actually necessary for an officer to stay for at least for a minimum period in a definite place to give service and grasp the rules. They said that the bureaucrats are transferred due to political interference, and this recent verdict can thus insulate the bureaucrats from political interference. Thus, it will help the officers to work in a particular post for a fixed tenure without any threat of external pressure. The Supreme Court in a landmark judgement directing the
bureaucrats not to take oral orders of the political bosses for administration will go a long way in giving freedom and independence to the functioning of bureaucracy which will promote professionalism, efficiency, good governance and above all transparency because it is apparent that much of the deterioration in the functioning of bureaucracy is due to political interference. Some again said ‘no’, as in spite of this, there are several loopholes by which an officer can be transferred. Thus, majority opined that the answer is ‘yes’, the threat of political interference and frequent transfer will be minimized.

**DHAS studies revelations:-**

I visited DHAS (District Historical and Antiquarian Studies), where I have gone through The Assam Tribunes of 1975-1977 i.e., emergency period, where I found that lots of officers were suspended and transferred during that period. Obviously, the reason laid down there was dereliction of duty, but then, I found it very much thought-provoking that so many officers during that period were not discharging their duties properly and moreover they were suspended without any inquiry or something like that.

I want to cite here few examples of what let me think over the issue:-

The Sept. 7, 1975 Assam Tribune mentioned that 11 employees were compulsorily retired from Cachar D.C’s establishment for dereliction of duty and unsuitable for public service. Sept. 10, 1975 Tribune again mentioned that 17 employees of Northern Railway suspended and disciplinary action initiated against another 28. The Sept. 12, 1975 Tribune said that Sri Himangsu Kumar Das, junior Inspector of Co-operative Societies in the office of the Assistant Registrar of Co-Operative Societies, Goalpara, has been removed from service under Art. 311(2)(b) of the Constitution of India. Sri Das was found unfit to be retained in public service. The same dated paper again
pointed out that one Sri. Lohit Laskar and Sri Barun Hazarika, sectional officers of the Jorhat Embankment and Drainage Deptt. Posted at Hanjmukh embankment were suspended with immediate effect for negligence of duties. Again, the Sept. 14, 1975 Tribune mentioned that the Communication Ministry has decided to prematurely retire in public interest, 607 employees. These comprise 590 class III and 14 class IV employees as well as 1 class I and 2 class II officers. The Sept. 16, 1975 Assam Tribune also laid down that 10 more Assam Govt. officers to be compulsorily retired. Meanwhile, 3 employees of the Deptt. Of Fisheries, Govt. of Assam, have been dismissed from service. Again, Sept. 20, 1975 Assam Tribune highlighted the fact that 52 Assam Govt. officers were dismissed, 49 forced to go on retirement. The corrupt officers were dismissed from service invoking Art. 311(2)(b) of the Constitution. Also, Sept. 26, 1975 paper highlighted on the fact that 12 top officers of Steel Authority removed from service.

Similarly, the 1976 newspapers also highlighted on such facts. For example, July 2, 10, 17,22 newspapers pointed out facts about compulsory retirement, postings and transfers. The July 24, 1976 newspaper again highlighted that the following ACS II officers working under Revenue Department are transferred and posted in disguise of the interest of public service – Sri Dimbeswar Bora, K.N Sarma Baruah, Sri Khagendra Nath Sarma, Sri Chilarai Baruah, Sri M.M Das etc. similarly, the newspapers of July 30, August 21, 28, Sept.6, 1976 also pointed out some cases of postings and transfer of ACS officers.
From the recent ‘The Assam Tribune’:-

It has been stated in The Assam Tribune of 01.11.2013, that the Supreme Court orders fixed terms for the bureaucrats. The Supreme Court in a path-breaking verdict said that bureaucrats should not act on verbal orders given by the political bosses as it sought an end to frequent transfers and suggested a fixed tenure to insulate them from political interference. Suggesting sweeping reforms in the functioning of bureaucracy, a bench headed by Justice K. S Radhakrishnan said the Parliament must enact a law to regulate postings, transfers and disciplinary action against bureaucrats. Holding that much of the deterioration in bureaucracy is because of political interference, it said that the civil servants should not act on verbal orders given by political executives and all actions must be taken by them on the basis of written communication. The bench, also comprising Justice P C Ghose, said giving a fixed minimum tenure to a civil servant will not only promote professionalism and efficiency, but also good governance. It asked the Centre and all State governments along with Union Territories to issue directions within three months for providing fixed tenure to civil servants. The bench also said Civil Services Boards ought to be constituted at the central and the state levels. The verdict, which is on the line of the apex court’s earlier order on police reforms for giving fixed tenure to senior police officers in the Prakash Singh case, will go a long way in giving freedom and independence to the functioning of the bureaucracy. The apex court passed the verdict on a PIL filed by 83 retired bureaucrats including former Cabinet Secretary T S R Subramaniam seeking its directions for insulating bureaucracy from political interference. “This is a landmark judgement. Public servants are not private servants”, said Subramaniam “Today faith in our Constitution has been reaffirmed………..Our faith in the strength of democracy has
been reaffirmed because the highest court of the land has recognized the problems,” he said, adding “malgovernance affected people and quality of administration”. Krishna Murthy, former Election Commissioner, lauded the verdict saying, “Good governance is critical to good quality democracy. Most of us have seen in our career how most of the transfers, promotions, postings and foreign assignments, all of them are decided on whimsical basis very often.” [The Assam Tribune dtd. 01.11.2013].

It has also been stated in the Assam Tribune of 01.11.2013 that the Indian Administrative Service (IAS) Officers’ Association also welcomed the Supreme Court verdict favouring fixed tenure for the bureaucrats, saying it will definitely help in ensuring good governance. “We support the judgement. It is a good judgement. It will check in arbitrary transfers and suspensions,” said IFoS association’s President A R Chadha. Also, The Assam Tribune dtd. 21.10.13 stated that IAS officers’ body seeks safeguard for the bureaucrats.

In ‘The Assam Tribune’ dtd. Sept.2, 2013, the article, ‘Civil Services reforms and development’ by Madhurjya Singha Lahkar, stated that with the 73rd and 74th Amendments of the Constitution of India, the Panchayat Raj institutions and the local bodies have become the integral components of the present administrative system. These have multiplied the functions and responsibilities of the civil servants all over the country. The article also stated that the close hands-in-glove interaction between the politicians and the bureaucrats are mandatory for the success of a strong political framework. In his book ‘Bureaucracy and Politics’, Dr. Mohammed Ali Rafath, a 1997-batch IAS, highlights on the ill-maintained relationship and the gross realities that exist between the politicians and the administrative service officers.
The Assam Tribune dtd. 19.09.13 published an article, ‘Indian administration in the doldrums’ by Manoj Kumar Sharma, where it has been stated that going by the recent developments, one can safely conclude that the bureaucrats who are not obliged to influential political leaders are shown the doors. This is going to demoralize the bureaucrats which in turn would result in bad governance. In the Constituent Assembly, Sardar Ballabh Bhai Patel advocated for Constitutional protection to IAS/IPS officers and called them “agents of the union”. It has also been stated in this article that there are instances where the office of the President has exercised its power to quash the illegal suspension orders imposed on IAS officers. U Sagayam, an IAS officer, was rewarded with his 20th transfer order in 21 years only because he exposed huge loss to the exchequer due to illegal quarrying. In Assam, we have the recent case of a senior ACS officer holding the office of Chief executive of the Lakhimpur Zila Parishad in which he has been transferred to another post because he refused to be party to financial scams. All these developments go to show that any administrator who refuses to oblige the political stalwarts are harassed in some form or the other. Ashok Khemka by his courageous conduct has proved before the nation that the bureaucrats are there to uphold the Rule of Law and not as an agent of those in power. Bureaucrats cannot betray public trust. They have to uphold the principles of justice and should be above politics. This is exactly what Khemka and Durgashakti Nagpal has shown. It is the duty of a bureaucrat to show by example that the IAS, IFS or IPS has credibility. No doubt, in our country, today the administration is in the doldrums. Honest, dutiful administrators with high moral and dignity are not tolerated by the politicians. It is high time we all realized this truth and acted in the desired way to show respect and express
our solidarity with the honest, dedicated and courageous bureaucrats. [The Assam Tribune dtd. 19.09.13;pg.6].

Also, The Assam Tribune dtd. 30.01.2015, said that Sujatha sacking triggers war of words between Congress and BJP. The sudden removal of Sujatha Singh as foreign secretary, whose tenure was abruptly curtailed evoked sharp reaction. [The Assam Tribune dtd. 30.01.2015].

**Practical Cases of Illustrations:-**

In Tyabur Rahman v/s State of Assam and Others (Civil Rule No. 5163 of 1994), the Hon’ble Gauhati High Court quashed the order of termination and directed to reinstate the petitioner. The petitioner was terminated from service on the ground of submission of fake certificate at the time of appointment but no enquiry was held before terminating the service, thus violating the provisions of Art.311(2).

In Gambhir Hira and Others v/s State of Assam and others (writ appeal nos. 248, 252, 253, 254 of 2001) the Hon’ble Gauhati High Court quashed the order of discharge of the appellants from the service and directed to reinstate the appellants. The appellants were discharged from service for cowardice and dereliction of duty but the appellants were not furnished with the enquiry report prior to the order of discharge.

In another case, Subhash Dutta v/s State of Assam (W.P(c) No. 2712 of 1999), the Hon’ble Gauhati High Court set aside an order of dismissal on the ground of non-holding of enquiry prior to dismissal and directed to hold proper enquiry. The petitioner was dismissed from service without holding any enquiry, thus without complying with the provisions of Art. 311.
In another incidence (reported in the ‘The Assam Tribune’ on Nov. 2, 2002), the Superintendent of Police, Guwahati city, Sri Paresh Neog and Additional S.P Sri Rana Bhuyan were instantly transferred from Guwahati for their encounter with some alleged extremists in the city without holding any enquiry whatsoever and eventually the Assam Human Rights Commission (AHRC) directed the Director General of Police, Assam, to institute a probe in that.

Also, in Debangshu Deb v/s Union of India, the Central Administrative Tribunal (CAT), Gauhati Bench set aside the order of punishment of the petitioner for unauthorized absence from duty on the ground of faulty disciplinary proceedings and the Union of India thereafter has moved to the Hon’ble High Court against the judgement of the CAT.

Thus, in all the cases stated above, the Constitutional provisions under Art. 311 were not complied with and are therefore, the glaring examples of improper implementation of the provisions of Art. 311. The improper implementation of Art. 311 is actually a matter of concern for the civil servants, in respect of their protective rights.

Thus, from the above discussion about the findings it reveal the fact that though there are certain rights of the civil servants, but in Assam, they face a lot of problems and also according to some civil servants, the whole administrative scenario in Assam is dominated by IAS. Also, the ACS officers do not get much incentive to work properly, they do not get enough scope to show their potentialities, and so, according to some ACS officers the civil service in Assam has lost its previous glory and prestige, faced with host of problems which works as impediments in the smooth working of civil servants. Also, it was clear from the study that the civil servants in Assam feel that
though there are certain protections given to bureaucrats in India, but in Assam, due to disturbed situation, at times they feel that they need more protections. At times, it so happens that nobody likes to go to the disturbed areas, but somebody will have to discharge the duties of that area. Then, the civil servants come under pressure. According to some of them, the problems of civil servant in Assam is just like ‘Dronacharya’ of Mahabharata, i.e., neither they can digest some happenings, nor they have any way out. Some also vented out their grievances by saying that the ministers misinterpret the term ‘civil servant’, they think that the bureaucrats are their personal servant, because of the presence of the word servant. That they themselves are also servant of the state, the ministers totally forget that, thereby nullifying the concept of democracy and civil servant rights. Also, it was seen that many of them have grievances related to the disciplinary proceedings, generally with the excess time taken in conducting a disciplinary proceeding. They suggested that it must be streamlined so as to fasten the course of disciplinary proceedings.

Here, I would like to suggest some remedial measures, so that the civil servants in Assam can enjoy rights without any fear or favour.

**Remedial measures:-**

The founding fathers of our Constitution left no stone unturned in inculcating a sense of fearlessness in the minds of our civil servants by engrafting in the Constitution itself the provisions for safeguarding the civil servants. But, we have come a long way from the initial objectives and ideals which permeated the creation of permanent civil services while framing the Constitution. All pros and cons of the issue were discussed at considerable length and a conscious decision was taken by the Constituent Assembly to
provide some specific safeguards to the All India Civil Services. Vallabhbhai Patel, the then Union Home Minister wanted the services to be apolitical, independent, fearless and upright in tendering advice to the government. It was expected that a civil servant should be imaginative, dynamic, effective, committed, objective, independent, fair, reasonable and non-political. But, unfortunately, reality has turned out to be quite the opposite. What we see in practice today are far from theoretical ideology which were dreamt of by the founding fathers of our Constitution. Most of the safeguards have remained only on paper and what was once described as “steel frame” during the days of British Raj has lost its lustre today. Today, the civil service, like the society, is in turmoil. It finds itself in a deep crisis of values. Various reports like report of the Shah Commission brought into sharp focus the erosion of values in the civil service and Vohra Committee Report showed dangerous nexus between criminals, bureaucracy and the political leadership. Civil servants have increasingly become pliant tools in the hands of their political masters as they learnt quickly that they should not rock their boats too much. There has been a steady deterioration in the “ministerial timber” and the mounting populist pressure to deliver election promises forces politicians to make their civil servants sacrificial lambs or easy scapegoats. These are not just the days of politician-bureaucrat nexus but of linkages or alliances fostered with criminals, mafia outfits etc. This unhealthy relations between ministers and civil servants are seriously detrimental which have found as the “root of all evils”. However, it must be noted here that it is actually a mixed bag of experience, and there are few civil servants who have the courage of conviction to stand up and fight for the values they cherish and the principles they uphold. In common parlance, people criticize that the civil service today is unresponsive, insensitive, lacks integrity and is neither transparent nor accountable.
But, it would be wrong to put the whole blame on the civil service. Civil servants are part of the society and when the society itself faces the crisis and suffers erosion of values, a civil servant cannot be expected to be immune from what is happening around him, more so their rights and protections are too limited and fettered.

Moreover, the framers of our Constitution provided safeguards to the civil servants in three of the cases: (i) dismissal, (ii) removal and, (iii) reduction in rank and left other cases of punishments to the wisdom and fairplay of the administrative authorities. But, from the study of the bulk of the cases that comes before the courts and tribunals, it has been found that the ministers through their power of transfers, suspension and ability to delay or deny promotions can get the civil servants to toe their line. Thus, ministers now-a-days, have got different ways of inflicting punishments on the public servants in a clandestine manner although those apparently appear to be no punishment and enjoy approval of law. All this makes for the criminalization of politics and the politicization of administration.

A number of steps can be considered to deal with the present highly depressing situation. The first set of measures relates to improving the moral and inner fibre of the services, and the second pertains to institutional and other changes to usher in an open government which is transparent, accountable, sensitive and people-friendly. These remedial measures are like:-

(1) Creation of Civil Service Boards for service matters:- One of the main suggestions pertains to the setting up of a statutory Civil Services Board (CSB), both at the centre and the states. These boards may advise the government on matters pertaining to promotions, postings, foreign assignments and transfers. Its advice should be binding
on the government. Wherever, the government decides to over-rule the advice, it should be incumbent to record the reasons in writing which should be open to challenge before appropriate authority.

(2) Putting an end to ‘Transfer Mania’:- The arbitrary and mindless transfers of the government servants have become a matter of serious concern. The states are now playing havoc in the exercise of these powers. The main question for consideration is when a transfer may be treated as a punishment. Transfers have become a lucrative industry in several states and there is no possibility of it being delicenced even in this era of economic liberalization. The Court suggested setting up of a high-level committee to oversee transfers and postings. Thus, the crying need of the hour are some uniform standards and guidelines regarding transfer policies and promotions.

(3) Ombudsman for Grievance Redressal of Civil Servants :- The other suggestion is the creation of an ombudsman for looking into the grievances of the government servants, prompt action investigation, prosecution and punishment of the officers who are involved in the corruption cases and so on, and such Ombudsman should be manned by those persons who have enough depth in service laws and legal acumen.

(4) Ensuring Freedom of Information :- This is another way out to bring in an open government with emphasis on transparency. The Chief Ministers’ Conference in May 1997 provided useful pointer to this direction in which the country was paused to think in this direction as well.

Thus, it is clear that the answer to the long-standing ills and deficiencies of civil services will have to be basic and sweeping. Any patchwork of temporary remedies will
not actually serve any purpose. Good governance is basic to any other reforms and changes in the society, but, the rampant corruption have made it almost an impossible target. The infamous Bofors Gun deal(1988), multi-crore Harshad Mehta Securities Scam(1992), Howla Scam(1995), 133 Crore Urea Scandal(1996), LOC Scandal of Assam etc. are some of the burning examples of the misdeeds wherein the involvement of the civil servants has been established beyond any shadow of doubt. It is always demanded from the civil servants that they should be people-friendly, socially conscious and devoted to clean administration, deeply committed not to any political ideology but to the basic values of Rule of law, respect for secularism, human rights and the welfare of the weaker sections of the society. But, unfortunately looking at the present state of affairs, all these sounds very much utopian, and if is to be translated into reality, then, it will require both administrative and political will.

**Some more remedial measures:-**

1) In the Appraisal process, less importance must be given on the subjective matters, and rather more importance must be given in the objective criterias. Thus, the system needs overhaul, and the promotions and all must be actually based on work output rather than personal attributes. There should be a provision of making the reporting officer accountable for recording any unfounded and vague adverse comments/grading(s) in the ACR.

2) The compensation system must be based on competence. Deptt. Of Personal and Training Secretary P K Mishra, at one of the conferences advocated for a radical system that ensures lower compensation to incompetent bureaucrats. “In Brazil, 60% of a government servant’s pay depends on competency and only
40% is fixed” he said. This system can go a long way in inculcating a sense of honesty and work amongst the bureaucrats, subject to that the civil servants should be allowed to function without any interference or external pressure and with full enjoyment of their rights and protections.

3) Inter-departmental collaboration amongst the bureaucrats also can help the bureaucrats to raise demands for their rights and all. Once there is a team-work, it helps the bureaucrats to sort out their problems.

4) Last but not the least, fixed tenures among the bureaucrats help them a lot to feel secured and thus give their best in the field of administration, without any fear or favour.

It must be noted here that even the 2nd ARC has given certain very valuable suggestions in this field, which has been discussed below:-

2nd ARC’s Reports :-

2nd ARC submitted 15 reports, out of which some are very significant and relevant to the rights of the civil servants. 1st report on Right to Information : Master key to good governance, June 2006, 4th report on Ethics in Governance and the 10th report on Refurbishing of Personnel Administration – Scaling new heights. The Commission in its 1st report emphasized on the freedom of information as the Right to Information Act was enacted at that time and it indicated a paradigm shift in the administration. The RTI Act was regarded by the Commission as a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. The 4th report dealing with Ethics in Governance laid down that the real intent of Art. 311 is to protect the honest
Building trust and confidence requires an environment where there is a premium on transparency, openness, boldness, fairness and justice.

The 3\textsuperscript{rd} chapter of 4\textsuperscript{th} report deals with the Constitutional protection to civil servants. The Commission has given deep consideration to the case for and against Art. 311 remaining in the Constitution of India. When Sardar Patel argued for protection of civil servants, the intention was clearly to embolden senior civil servants to render impartial and frank advice to the political executive without fear of retribution. But the Commission also stated in its report that the compulsion of equal treatment of all public servants have created a climate of excessive security without fear of penalty for incompetence or wrongdoing. The Commission believes that the rights of a civil servant under the Constitution should be subordinate to the overall requirement of public interest. Also, it is true that the government as a model employer is expected to act in a fair manner and it has to be a model employer. It has also to be ensured that the honest and efficient public servants are not subjected to the whims and fancies of their superiors. No government can be expected to dispense with the services of a government servant in an arbitrary manner or without a proper enquiry. Such arbitrary removal is not possible even in the private sector. The Commission recommended suitable legislation to provide for all necessary terms and conditions of services should be provided under Art. 309, to protect the bonafide actions of public servants taken in public interest and necessary protection to public servants against arbitrary action should be provided through such legislation under Art. 309.

Chapter 9 deals with relationship between the political executive and the permanent civil service. The Commission laid down that the relationship between the secretary
and the minister is organic. The minister has the mandate of the people to govern, but
the secretary has an equivalent Constitutional mandate to advise the minister. A civil
servant is required to implement the orders of government without bias, with honesty
and without fear or favour. One area of tension in the relationship is the arbitrary
transfer and posting of civil servants at the behest of ministers and other political
leaders. The Commission in its report stated that the process of transfer of civil servants
is perceived to be so lucrative that it is popularly known as the transfer industry. The 5th
Pay Commission also made some adverse observations about the ‘transfer industry’. The
Commission declared that there is a definite feeling that the instrument of transfer
is widely misused in this country, particularly by politicians in power, to subjugate the
government employees. Transfer is also used as an instrument of
punishment……demands have, therefore, been made that no transfer before the expiry
of three years in a post, should be made appealable, particularly if it has been made at
the behest of politicians.

The 5th Pay Commission made several recommendations about evolving detailed, clear
and transparent transfer policies.

1. First, the Commission recommended that detailed guidelines should be
formulated and publicized by each department as part of a comprehensive
transfer policy, so that arbitrariness in transfers is eliminated altogether.
2. Second, in order to ensure administrative continuity and stability to
incumbents, frequent transfers should be discouraged, and a minimum tenure
for each posting of officers should be predetermined.
3. Third, any premature transfer before the completion of the prescribed tenure
should be based on sound administrative grounds, which should be spelt out in
the transfer order itself. The civil servants should be given the right to appeal against such an order if he feels aggrieved, and a provision for a summary procedure to deal with such a situation should be made within each department.

4. Fourth, the instrument of transfer should not be allowed to be misused either by bureaucrats themselves or by politicians in power.

Moreover, the report also stated that another likely area of conflict is the influence exercised by the minister in the day-to-day functioning of subordinate officers.

Chapter 15 of the 10th report deals with relation between the Political executive and Civil Servants. In 15.1.3, it has been clearly spelt out that a healthy working relationship between ministers and civil servants is critical for good governance. While the principles governing the roles and responsibilities of ministers and civil servants are well defined in political theory, in the actual working of this relationship this division of responsibility becomes blurred with both sides often encroaching upon the other’s sphere of responsibility. In any democracy, ministers are responsible to the people through Parliament and therefore, the civil servants have to be accountable to the minister. However, an impartial civil servant is responsible not only to the government of the day but to the Constitution of the land to which they have taken an oath of loyalty. At the same time, implementing the policies of the duly elected government is a core function of civil servants. That is why, the division of responsibility between the civil servants and the ministers needs to be more clearly defined. The report in 15.3 and 15.4 have nicely summed up the problems of minister-civil servant relationship, thereby highlighting on the needs of rights of civil servants. In 15.3, the scenario of civil service in post-independence India has been highlighted. It has been laid down that in the initial years after independence, relations between ministers and civil
servants were characterized by mutual respect and understanding of each other’s respective roles, with neither encroaching upon the other’s domain. However, in subsequent years, matters started changing for the worse. While some civil servants did not render objective and impartial advice to their ministers, often some ministers began to resent advice that did not fit in with short-term political interests. There was also a tendency for some ministers at the Union and the State levels to focus more on routine administrative matters such as transfers in preference to policy making. At the same time, some civil servants learnt the art of ‘manoeuvring’ for favours in return for pliability in their decision-making. This trend was further accentuated by rising materialism and acquisitiveness in society as well as decline in values across the board. As a result, ‘political neutrality’ which was the hallmark of the civil servants in the pre-independence era as well as in the period right-after independence, was gradually eroded. These trends led to the phenomenon of ‘politisation of the civil service’ in India. The areas of friction has been discussed in 15.4. The areas of potential conflict in the relationship between the political executive and the permanent civil service can be identified as – (a) The concept of neutrality; (b) Advisory role of civil servants in policy making; (c) Statutory role of the civil servants; (d) Discharge of delegated functions; (e) Appointments/recruitment to civil services; (f) Transfers and postings of civil servants. In 15.4.1, the concept of civil service neutrality has been discussed at length. Sardar Patel had made the following observations in the Constituent Assembly to support the continuance of the pre-independence civil service structure :- “It needs hardly to be emphasized that an efficient, discipline and contended civil service assured of its prospects as a result of diligent and honest work, is a sine-qua-non of sound administration under democratic regime even more than under an authoritarian rule.
The service must be above party and we should ensure that political considerations, either in its recruitment or in its discipline and control, are reduced to the minimum if not eliminated altogether.” Unfortunately, this vision of civil service neutrality no longer holds good. It has been clearly mentioned in this part of this chapter that changes in governments particularly at the state level often lead to wholesale transfer of civil servants. Political neutrality is no longer the accepted norm with many civil servants. The Commission is of the view that the political neutrality and impartiality of the civil servants needs to be preserved. The onus for this lies equally on the political executive and civil servants. As observed by Paul Appleby, civil servants should not confuse ‘political neutrality’ with ‘programme neutrality’. At the stage of policy formulation, the role of civil servants is to render free and frank advice which should not be coloured by any political considerations. Once a policy or programme has been approved by the elected government, it is the duty of the civil servant to faithfully and enthusiastically see to its implementation. 15.4.2 discusses in length about the advisory role of civil servants in policy making, thereby highlighting on the limitations of such a role. 15.4.6 deals with postings and transfers of civil servants. The National Commission to Review the working of the Constitution made the following observations regarding transfers and postings of civil servants – “Arbitrary and questionable methods of appointments, promotions and transfers of officers by political superiors also led to corrosion of the moral basis of its independence. It has strengthened the temptation in services to collusive practices with politicians to avoid the inconvenience of transfers and to gain advantages by ingratiating themselves to political masters. They would do the politicians’ biddings rather than adhere to rules. Lest the situation becomes more vicious, it is necessary that a better arrangement be conceived under the Constitution.
The question of appointments, transfers and placements is not to be left to the discretion of the politicians or administrative bosses but be entrusted to independent and autonomous boards.” Also it has been clearly spelt out in 15.4.6.2 that arbitrary and motivated transfers of government servants which are not in public interest and good governance have become a matter of great concern. Chapter 12 of the 10th report of 2nd ARC deals with motivating civil servants. It has been stated there that a motivated and willing civil service is the best instrument to achieve the outcomes desired by the State and Society. Motivation comes through incentives [12.1.2].