
A STUDY OF LAW REGARDING CONSTITUTIONAL PROTECTIONS AND RIGHTS OF CIVIL SERVANTS IN INDIA

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ABSTRACT

Civil servants and government employees have a set of responsibilities that go along with their jobs; they are expected to lead both in their official capacities and personally. Government employees have a responsibility to the larger community just like the government does. To carry this out, certain standards and regulations that depict the duties of government employees and civil servants have been established somewhere around numerous statutes. One of the key regulations is the Central Civil Service Conduct (Rules) of 1964. Services provided by the union and the states are covered in Part IV of the Constitution of India, 1950. The Indian Constitution has provisions for centre and state services in Articles 309 to 323. The civil servant is essential to the nation's administration in the modern-day age.

Laypeople create plans, and governments create laws, but it is up to government employees to carry out these plans and laws effectively and efficiently. The management of the country is aided by the organization along these lines for the political leader. Accordingly, the Constitution aims to maintain in government employees the belief that everything is just and reasonable so they may work effectively and do their best for the country.

The protections afforded to government officials by the Indian constitution are increasingly discussed in this essay. This research paper will provide a critical analysis of Article 311 of the Constitution with a focus on the notion of pleasure and significant legal precedents.

Keywords: Civil Servants, Government, Constitution of India, Regulation, notion of Pleasure.

1.1 Introduction

Retrospect of the Constitutional development is necessary for a proper understanding of this Constitution because the Indian Republic's Constitution is not the result of a political revolution but rather the study and deliberations of a group of distinguished representatives of the people who sought to improve the current system of government¹.

India is a social welfare state with many different purposes. There are civil employees for the states because it is vital to have servants or officials who have initiative and have vision in administering the states' affairs and functions for effective and efficient performance of their tasks. Civil servants must be free from political pressure and personal favouritism for democracy to function properly and effectively. Therefore, it is essential to make sure that the best candidate is chosen for appointments to a role in order to prevent nepotism and arbitrary hiring practices. If government workers are selected exclusively based on merit, without any favouritism, nepotism, or political influence, this goal can be attained²

Services provided by the union and the states are covered in Part IV of the Constitution. The Indian Constitution has provisions for centre and state services in Articles 309 to 323. In the modern, authoritative era, the civil servant is essential to the management of the country. Government employees are tasked with the task of effectively and efficiently implementing the arrangements and laws that clergymen and governing authorities set down. The management of the country is aided by the organization along these lines for the political leader. Accordingly, the Constitution aims to maintain in government employees the belief that everything is just and reasonable so they may work effectively and do their best for the country. Considering everything, Despite the fact that safeguards have been provided that only such a force may be based on, the legislature's power to absolve or demote a worker has been retained perfect. Members of the state occupy office at the pleasure of the governor, whereas all federal public workers serve at the president's pleasure. The government workers are protected by Article 311 of the Indian Constitution, which also specifies a few exceptions to the theory of pleasure. The chapters that follow will critically analyse this³.

¹ D.D. Basu, Introduction to the Constitution of India, (21st Edition, Lexis Nexis) p.3.

² M. P. Jain, Indian constitutional law (8th edn, Lexis Nexis 2018)

³ Yashraj, Constitutional provisions regarding civil Servants in India
<https://www.legalserviceindia.com/legal/article-2388-constitutional-provisions-regarding-civil-servants-in-india.html> (Accessed on 13-05-2023)

1.2 Doctrine of Pleasure

Common law is where the notion of pleasure first emerged. Public employees and their employer, or the government, have a unique connection that, in some ways, differs from the master-servant relationship that exists under regular law. When managing disciplinary proceedings against government employees, the chief vigilance officers and officers handling vigilance matters must keep these in mind⁴. Members of the union's defense or civil services hold their positions at the president's pleasure, while members of the state services hold their positions at the governor's pleasure⁵. In England, a government employee keeps his job during the Crown's delight. The Crown has the right to oust him at any time without providing a cause.

1.2.1 Rule in England

A government employee of the Crown is often expected to work during the pleasure of the Crown in England. This means that the Crown has the right to oust him at any time without providing a reason. The Crown is not constrained by any work agreements, whether there are any or not. In the end, if a government employee is relieved of his duties, he cannot promise compensation for early termination of his employment or other damages. The public arrangement affects the joy precept.

1.2.2 Rule in Indi

Services provided by the union and states are included under Part XIV of the Indian Constitution. The Indian Constitution's Article 310 incorporates the common law theory of pleasure. It states unequivocally that all members of the defense Services or the Civil Services of the Union or All-India Services hold office whilst the President is happy. Additionally, officials from the State Services hold positions during the Governor's pleasure. But this Article does not entirely reflect this English legal standard. In India, a government employee may normally bring a claim against the Crown for unpaid wages. The English-developed doctrine of pleasure is not entirely embraced in India. It is governed by the guidelines in Article 311 that establish procedural protections for government workers. As a result, Article 310 is now

⁴ Abhinav Garg, 'Doctrine of Pleasure' Academike < <https://www.lawctopus.com/academike/doctrine-of-pleasure/#:~:text=The%20Constitution%20of%20India%20through,function%20boldly%2C%20efficiently%20and%20effectively.>> (accessed on 13-05-2023)

⁵ Madhushri Sharma, 'doctrine of pleasure (article 310 and 311)' (ISSN NO. 2465 – 6470, volume 2 issue 5) IJTSRD < <https://www.slideshare.net/ijtsrd/doctrine-of-pleasure-article-310-and-311#:~:text=Constitutional%20safeguards%20to%20civil%20servants,2.>> accessed 13-05- 2023)

subject to Article 311. As a result, no government servant's employment may be dismissed at any time without first complying with Article 311's requirements⁶.

The fundamental rules governing the residency of office for those working for the Union or a State are outlined in Article 310 of the Constitution of India, 1950. Unless otherwise expressly provided by this document, each person who belongs to a protection administration, a common assistance of the Union, an all-India administration, or holds any post associated with guard or any thoughtful post under the Union, holds office during the joy of the President, and each in the State of the Union.

There are certain workplaces that are beyond the purview of Article 310, and Article 311 was added as a restriction to the concept of joy. Currently, if such powers were granted to the leader of India and the legislative head of states, it would be really difficult to exercise authority on them. It is intriguing to understand what mechanism has been provided in the Indian constitution to reject them considering the large number of incidents involving the denigration of government personnel and other officials. The Supreme Court has emphasized that since Article 310(1) gives the State the authority to fire a public employee at its discretion, "except as expressly provided by the Constitution," it follows that this authority cannot be restricted⁷.

the officers to whom the President or Governor delegated the authority in line with the pertinent laws or rules enacted under Article 309 may exercise the President's pleasure to terminate the employment of a government employee.⁸ Article 310(1) is not governed by any contract's terms. According to the Supreme Court, the State can enter into temporary employment contracts and impose special conditions as long as they do not violate the Constitution. Those who choose to accept these conditions and enter into the contract are obligated to abide by them just as the State is⁹.

1.3 Safeguard of Civil Servants under Indian Constitution

The Indian Constitution's Articles 309, 310, and 311 for the Appointment, Dismissal, and Removal of a Civil Servant from its Post explain and explain the constitutional provisions

⁶Abhinav Garg, 'Doctrine of Pleasure' Academike < <https://www.lawctopus.com/academike/doctrine-of-pleasure/#:~:text=The%20Constitution%20of%20India%20through,function%20boldly%2C%20efficiently%20and%20effectively.>> (accessed on 13-05- 2023)

⁷ *State of U.P. v. Babu Ram*, AIR 1961 SC 751

⁸ *Shamser v. State of Punjab*, AIR 1974 SC 2192

⁹ *Satis anand v. Union of India* AIR 1953 SC 25

protecting administrative officials and civil servants from such harshness and unreasonableness of the political heads. It is often referred to as a legal immunity granted to the civil servant in order to protect his position from being used improperly in legal or administrative proceedings against him¹⁰

According to Article 309 of the Indian Constitution, the Union and State Governments may each select civil servants, and the Parliament of India and State Legislatures may supervise and issue legislation and regulations governing those appointments. The clause also expressly states that the President or the Governor of the State has the authority to enact laws that may only be temporary in order to control and carry out such appointments, protecting the country from bad regulation and disappointment, until the provisions or laws regarding the aforementioned are made by the Parliament or any or all State Legislatures. Article 311 of the Indian Constitution provides specific rights for government servants. These protections are only applicable if the civil servant in question is a member of the union's civil service, an all-India service, the civil service of a state, or he holds a civil position under the union or the state, and if he is terminated, demoted, or otherwise lowered in status¹¹. If he is not a member of the civil service or the holder of a civil post under the union or a state government, the offered guarantee will not be available to him.

The process outlined in Article 311 is anticipated to provide some safeguards against the discretionary evacuation of a government worker, reduction to a lesser rank, and initially, a portion of tenure security to those covered by the Article who work for the government. These agreements are valid in a court of law. When Article 311 is violated, the disciplinary authority's demands are null and invalid, void ab initio, and in the eyes of the law, are "no more than a piece of wastepaper," and A government employee will be deemed to have continued in management or due to a reduction in rank, in his previous role throughout. An amendment to Article 310 is conceptualized in Article 311. Accordingly, the provisions of Article 311 govern and supervise the President's action of delight under Article 310.

¹⁰Yashraj, 'Constitutional provisions regarding civil servants in India'
<http://www.legalserviceindia.com/legal/article-2388-constitutional-provisions-regarding-civil-servants-in-India.htm> laccessed on 15-05-2023

¹¹ Niranjana Parida, 'Constitutional safeguards and protection of civil servants in India', [April 2020]
https://fastforwardjustice.com/constitutional-safeguards-and-protection-of-civil-servants-in-India-a-legal-study-relating-to-leading-cases-2/#_ftnref26 (accessed on 15-05-2023)

According to Article 311(1), the sector covered by this article is not subject to the application of the theory of pleasure since the president or governor's pleasure is governed by the specified regulations. The enjoyment must be enjoyed while adhering to the procedural protections outlined in article 311¹². Only when dismissal, removal, or rank reduction is used as punishment is Article 311 relevant, and it might be challenging to decide when termination of service or a rank decrease is used as punishment. The Supreme Court established criteria to decide when punishment-based dismissal should be used¹³. The purpose of this test is to determine two things: first, if the servant has the right to hold the position or rank, and second, whether he has suffered any negative outcomes.

Dismissal and Removal are not defined in the Indian Constitution. Therefore, as stated by the departmental Rules, even though there is no connection between the "expulsion" and the "excused" person's inability to be reappointed by the legislature. The standard for both disciplines is that both require corrective measures, such as giving up or delaying the right to remuneration, stipend, or benefits, and both are given for unfavourable behaviour, insufficient effort, or administrative failure. Reduced or downgraded ways of ranking, status or position unbound by forces or duties. Only the promoted person may return to the lower position from which he was elevated; a person appointed to a direct post is not permitted to hold a lower post that was not previously held by him¹⁴.

The termination of his employment or decrease in rank constitutes punishment if the government employee had a right to hold the position under the provisions of any service agreement or regulation controlling the services, in which case he will be entitled to protection under article 311¹⁵. Articles 310 and 311 apply to government servants, whether permanent, temporary, officiating or on probation¹⁶. The Order's simplicity has nothing to do with the respondent's leadership. It merely demonstrates that his agreement was illegal since it was

¹² Madhushri Sharma, 'doctrine of pleasure (article 310 and 311)' (ISSN NO. 2465 – 6470, volume 2 issue 5) IJTSRD < <https://www.slideshare.net/ijtsrd/doctrine-of-pleasure-article-310-and-311#:~:text=Constitutional%20safeguards%20to%20civil%20servants,2.>> (accessed on 15-05-2023)

¹³ *Parshottam lal Dhingra v Union of India AIR 1958 SC 36*

¹⁴ *Hussain Sasansaheb v State of Maharastra AIR 1987 SC 1627*

¹⁵ Madhushri Sharma, 'doctrine of pleasure (article 310 and 311)' (ISSN NO. 2465 – 6470, volume 2 issue 5) IJTSRD < <https://www.slideshare.net/ijtsrd/doctrine-of-pleasure-article-310-and-311#:~:text=Constitutional%20safeguards%20to%20civil%20servants,2.>> (accessed on 15-05-2023)

¹⁶ Supra Note 14

created without the prior approval required by the clever authority. The request is not discriminatory¹⁷.

The final request was given in violation of the standards of characteristic equity and Article 311(2) of the Indian Constitution on the off chance that there was any inconsistency in the arrangement cycle that might have been investigated by the division but without taking any action to any request. The court further determined that providing the respondent with an opportunity to be heard before the subject office request was issued was not a necessary condition and would be a fruitless endeavor. Because both have the right to keep a position, the termination of employment or decrease in rank of a contractual or permanent employee constitutes punishment and is covered under Article 311(2) of the Indian Constitution. In all circumstances, regardless of the order's format, if in order for an order against a worker holding a civil post to be lawful, it must be preceded by an inquiry and the reasonable opportunity protected by Article 311(2) if it amounts to "removal," "dismissal," or "reduction in rank."

A government servant is protected by the constitution under article 311, which states that they cannot be fired by a superior and must have a fair chance to be heard. A government employee shall be fired from his job in accordance with Clause 1 of Article 311 by the power that chose him or by another person who holds a position or rank equivalent to that of the power that appointed him. Therefore, no one who has the naming post may fire a government employee, even if they are superior to them in authority. The expulsion won't be valid unless he kills him. Government personnel have the right to be heard under Clause 2 of Article 311. By giving the government employee the opportunity to establish his innocence, this decision exemplifies the common equity rule. This provision guarantees a fair chance to be heard, but it doesn't specify what a fair chance is. It appears to be unclear protection when the definition of "reasonable opportunity" is not clarified since there is no way to tell whether a government servant had a reasonable opportunity or not. Thus, the concept of a reasonable opportunity should be interpreted similarly to that of natural justice.

1.4 Exceptions of Protection

Although Article 311 of the Constitution guarantees protection for their interests, there are several exceptions to this rule. The exemption to the defenses granted by section (2) is outlined

¹⁷ Union of India v Raghuwar Pal Singh AIR 2018 SC 463

in clause (a)(b)(c) of Article 311(2).

1.4.1 Conviction on a criminal charge:

There is no necessity to conduct an investigation as envisioned by Clause (2) of Article 311 of the Constitution when a government official is charged with crimes and found guilty of them. The laws governing disciplinary processes include provisions for it, and the disciplinary authority has the right to immediately impose any punishment on a public servant based on the behaviour that resulted in the conviction¹⁸. If a Civil Servant is found guilty by the Court, it is evident that disciplinary proceedings must follow him; but, even if he is declared innocent, a Departmental Enquiry may still be launched against him if his acquittal was not honourable¹⁹.

1.4.2 Impracticability:

The provision's clause (b) states that, in cases where the appropriate disciplinary authority is satisfied, the expert's reasons must be written down in hard copy. If the expert doesn't think it is logically practicable to give the person a chance to explain their actions, no such open-door need be provided. This declaration must be fulfilled by the person in a disciplinary position with the authority to exempt, remove, or lower the rank of a government employee.

1.4.3 Assurances of security

If the President determines that keeping a particular openly elected administration is detrimental to the security of the State, such administration may be removed under clause (c) of Article 311 (2) without following the standard procedure outlined in that provision. The President's emotional fulfilment regarding the pragmatism of denying the representative a chance because of a justifiable concern for the state's security is reflected in the proviso. This caveat does not require that the justifications for the fulfilment be written down in tangible copy. This shows that the President's use of force is unrestricted and cannot be justified since doing so would amount to substituting the court's fulfilment for the President's fulfilment.

¹⁸ MD. Anisur Rahman, 'Conceptual analysis of procedural safeguards of employment related interests of the civil servant in India' (International Journal of Marketing & Financial Management, Volume 6, Issue 2, Feb -2018, pp 62-72)

¹⁹ K. Venkateswarlu v. State of Andra Pradesh AIR 2012 SC 2955

1.5 Conclusion

The rights of government employees in government administration are so protected and upheld by Article 311 of the Indian Constitution against arbitrary exclusion, ejection, and rank reduction. Such assurance enables government personnel to effectively, efficiently, and stunningly unleash their talents. India's national security and general welfare are given priority above representatives' rights. Therefore, conviction for a crime, practicality, and expediency in the sake of state security are seen as exceptions. In Article 311, the legal adviser provided significant guidelines and justifications to clarify the legislation. The common administration can be strengthened by providing enough security of residency for government employees thanks to legislative requirements and holy agreements. However, instances in which these defensive measures are used may occur. Disciplinary actions taken by government divisions against corrupt officials are time-consuming. The order of 'sensible possibility of being heard' in departmental requests encompasses the Principles of Natural Justice, which is a more comprehensive and adaptable approach to obligate multiple norms on reasonable hearing. The courts have the authority to rescue the disciplinary processes on the basis of propensity and procedural flaws when the Principles of Natural Justice are violated.