



# PREMATURE RETIREMENT WILL AFFECT THE PERMANENT GOVERNMENT

*The Indian Constitution has provided adequate protection to the Permanent Government, especially the All India Services, to work properly without any undue pressure and influence. But recently, premature retirement of the All India Services' officers has adversely affected the functioning of the officers in discharging their statutory duties. As the father of the All India Services, Sardar Patel termed the All India Services as the "steel frame of India," and this change will alter the very essence of his ideal. This article seeks to examine the impact of premature retirement with the help of examples. Also, the paper will relook at the Constitutional Protection to the All India Services officers in detail and try to bring the synergy between autonomy and accountability.*

## Introduction

The public administration started its academic journey in the United States of America. Woodrow Wilson the Father of Public Administration in an early essay titled *The Study of Administration*, emphasised that "it is getting harder to run a constitution than to frame one". The precise idea of the Politics-Administration dichotomy (1900-1926) should be the separation of the policy-making and policy execution. Further, Frank J. Goodnow, in his book 'Politics and Administration' published in 1900 distinguished the two functions of the Government. According to Goodnow, "Politics has to do with politics or expression of the state will" while the administration "has to do with the execution of these policies". Elected representatives and appointed public administration work differently. A thought developed in this phase about the administration was that public administration valued neutrality and had only to implement the policies or programmes mechanically. The politics must be separated from the administration to develop its own science with effective government machinery. The early phases of public administration's central concerns were economy, efficiency and effectiveness.

The New Public Administration (NPA) movement marked the turning point in the field of the new public administration, contributing to the growth of the discipline. With the paradigm shift in public administration, which cannot be dissociated from political science; politics and administration were interlinked. At first Minnowbrook conference held in 1968, Rosemary O'Leary stated that "Minnowbrook stands for the spirit of critical inquiry and an honest examination of the field". The concept of New Public Administration was born with the idea of change in administration towards the citizens' perspective. It included four essential goals: relevance, value, social equity and change. The most crucial change in the nature of the administration was the 'value'. It rejected the neutral concept of administration as done earlier by the public administration. NPA also advocated that the administrator must have certain values such as New Public Administration which is less 'generic' and more 'public' than his forbear less 'descriptive' and more 'prescriptive'. The New Public Administration is also less 'institution oriented' and more 'client-impact oriented', less 'neutral', and 'more normative'. Public administration should play a special role for the underprivileged class and ensure a citizen-centric administration. Therefore, New Public Administration calls the "bureaucrats to become an instrument for achieving social equity".

Article 312 of the Indian Constitution emphasises on the Indian administration, especially All India Services, as per the historical perspective of the All India Services (common for the Union and State Governments). During the pre-independence time, the All India Services were known as the Secretary of the State Services, including the Indian Civil Services (ICS) and Imperial Police Services (IPS). Later on, ICS was changed to IAS (Indian Administrative Services) and the latter to the IPS (Indian Police Services). As the chief architect of the All India Services and India's first home minister, Sardar Patel realized that he could not unite India until centralized services like IAS and IPS were initiated.



Sardar Patel faced several challenges during the formation of the All India Services (A) - The first challenge was from the provinces, which wanted to control the services through powers of disciplinary action 'to remove'. The issue of the All India Services was discussed in the Prime Minister's conference held on 21-22 Oct 1946. The three non-Congress governments of Bengal, Punjab, and Sind (the muslim-majority state) opposed this proposal. Several states supported the state services rather than the All India Services. Still Sardar Patel strongly supported the All India Services and made a decisive speech in which he argued that there should be adequate allowance for provincial susceptibilities in a country of multi-cultural communities, but it was precisely because of these susceptibilities that centrally controlled all-India services were important. Such a service modelled on the ICS, alone would be efficient, impartial, free from local or communal bias, party allegiance, or political influence. Locally controlled service under any government of the day could not, on the contrary, act independently or offer resistance to local politics or intrigues. There would be a reciprocity in the distribution of advantage between the centre and state arrangement. It will ensure uniformity in the application of administrative norms and standards between the centre and the states. Provincial administration would acquire a wider and integrated outlook using the best material available for the higher posts. This could only be achieved by an administrative staff centrally recruited controlled to ensure contentment and security necessary for independence of conduct. He reiterated that "it was 'desirable' that an officer should not be exposed to the serious penalty of removal or dismissal from services before his case is examined by an independent and impartial authority which would be the Federal Public Services Commission." This displays Sardar Patel's commitment to protect the All India Services at such a level that officers could work freely without any fear and local pressure. Later, the All India Services was approved due to the strong commitment.

(B) The second level is the protection of the services to ensure security. Sardar Patel incorporated this into the Constitution. Before the Cabinet meeting on 27th April 1948, he wrote to Nehru, "Constitutional guarantees and safeguards are the best medium of protection for the Services and are likely to prove more lasting. In addition, it would be a grave mistake to leave these matters to be regulated by the Central or Provincial legislature. Chances of interference with the services and hence seriously prejudicing their efficiency on account of the interaction of central and provincial politics are obvious". Such protections were inserted in the Constitution after the rigorous exercise by Sardar Patel. Sardar Patel had put it very well by saying that "You will not have united India if you do not have a good all-India Services which has the independence to speak out its mind".

## Constitutional and statutory protections

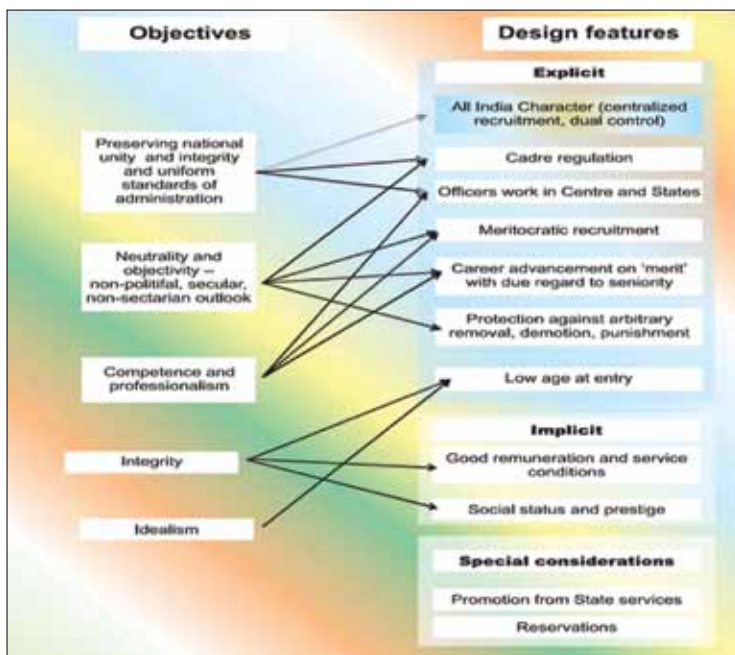
- Article 311 of the Indian Constitution protects against the arbitrary removal of a person from the services. Removal from the services may take place only by the appointed authority with independent inquiry and Consultation by the Union public service commission (In the cases of the All India services) under Art 320(c) of the Constitution.
- The state government could take only immediate disciplinary action while the final decision on discipline only is accepted by the Union government after the consultation by the UPSC.

## The importance of All India Services

Some basic qualities in Indian civil services are also incorporated in the All India Services Act 1951.

- Impartiality - This concept recommends the civil servants act free and fair and accountable to the law of the land only. There is a school of thought that administration or Government machinery must be responsible to the law of the land alone. This argument is based on Lord Denning's historical judgment (1968).

"I told it to be the duty of the commissioner of police of the Metropolis, as it is of every chief constable, to ensure the law of the land. He must take steps to post his men that crimes may be detected and that honest citizens may go about their affairs peacefully. He must decide whether or not suspected persons are to be



Source: 2nd administrative reform commission

prosecuted and, if need be, bring the prosecution or see that it is brought. But in all these things, he is not the servant of anyone but the law itself. No Minister of the Crown can tell him that he must or must not keep observation on this place or that he must or must not prosecute this man or that one. Nor can any police authority tell him to do so. He is answerable to the law of the land only". The Hon'ble Supreme court accepted this argument in various judgments like Police reforms, civil services board, etc.

○ **Neutrality** - Civil servants always have to maintain an equal distance from any ideology and political parties. In those terms, civil servants are accountable to the rule of law, not to the political party in power. There are always some differences between the political parties' norms and civil servants' norms in developing nations. To maintain the neutrality of the civil servants, Constitutional and Statutory protections are required.

○ **Anonymity**- Civil servants have to work silently without coming into the media. If they have a

dissenting opinion, they must register it in writing to the concerned authorities. Ultimately, ministers or public relations officers are responsible for responding to media. Recently, civil servants have the habit of becoming popular or famous going against the spirit of anonymity. The concerned authorities must take action against those officers.

## Premature retirement of the All India Services officers

In this article, the most critical issue is the premature retirement of the All India Services officers before completing the Service period without any inquiry or explanation. For example, IPS Amitabh Thakur, a 1992 batch officer of Uttar Pradesh, was prematurely retired by the Union Home Ministry under All India services rule 16(3). According to this provision, the Central government may retire an officer if they have completed 15 years or 25 years after assessing that they were unsuitable to continue their services in the public interest without going for the disciplinary action and show cause notice to the officers. However, this provision is against natural justice and affects the officer's autonomy to act free and fairly.

Brief sequence related to the case of Amitabh Thakur

- On 17th March 2021, the Union Home Ministry issued an order to prematurely retire the officer from the IPS service under the All India Services (Death-Cum-Retirement)1958 section16(3).
- On 28th March 2021, an R.T.I 2005 was filed to know the detail of the service record, different letters related orders, grounds on which he was prematurely retired.
- The information officer denied giving the information related to premature retirement due to section 8(1) of the R.T.I Act of 2005.

The above facts have proved that premature retirement is affecting the concerned officer at several levels as following-



1. The Government of India does not treat premature retirement as a disciplinary action. Therefore, the procedure bypasses the detailed provisions of the disciplinary action mentioned in the Constitution and the statutory provisions. It also affects the independent functioning of the officer as Constitutional protection becomes ineffective. Sometimes the officer has to work against the ruling establishment (due to statutory requirement) that space will not be available to any officer, and the whole purpose of the “steel frame of the Civil services” will be defeated.
2. Premature retirement may be included in service rules, but proper grievance redressal should be there with the recommendation of the independent authority. Unfortunately, both are lacking in the present rule (All India Services (Death-Cum-Retirement) 1958 section 16 (3)).
3. The present mechanism of assessment of the Annual Confidential Report is faulty and follows an authoritarian working style. As represented by the old Classical school of Public administration. (Like the McGregor Theory “X”).

To relook the premature retirement (All India Services (Death-Cum-Retirement) 1958 section 16 (3))

- Annual Confidential Report has to be changed into Performance Management with a 360-degree evaluation of the officer with open access. Getting the feedback from multiple sources like an assessment of the officer should be done in multiple ways, which includes:
  - Self
  - Superior
  - Peers
  - Subordinates
  - Internal customers
  - External customers

Others will reflect the complete picture of the officers and should be uploaded on the website. Finally, the review committee should be set up to relook in the officer’s grievance.

Gaps in the performance as below

Another example is Indian Forest Services officer Sanjiv Chaturvedi, a 2002 batch officer of the Haryana cadre. He was protected due to the solid constitutional protection available to him under the Constitution. Otherwise, it was impossible to protect honest officers like Sanjiv Chaturvedi. A brief history of the Sanjiv Chaturvedi case:

1. He exposed the illegal construction inside the wildlife sanctuary in Kurukshetra and stopped illegal construction (Against the direction of the Hon’ble Supreme court).
2. The state government charged the officer for violating the norms by stopping the construction.
3. The State government set up an inquiry against the order.

Present	Desired
<ul style="list-style-type: none"> <li>• Individual rankings</li> <li>• Appraisal</li> <li>• Periodicity - annual</li> <li>• Outputs</li> <li>• Performance and pay not related</li> <li>• Ratings - Top-down</li> <li>• Directive</li> <li>• Monolithic</li> </ul>	<ul style="list-style-type: none"> <li>• Process</li> <li>• Joint review</li> <li>• Periodicity - more periodic</li> <li>• Outputs/Outcomes</li> <li>• Performance related pay</li> <li>• Ratings - Consultative</li> <li>• Supportive</li> <li>• Flexible</li> </ul>

Source: Second Administrative Reform Commission (10th Report)





4. Then the officer made the representation to the Cabinet Secretary.
5. The Government of India constituted an inquiry under the two-member committee (Under Art-311 of the Constitution)
6. Then the committee gave a clean chit to the officer, and the union government had ordered the state government to quash the charges against Sanjiv Chaturvedi
7. Later on, as per Article 320(c), the Hon'ble President consulted the UPSC (Union Public Service Commission). Consequently, based upon the commission's recommendation, the Hon'ble President ordered the state government to quash inquiries and charges against the officer immediately.

This whole incident has proved the importance of All India Services and protection provided by the Constitution to All India Services ultimately in the nation's public interest so that honest officers could discharge their duties. Once again, the credit goes to the farsighted views of Sardar Patel, who said, "You will not have a united India if you do not have a good all-India Services which has the independence to speak out its mind".

## Conclusion

This article dwells upon the constitutional protections that have been provided to All India Services' officers. These constitutional protections are essential to protect honest officers from premature retirement. Therefore, the government needs to change the assessment procedure of the officers as soon as possible to ensure their free and fair functions by finding the direct relationship between public service motivation and human resource management. As mentioned above in the article, several gaps in performance management have to be addressed thoroughly. Furthermore, the government has to modify its performance assessment methods from authoritarian to employee-friendly for effective delivery of the services to the citizens. Last but not least, the primary goal of the public services should be to serve the citizens according to their requirements.

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