The Constitution of India provides Fundamental Rights under six groups as follows-
(a) Right to Equality (Art.14 to 18)
(b) Right to Freedom (Art.19 to 22)
(c) Rights against Exploitation (Art.23 to 24)
(d) Right to Freedom of Religion (Art.25 to 28)
(e) Cultural and educational Rights (Art.29 to 30)
(f) Rights to Constitutional Remedies (Art.32-35)

The Right to Property has been eliminated by the 44th Amendment Act (w.e.f 30-4-79). Right to Education was made a Fundamental Right by the Constitution (86th) Amendment Act, 2002. Art.21A incorporated as per the above amendment provides for free and compulsory education to children of the age of Six to Fourteen years.

The rights which are given to the Citizens by way of Fundamental Rights are a guarantee against State action. In case of violation of one’s fundamental rights by the State, the aggrieved person can directly approach the High Court or Supreme Court for remedy. In case violation of one’s fundamental rights by private individuals the ordinary remedies may be available but not constitutional remedies.

The fundamental rights enshrined in Part III of the Constitution are available against State. Art.12 of the Constitution defines ‘State.’

By virtue of the definition in Art.12, the term ‘State’ includes-
(i) The Central Govt. and Parliament of India,
(ii) The State Govt. and Legislature of each State,
(iii) All local or other authorities within the territory of India
(iv) All local and other authorities under the control of the Govt. of India

The term State thus includes executive as well as legislative organs of the State. Whenever the action of these bodies violates one’s fundamental rights as guaranteed in Part III, he can challenge the violative action before the Supreme Court or High Court.

S.3 (31) of the General Clauses Act defines the term ‘Local Authorities’. They include Municipalities, District Boards, Panchayats, Improvement Trusts and Mining Settlement Boards. Courts interpreted the term ‘other authorities’ in their judgments.
Fundamental Rights

I-Right to Equality

1-Equality before Law-Art.14
2-Prohibition of discrimination on ground of religion etc.-Art.15
3-Equality of opportunity in employment-Art.16
4-Abolition of untouchability-Art.17
5-Abolition of titles-Art.18

II-Right to Freedom

1-Freedom of speech and expression, assembly, association, movement, residence and profession-Art.19
2-Protection in respect of conviction for offences-Art.20
3-Protection of Life and personal liberty-Art.21
4-Right to education-Art.21A
5-Protection against arrest and detention in certain cases-Art.22

III-Right against exploitation

1-Prohibition of traffic in human beings and forced labour-Art.23
2-Prohibition of employment of children in hazardous employment-Art.24

IV-Right to Freedom of Religion

1-Freedom of conscience and free profession-Art.25
2-Freedom to manage religious affairs-Art.26
3-Freedom as to payment of taxes for promotion of any particular religion-Art.27
4-Freedom as to attendance at religious instruction in certain educational institutions-Art.28

V-Cultural and Educational Rights

1-Protection of language, script or culture of minorities-Art.29
2-Right of minorities to establish and administer educational institutions-Art.30

VI-Right to Constitutional remedies

Remedies for enforcement of the fundamental rights conferred by Part III –Writs of Habeus Corpus, Mandamus, Prohibition, Certiorari and Quo warranto-Art.32 and Art.226
Double jeopardy
Immunity from Double prosecution and Punishment

The prohibition against double jeopardy is contained in Clause (2) of Art.20 which runs as follows-

“No person shall be prosecuted and punished for the same offence more than once”

The expression ‘double jeopardy’ is used in the American law, but not in our Constitution. A similar principle is incorporated here. The Supreme Court in Venkataraman V Union of India(1954)SCR1150 laid down that Art.20(2) refers to Judicial punishment and gives immunity to a person from being prosecuted and punished for the same offence more than once. In other words, if a person has been prosecuted and punished in a previous proceeding of an offence, he cannot be prosecuted and punished for the same offence again in subsequent proceedings. If any law provides for such double punishment, such law would be void. The Article however does not give immunity from proceedings other than proceedings before a Court of law or a judicial tribunal. Hence a Govt. Servant who has been punished for an offence in a Court of law may be subjected to departmental proceedings for the same offence or conversely (Venkataraman V Union of India). If the accused was neither convicted nor acquitted of the charges against him in the first trial his retrial would not amount to double jeopardy(O.P.Dahiya V Union of India(2003)1 SCC 122). Prosecution and other punishment under two sections of an Act, the offences under the two Sections being distinct from each other, does not amount to double jeopardy(State of Rajasthan V Hat Singh AIR 2003 SC 791)

Prerogative writs

The expression ‘Prerogative writ’ is one of English Common law refers to the extraordinary writs granted by the Sovereign, as fountain of justice, on the ground of inadequacy of ordinary legal remedies. In course of time these Writs came to be issued by the High Court of Justice as the agency through which the Sovereign exercised his judicial powers and these prerogative writs were issued as extraordinary remedies in cases where there was either no remedy available under the ordinary law or the remedy available was inadequate. These writs are –Habeus Corpus, Mandamus, Prohibition, Certiorari and Quo warranto.

The power of the High Courts to issue these writs is wider than that of the Supreme Court. Under Art.32 of the Constitution, the Supreme Court has power to issue these writs only for the purpose of enforcement of the Fundamental rights whereas under Art.226 a High Court can issue these writs not only for the purpose of enforcement of fundamental rights but also for the redress of any other injury or illegality owing to contravention of the ordinary law. A person can move High Court or Supreme Court for enforcement of Fundamental rights.
Writ of Habeus Corpus

This is in the nature of an order calling upon the person who has detained another to produce the latter before the Court in order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for the imprisonment. The words ‘habeus corpus’ literally mean ‘to have a body’.

The detenue or a relative or friend of him can file application for this writ.

Writ of Mandamus

This is an order of the Court commanding a person or a public authority to do or to refrain from doing something in the nature of a public duty or a statutory duty. This will be issued when there is a failure to perform a mandatory duty by a public authority.

The party applying for this writ must show that he made a demand and it was refused by the public authority.

Writ of Certiorari

A writ of Certiorari is issued for quashing or nullifying an order made without jurisdiction or in violation of the rules of natural justice by an inferior court or body exercising judicial or quasijudicial function.

Writ of Prohibition

This writ is issued to prevent an inferior Court or tribunal from exceeding its jurisdiction or acting contrary to the rules of natural justice. It is issued to judicial and quasijudicial bodies for preventing them from exercising jurisdiction which is not vested in them or to prevent them from abusing the jurisdiction.

Writ of Quo Warranto

This writ is issued to a person who holds a public office to show the Court under what authority he holds his office. The words ‘quo warranto’ means ‘what is your authority’. Any member of public can challenge the right of a person to hold a public office.

Article 19(2) to (6) of the Constitution provides for reasonable restrictions on the exercise of fundamental rights in the interest of Sovereignty and integrity of the State, public order or morality etc.

In addition to these restrictions, the Govt. has imposed certain restrictions on the action or omission of Govt. Servants. Some actions are restricted, some can be performed with permissions and some others are prohibited. That means there are certain “Dos” and “Don’ts” prescribed for Government Servants. These acts or omissions are grouped under
various rules in Govt. Servants Conduct Rules as General Conduct, Hospitality, Property, Investments, Secrecy, Associations, Literary activities, Personal Misconduct. Relations with –Family, Co-workers, Public, Other authorities, Representatives of People, Ministers, Governor, Other Govts., etc., Govt. Servants Conduct Rules 1960 came into existence in January, 1960. This was issued as a statutory notification as per GO(P)No.6/PD dt.5-1-1960 in Kerala Gazette No.2 dt 12-1-1960 invoking the powers conferred to Governor under Art.309 of the Constitution of India. This rule is later revalidated under the Kerala Public Services Act, 1968. This Rule consists of 96 rules.

Application of Rules

These rules apply to all Govt. Servants under the rule making control of Kerala Govt. except to the employees in Subordinate Service in Govt. owned industrial concerns.

The Article 309 of the Constitution of India confers on the State and Central Government the absolute power to frame rules for regulating the conduct of Government employees. In discharging official duties the Government servant have to conform to rule of conduct made by the Government and they should also observe a certain standard of discipline, dignity and decorum within public as well as private life.

Conduct Rules have always invited numerous interpretations from different courts. There is nothing unusual about it, since human nature is so unpredictable.

MISCONDUCT

The term ‘misconduct’ is not defined in any of the conduct rules or other enactments’ Misconduct’ literally means wrong conduct or improper conduct. The expression misconduct is an expression of wide amplitude. Misconduct has been defined in Black’s Law Dictionary, Sixth Edition at page 999, thus –“a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour. It’s synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness”.

MISCONDUCT IN OFFICE-DEFINITION

“Any unlawful behaviour by a public officer in relation to the duties of his office, wilful in character. The term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act”

Rule 3 of the Kerala Government Servant’s Conduct Rules requires that every Government Servant shall at all times maintain absolute integrity and devotion to duty. Any thing contrary of this rule will be considered as misconduct.
Gujarat High Court held that the Armed Police Constable Dalabhai Bhimabhai Patel who had sexual intercourse with the wife of another constable, with her consent may not be guilty of offence of rape or criminal trespass, but it is certainly a case of misconduct and a departmental enquiry can validly be held against him. [Dalabhai Bhimabhai Patel v Dy. Commr. of Police 1992(1) SLRGuj551]

When a Government Servant fails to give satisfactory account about the property which he has acquired and which is disproportionate to his known sources of income he can be considered to have committed grave misconduct under the provision of the Conduct Rules [Bharat Ram v Union of India AIR1967Pat347]

Omitting sexual intercourse with a co-worker while on duty, is an act subversive of discipline.[Prabu Dayal v State of Madhya Pradesh,1988(6)SLR M P 164]

**CASE STUDIES**

Summaries of some landmark cases related to Conduct Rules are given below

These rules primarily govern the conduct of Govt. Servants. They are framed in ‘public interest’ and as a matter of ‘public policy’. They lay down norms and standards for the conduct of the Govt. Servants in public interest. These aspects afford a key to the understanding of the word ‘business’ occurring in Rule16 –Manmadan V Krishnappan Unni, 1985 KLT (670)

To seek police reports about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the Preamble of the Constitution. Termination of Service on a police report that before his appointment the employee had taken part in R.S.S. and JanaSangh activities was held to be illegal-State of M.P.V.Ramashanker(1983) 2 SCC 145.

A citizen who is otherwise found fit for public employment cannot be discriminated or priced out of employment market because of his political convictions or affiliations. Of course, once he enters the Service, he would be bound by and governed by the Rules and the code of conduct obtaining in that Service and cannot act contrary to them.- Kalluri Vassayya V Supdt. Of Post office 1980 (2) SLR433.

The fact that the Rules came into force after a person entered service or the fact that he ceased to be a Govt. Servant on the date when disciplinary proceedings were actually commenced cannot stand in the way of Government enforcing the provisions of the Rules against him.- Narayanan Nair V.St. of Kerala 1962KLT 740

Conduct on the part of a Govt. Servant prior to the promulgation of the Rules cannot be investigated under the new Rules which cannot have retrospective effect.- Gopinathan V.State of Kerala 1963 KLT 508.
It is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a Servant of the Government in order that it may form the subject matter of disciplinary proceedings. If the act or omission is such as to reflect on the reputation of the officer or his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission.- Govinda Menon V Union of India AIR 1967 SC 1274,1967 KLT 336.

Every official lapse, inefficiency or incapacity cannot be dubbed as misconduct so as to warrant disciplinary action.- Kannan V Board of Revenue,1994(1)KLT 271

When the office was shifted the officer invoked the blessings of ‘God Ganapathy’ through a special worship performed in the office. The contention that such conduct of the officer is a negation of the Secular principles of the Constitution and that he has committed misconduct warranting initiation of disciplinary proceedings is unsustainable. –Peethambaran V Supdt. Of Police 1996(1) KLT 167, ILR 1996(2) Ker.153

Even if the act of delinquency is not specified in the Rules as an act of misconduct, disciplinary action can be taken, if there are good and sufficient reasons.- Secretary to Govt. V Brito (1997)3 Sec 387

The contention that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasijudicial proceedings not sustainable –Union of India V Saxena (1992)3 Sec 124.

When an officer in exercise of judicial or quasijudicial powers acts negligently or recklessly or in order to confer under favour on a person he is not acting as a judge. Disciplinary action can be taken in respect of such action- Union of India V Dhavan (1993)2 SCC 56.

Misconduct committed while discharging quasi judicial function as an Appellate Asst. Commissioner. Disciplinary action can be taken –Jacob John V Secretary to Govt.1996 (2) KLT462

Extreme care and caution is needed before initiating disciplinary proceedings against an officer performing judicial or quasijudicial functions regarding any of his actions in the course of such functions-Natarajan V Board of Revenue ,1995(1)KLT 695.

Moral turpitude is an expression which is used in legal as also social parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity .The Supreme Court has suggested that provision has to be made that punishment of fine up to Rs.2000/- or so on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in Govt. Service –Pawan Kumar V St. of Haryana (1996)4SCC17
Based on the above observation of the Supreme Court the Govt. of Kerala added the following proviso to the Kerala Civil Services(Classification Control & Appeal) Rules,1960 as per GO(P)No.28/2003/P&ARD dt.18-9-2003

“…..Provided further that where a Government Servant is convicted on a criminal charge by a criminal court and sentenced to imprisonment and or with fine;

(a) he shall be dismissed or removed from service forthwith by invoking the provision contained in item(a) of the second proviso to clause(2)of Article 311 of the Constitution of India irrespective of the fact that an appeal is pending or that the execution of sentence is suspended in respect of the said conviction and
(b) in case the said conviction is subsequently set aside in appeal or otherwise and the Government Servant is acquitted of the charges, the order of dismissal or removal ceases to have effect and revised orders shall be issued forthwith to reinstate him in service entitling him all the benefits to which he would have been entitled had he been in service.

Provided also that in case where conviction is on a summary trial the sentence for petty offences and the sentence is for a fine upto Rs.2000/-only such conviction shall not be treated as a conviction for the purpose of this rule and for the entry into service or retention in service as the case may be.

Disciplinary action initiated against the petitioner on the ground that while functioning as Deputy Commissioner (Appeals) he allowed an appeal filed by the assessee resulting in loss to Government was held illegal. Officers invested with quasijudicial powers are to discharge their functions without fear of disciplinary action on account of their free exercise of that power-KesavanVState of Kerala 1989 (1) KLT135

The conduct of an officer in submitting a false report in his capacity as an authorized Officer assisting a quasijudicial Tribunal can be subject matter of disciplinary proceedings-George Eapen V State of Kerala -1989 (2)KLT 659

A public Servant is in the position of trustee. Social power vests in him for the purpose of rendering service to the community-GonalBhimappa V State of Karnataka AIR1987 SC 2359

The word misconduct is sufficiently a wide expression and covers any conduct which in any way renders a man unfit for his office or is likely to tamper or embarass the administration. In this sense grossly improper or unbecoming conduct in public life may also become misconduct-Natarajan V Div.Supdt. of S. Railway 1975KLT 806

It is not necessary that a member of the service should have committed the alleged act or omission in the course of discharging of his duties as servant of a Govt.in order that it may form the subject matter of disciplinary proceedings. If the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for
that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship-GovindaMenon V Union of India AIR 1967SC 1274

An act or omission runs counter to the expected code of conduct would constitute misconduct. Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct-Union of India VAhmed AIR 1979SC 1022

An illegal or irregular or improper exercise of judicial discretion, in the absence of malafides, will not amount to misconduct-Bhagavat Swaroop V State of Rajasthan 1978(1) SLR 835

In a complaint about the nonmaintenence of a wife against a Govt. servant, the question of relationship of the alleged wife must be left for the determination of the Courts of law. If there was a decree passed, that decree could have been relied on for further action-Jaladharan V D.T.O.1966 KLJ 673

An Appellate Assistant Commissioner of AIT&STDept.was found guilty on the charge that she did not achieve the quota of 385 appeals fixed for a period in the matter of disposal. The proceedings were challenged contending that matters relating to the discharge of judicial duties cannot form subject matter of a charge of misconduct. The contention was rejected holding that the instructions issued in this case have no bearing on the decision-making process. The charges do not relate to the quality of judicial functioning of the petitioner-Saradamma V Board of Revenue 1988(2) KLT 437

Railway servant publishing a letter in a newspaper which is aimed at focusing the attention of the Railway administration on the need for providing safety measures to prevent recurrence of accidents and the adverse effect of what he thought to be repressive measures against Railway work men. It was held that the petitioner cannot be held guilty of charge under the Railway Services Conduct Rules. His removal from service was held invalid-Kunhabdulla V Union of India 1983 KLT 1017

In a representation submitted to the employer the employee invited the attention of the employer to the newspaper reports relating to some alleged irregularities in the handling of Wakf properties and expressed the opinion that the allegations in the newspaper reports required investigation. It was held that this was not a misconduct so as to warrant disciplinary action. No authority is entitled to treat the exercise of the fundamental right of freedom of speech by a citizen as misconduct and deal with its employee for the misconduct of the exercise of fundamental freedom of speech and expression assured by Art.19 (1) of the Constitution of India-Ibrahim V Kerala Wakf Board 1985 KLT 24

The fundamental rights guaranteed in the Constitution cannot be waived by conditions of service, but reasonable restriction can be imposed. Rule80 (a) of TCConduct Rules restricted the membership of Service Associations to Govt. servants only and
Rule 81 which provided that “no Govt. servant shall be a member of any Service Association which has not been recognized by Govt. or of which the recognition has been withdrawn “were held to be reasonable and valid-C.N. Chellappan Pillai V State of TC 1957KLT 169

The fundamental right guaranteed under Art. 19 (1) (c) of Constitution to form unions does not carry with it a right to claim the grant of recognition of the union by the employer – David V St. of Kerala, 1971KLT892

Rule 4A of the Central Civil Service(Conduct) Rules, 1955 in so far as it prohibited any form of demonstration was violative of the Govt. Servants rights under Art. 19(1) (a) and (b) of the Constitution and should, therefore, be struck down. The Court further held that the said rule in so far as it prohibited a strike could not be struck down for the reason that there was no fundamental right to resort a strike – OK Ghosh V E X Joseph AIR 1963SC812

There is no fundamental right under Art. 19 (1) to strike – Radhey Shyam V pmg Nagpur AIR 1965 SC311

The petitioner was called upon to answer only one charge. That charge framed against the petitioner having found to be not proved, there is no justification in proceeding further in the matter. If the disciplinary authority had a case of any other instance of misconduct, the petitioner should have been proceeded against separately – Vijayan V High Court of Kerala 2003(1) KLT 914.

The Indian Penal Code 1860
(Law of Crimes)

A crime is an act or omission which the law punishes. A crime is considered to be a public wrong i.e., a wrong against public at large or wrong against the State. When a person commits a crime the State prosecutes him.

Elements of a crime

“Actus non facit reum nisi meus sit rea”

This maxim means an act does not amount to a crime unless done with a guilty intention. In other words, the act alone does not amount to guilt, it must be accompanied by a guilty mind. The act or omission should be one prohibited by law.

Maintenance of law and order is a Sovereign function of the State. For this purpose certain acts and omissions of human beings are prohibited or restricted by law. The object of criminal law is protection of life, liberty and property of persons in the society. Threat of punishment is used to achieve this. Following punishments are provided in Indian Penal Code.
1-Death
2-Imprisonment for life
3-Imprisonment for a fixed period—it may be rigorous or simple or solitary
4-Forfeiture of property
5-Fine

**Theories of Punishment**

The purpose of criminal justice is punishment to the wrong doer. There are mainly five theories

1.-**Retributive**—Purpose is retribution. The wrong doer should suffer. The principle is “an eye for an eye, a tooth for a tooth”

2.-**Preventive**—Purpose is prevention or disablement. Offender is disabled from repeating the offence.

3.-**Deterrent**—Purpose is to make the offender an example and a warning to other persons who are like minded i.e., to deter the ‘would be criminal’

4.-**Reformative**—Object is to reform the criminal morally

5.-**Explanatory**—the object of punishment is explation. The guilt is expiated when the offender is suffered in person or purse.

Each theory has its own merits and demerits.

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