

Civil Services & Status of Probationer

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STATUS OF PROBATIONER - HIS POSITION

- On Probation means on observation [a process of testing or observing the character or abilities of a person who is new to a role or job.] (True/False)..
- When we say that Mr.'X' is a probationer in the context of government service, what we exactly mean is that he is on trial(True/False).
- The question that arises is what kind of trial it is? The answer is his suitability or fitness is being assessed with reference to the service or post to which he has been appointed on probation (True/False).
- Article 311 has no application when the action proposed to be taken is not penal at all or is penal but not dismissal, removal or reduction in rank

1. Part XIV of the Indian Constitution deal with Civil Services. Do the Constitutions of most of the countries deal with Civil Services?
2. All persons who are members of the Defence Services do not hold office during the pleasure of the President (True/False)
3. Article 311(2) which places restriction on the pleasure is applicable only to the members of civil service and not defence services (True/false)
4. Provisions of Part XIV have application to a post held under local bodies like municipalities or Panchayats (True/false)
5. Provisions of Part XIV have application to posts held in statutory corporations (True/false)
6. MPs & MLAs do not get appointed to a post to be termed an employee unlike the PM, CMs and ministers (True/false)

1. Article 311 applies to a civilian employed in a defence department (T/F)
2. The relationship between the Government and its servant is like an ordinary contract of service between a master and his servant (T/F)
3. The origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules (T/F)
4. Such statute or statutory rules may be framed or altered by the Government unilaterally (T/F)
5. In the context of service when the relationship between the Employer and the Employee is regulated by Law, it is described as “Status” (True/False).

- Article 311(2) is silent about minor punishments and therefore, not applicable with respect to minor punishments like censure, withholding promotion and withholding increments (**True/False**).
- A temporary Government servant is entitled to the protection of Article 311(2) where the termination is by way of dismissal or removal on account of misconduct (**True/False**).
- If a Government servant is suspended, can he claim the constitutional guarantee of reasonable opportunity (Article 311(2))?
- With respect to members of the All India Services, penalties of dismissal, removal or compulsory retirement can be imposed only by the Government of India and not by the State Government (**True/False**).
- With respect to members of the All India Services, an appointment to a post under the Union is considered as on deputation (**True/False**).
- Members of the All India Services can be suspended for only 30 days without initiating DP or obtaining the approval of the Central Govt (**True/False**).
- Dismissal disqualifies the dismissed employee from reemployment, but removal does not disqualify him from reemployment (**True/False**).

Doctrine of pleasure in the Indian context

- The Civil Services in India are modelled upon the British pattern, though there are important differences between the two. ***The doctrine of pleasure has been adopted in India subject to certain exceptions, that is, in a modified form.*** The rigour of the British concept of “Doctrine of Pleasure” has been toned down in India.
- Here, in India, a ***Govt. servant holds his office during the pleasure of the President or the Governor,*** as the case may be - President if he is an employee under the Central Government and Governor, if he is an employee of any State Government. ***There are restrictions imposed upon the doctrine of pleasure in India.***

Restrictions on the Doctrine of Pleasure

The doctrine of pleasure is subject to the safeguards provided by Article 311. In other words, Art. 311 is a proviso to Art.310 (1).

The doctrine of pleasure is controlled by the Fundamental Rights.

There are certain constitutional functionaries who do not hold their offices during the pleasure of the President or the Governor, such as Judges of the Supreme Court and High Courts, the Chief Election Commissioner, Election Commissioners and Regional Commissioners and the CAG.

Safeguards of Article 311- an outline

- (1) No dismissal or Removal by authority subordinate to appointing authority.
- (2) **No dismissal or removal or reduction in rank.**
without inquiry in which :-
 - (i) **charge should be communicated** to the Government Servant concerned.
 - (ii) he and she should be given **reasonable opportunity of being heard in respect of charges**, and
 - (iii) **penalty may be imposed on the basis of evidence adduced during such inquiry.**

Exceptions where Inquiry as enjoined under Article 311(2) may be dispensed with

1. Where a person is dismissed or reduced in rank on the ground of **Misconduct which has led to conviction on criminal charges** {clause(a) of Article 311(2)}
2. Where in the **interest of the security of state, it is not expedient** to give such an opportunity to the civil servant {clause(b) of Article 311(2)}
3. Where it is **impracticable to give the civil servant an opportunity to defend himself** but the authority taking action against him shall **record the reasons for such action**{clause(c) of Article 311(2)}

Termination

- **DISCHARGE**

Unsuitable/Unfit

(ABILITIES/CHARACTER needed for the service)

Recommendation by Director on the basis of record-Summary Enquiry by CG- Discharge by CG.

- **DISMISSAL/REMOVAL**

Misconduct/Stigma(mark of disgrace)

Disciplinary Proceeding by Academy

Dismissal/Removal by Central Government

Article 311(2) applies only for dismissal/removal(not for censure/fine/extending probation)

Misconduct can be a reason for discharge and not the sole reason

LIEN

1. Job Security
2. **Only for Permanent** Employees
3. **No benefits** carried from Previous Employment

- ✓ State Govt. to Central Govt
- ✓ Public Corporations to Central Govt

TECHNICAL RESIGNATION

1. Job Security/with ifs/buts
2. Temporary Employees also
3. Benefits carried from Previous Employment (Past Service /LTC /Gratuity/EL)

- (X) State Govt. to Central Govt
- (X) Public Corporations to Central Govt

- Article 311 to whom it applies:-

- (a) a member of an All India Service.
- (b) a member of a civil service of the Union.
- (c) a member of a civil service of a State.
- (d) **a person who holds a civil post under the Union or a State.**

Article 311 does not apply to

- (a) a civilian employed in a defence department.
- (b) an employee of a statutory corporation like LIC, Food Corporation of India etc. or of a Government Company.
- (c) Defence Personnel.

DEEMED SUSPENSION

- A Government servant shall be *deemed to have been placed under suspension* by an order of appointing authority -
 - (a) with effect from the date of his detention, if he is **detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours**;
 - (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is **sentenced to a term of imprisonment exceeding forty-eight hours** and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction

Cadre Clearance Certificate

- Cadre Controlling Authority=the Government of India in the Ministry of
- Officers applying to (1)deputation posts,
- (2)foreign training and
- (3)private foreign visits.
- (4)voluntary retirement and
- (5)resignation of US and above level officers.

No vigilance case is pending/contemplated

No Major/Minor penalties (in a DP)imposed upon the Officer in the last 10 years

Integrity Certified as beyond doubt

Vigilance Clearance/Integrity Certificate

- Empanelment (ascertained from State Govt)
- Promotion
- Pension
- Appointment to Sensitive Posts
- Assignments to Training Programmes (Not mandatory Training Programmes)
- Premature Repatriation to the Cadre
- Any deputation to which clearance is required

NO= 3 Years after (currency) minor penalty imposed

NO=5 years after (currency) major penalty imposed

VC denied if Annual Immoveable Property Return is not filed

Fundamental Rights and the Government Servants

- Article 33 authorizes the Parliament to abrogate or restrict fundamental rights in their application to certain categories of Govt. servants as specified therein, namely, members of the armed forces such as Army, Navy, Air Force, Police Force charged with the maintenance of public order and persons employed in any Bureau or any Organization established by the State for the purpose of intelligence and counter-intelligence, and persons employed in connection with telecommunication systems such as Intelligence Branch of the Govt. of India, RAW, IB, SSB (Special Service Bureau) and the wireless department attached to any police organization
- If you check up Army Act, Navy Act, Air Force Act, you will find instances of abrogation or restriction of fundamental rights in respect of defence personnel

Broad outline of the Chapter I of part XIV (Civil Services) of the Constitution

- Chapter I contains seven articles, of which Articles 309, 310, 311 and 312 are the most material. They deal with matters as indicated below:
- **Art. 309** - It itself makes no provision for recruitment or conditions of service of Government servants but **confers powers upon the appropriate legislature to make laws** and upon the President and the Governor of a State to frame rules in respect thereof.
- **Art. 310** - It relates to the **tenure of office of the members of the defence services and of civil services** and **accords constitutional sanction to the doctrine of pleasure**.

Broad outline of the Chapter I of part XIV of the Constitution

- Art. 311 - It provides for *certain safeguards to persons employed in civil capacities* under the Union or a State but not to members of the defence services.
- Art. 312 -It *refers to the All India Services*. It speaks of how a new All India Service may be created. It also *authorises the parliament to make Law regulating the recruitment to and conditions of services of the members of the All India Services*.

Conditions of Service-What do they mean?

- All those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. The various conditions are-- Salary, Increments, Efficiency Bar, Leave, Transfer, Probation, Confirmation, Promotion, Deputation, **Lien, Technical Resignation, Retirement, Pension, Gratuity, Conduct, Suspension, Tenure, Termination, Disciplinary Proceedings, Subsistence Allowance and Punishment.** This list is not exhaustive but it is only illustrative.

Basic Characteristics of the All India Services

- a. Members of the All India Services are common to the Union and the States.
- b. Each member of an All India Service is allotted to a particular cadre.
- c. The Cadre exists in the State and not at the centre.
- d. They are an additional agency of Central of the Union over the States.
- e. His appointment to a post under the Union is considered as on deputation.

Basic Characteristics of the All India Services

- f. All India Services are regarded also as instruments for “National Integration”.
- g. Members of the All India Services are subject to disciplinary control of the Government of India and also to the State Government if the alleged misconduct is committed while serving the State Government. However, penalties of dismissal, removal or compulsory retirement can be imposed only by the Government of India and not by the State Government.

Grant Vigilance Clearance

- Vigilance Clearance is an instrument to certify whether an employee is involved in any misconduct or criminal offence
- On a complaint cannot be denied unless the concerned Department has *prima facie*, substance to verifiable allegations regarding
 - 1) Corruption
 - 2) Possession of assets disproportionate to known sources of income
 - 3) Moral turpitude
 - 4) Violation of the conduct rules

VC shall not be withheld unless...

1. The officer is under suspension.
2. A chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending
3. Chargesheet has been filed in a Court by the Investigative Agency in a criminal case and the case is pending
4. Sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter.
5. The officer is involved in a trap/raid case on charges of corruption and investigation is pending

Review of Suspension

- Beyond 90 days extending or revoking on the recommendation of the Review Committee constituted for the purpose.
- Subsequent reviews shall be made before expiry of the extended period of Suspension.
- Extension of Suspension shall not be for a period exceeding 180 days at a time.

AIS Officers =Suspension 30 days

- where a State Government passes an order placing under suspension a member of the Service against whom disciplinary proceedings are contemplated, such an order shall not be valid unless, before the expiry of a period of thirty days from the date from which the member is placed under suspension
- ***either disciplinary proceedings are initiated against him or the order of suspension is confirmed by the Central Government.***

Period of Suspension(AIS[Discipline & Appeal]Rules, 1969)

- The period of suspension of a member of the Service on charges other than corruption shall not exceed **one year**.
- The period of suspension of a member of the Service on charges of corruption shall not exceed **two years**
- *and the inquiry shall be completed and appropriate order shall be issued within two years from the date of suspension failing which the suspension order shall automatically stand revoked*

Vigilance Clearance

- Vigilance Clearance is an instrument to certify whether an employee is involved in any misconduct or criminal offence like demand/ acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position involving vigilance angle and violation of any of the provisions of Conduct & Discipline Regulations

Concepts

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SI. No.	CRIME	CIVIL WRONG
1.	<p>Ingredients=</p> <ol style="list-style-type: none"> 1. Act or Omission 2. Guilty Intention (Mens Rea) 	<p>Ingredients=</p> <ol style="list-style-type: none"> 1. Act or Omission 2. Injury (Infringement of a legal right)
2.	Focus= Accused and his intention	Focus= Victim and his injury or his right
3	Redress= Punishment	Redress= Compensation or some other but not punishment

Caselet 1:

- On April 4th, 2024, Raghav, along with his wife Yamini Priya and her two younger sisters, visited a beach. While the others preferred to stay on the shore, Yamini Priya was thrilled and decided to take a dip in the sea. Despite Raghav's warning to his wife, "Yamini, sea thrills but kills," she entered the sea. Subsequently, Yamini Priya found herself in a dangerous situation, unable to extricate herself and began crying out for help. Despite earnest pleas from Yamini Priya's sisters, Raghav did not attempt to assist his wife. Unfortunately, she drowned and died. Interestingly, Raghav is a proficient swimmer, having gained recognition by winning several swimming competitions. Has Raghav committed any wrongdoing by failing to help Yamini Priya?

Caselet 2:

- Rajani and Subhash are wife and husband living in Delhi. Both are Hindus. Subhash wanted to marry another girl named Roja. Subhash and Roja have decided to marry in Dehradun on 11/06/2024 at 11:00 a.m. without Rajani's knowledge. In Delhi, Rajani met with an accident and died on the spot on 11/06/2024 at 10:50 a.m. The marriage was performed at 11:00 a.m. Has Subash committed any wrong and if it is a wrong whether it's a crime or a civil wrong?

Caselet 3:

• In the ticket counter of a Cinema Theatre, there was an altercation between Suresh and Dharm, who were not acquainted with each other at that time. Consequently, Dharm became so impatient that he punched Suresh in the stomach, resulting in Suresh's death. Both are young men around 25. Is Dharm guilty of murder or culpable homicide?

Navjot Singh Sidhu's case:

- Sidhu (aged 25 in 1988), along with his friend Sandhu, was accused of assaulting and causing the death of a 65-year-old man named Gurnam Singh. The trial Court acquitted both on the ground that they were falsely implicated. However, the High Court reversed the verdict of the trial court and held both guilty of culpable homicide not amounting to murder for the death of Gurnam Singh and awarded a punishment of 3 years imprisonment. Both the convicts then appealed in the Supreme Court of India. In Appeal, the Supreme Court convicted them but only levied a fine of ₹1,000 without any imprisonment, stating that "there was no evidence to prove that the death was caused by the single blow" dealt by Sidhu. The court mentioned that Sidhu did not use a weapon. The complainants filed a review petition in the Supreme Court. In the review, the Supreme Court convicted him (on 19th May 2022) for voluntarily causing hurt (Section 323 of the Indian Penal Code) and sentenced him to 1-year rigorous imprisonment. Section 323 (punishment for voluntarily causing hurt) of IPC had a maximum jail term of up to one year or a fine up to Rs 1,000 or both.

Caselet 4:

- Chotu, a six-year-old child, was with his mother in an aquarium when he threw a ball with a lot of force at a fish tank (glass showcase), causing it to shatter. Consequently, the showcase was destroyed, and a few expensive fish died before they could be transferred to another safe tank. Does the child's action constitute a crime or a civil wrong and does his wrongdoing invite liability?

Caselet 5:

- Anand was a qualified voter in a parliamentary election, but Bikram, the returning officer, prevented Anand from exercising his franchise. In fact, no loss was caused to Anand by such prevention because the candidate for whom he wanted to vote, won the election with a huge margin. Furthermore, one vote does not matter. Is there a crime or a civil wrong committed by Bikram, and what about Anand's remedy?

Caselet 6:

- Amod had worked with Dev Medical Shop, owned by Dev, for around 19 years, but he was dismissed from service on 23.02.2024 by Dev due to Amod's misbehavior. In June 2024, Amod started another medical shop named Amod Medical Shop, right opposite Dev Medical Shop, after obtaining all necessary permissions. As a result, the profits of Dev Medical Shop halved in the months of June, July, and August. Now, Dev has brought an action in the Court of Law against Amod for the loss of his profits, alleging that Amod Medical Shop was started with an evil or a bad motive with a vengeance to cause loss of profits to Dev Medical Shop and thus sought an order from the Court directing Amod to compensate Dev for the loss caused as well as to restrain Amod from carrying on the medical shop business, which he has been conducting.

Caselet 7:

- Snoopy is a pet dog of Jaiveer. Snoopy has a vicious or savage propensity (dangerous and harmful by nature), and Jaiveer is aware of this fact. Every day, around 7 A.M., Jaiveer takes his pet dog for a walk. On 1-6-2024, Jaiveer, as usual, was taking Snoopy for a walk. Snoopy was tied to a chain, and Jaiveer had control over the chain. There was a call on Jaiveer's mobile phone, and while answering the call, Jaiveer carelessly left the chain, thus losing control of Snoopy. Before Jaiveer could regain control of Snoopy, it attacked Naresh, a passerby and caused hurt. Discuss the liability of Jaiveer.

Caselet 7

- Situation 2 Caselet 7: What would be the nature of wrong if Naresh is attacked by Snoopy on the instructions of Jaiveer.
- Situation 3 Caselet 7: A delivery boy went to deliver a parcel to someone on the fourth floor and suddenly found himself in the presence of a ferocious dog. He jumped from the fourth floor and died as a result. Discuss whether, in such circumstances, it constitutes a crime or a civil wrong.

Domestic Violence Act 2005

- The remedies envisaged under the Domestic Violence Act 2005 Act, are that of the power of the court to pass *“protection orders”* *“residence orders”*, (providing for woman's right to secure housing) *appointment of Protection Officers and NGOs* to provide assistance to the woman with respect to medical examination, legal aid, safe shelter, etc.

Pornographic Stuff

- **Downloading or watching pornography in a private space is a crime (True/False).**
- **Storing pornographic stuff per se (by itself) is a crime (True/False).**
- **Uploading, transmitting pornographic stuff is a crime (True/False).**

SCIENTER RULE

- For the purpose of the scienter rule, the animals have been divided into two categories: (a) animals dangerous by nature (Lions, tigers, bears, elephants, zebras, monkeys etc.,) (b) animals harmless by nature (Horses, camels, cows, dogs, cats, rabbits etc.,). In case of dangerous animals, the knowledge as to its dangerous nature is conclusively presumed and the person having their control will be liable for the damage caused by their escape even without any proof of negligence on his part. With respect to animals harmless by nature, the person having their control (keeper of the animal) is not liable for damage done by them unless it can be proved that the particular animal in question had a vicious or savage propensity and the person having its control had knowledge of the same.

Burden of Proof

- ✓ **CRIMINAL CASES**= Burden on Prosecution
- ✓ **CIVIL CASES**=Burden on Both Parties to prove
- ✓ **CRIMINAL CASES**= Prosecution's burden is to prove the guilt beyond reasonable doubt

Accused's burden = is just to create a doubt about his innocence

- ✓ **CIVIL CASES**= Court determines on the basis of preponderance of probabilities whether a party has proved (WEIGHT in terms of QUALITY)
- ✓ **CRIMINAL CASES**= Conviction Rate low because of the operation of these principles(100 let free)

Caselet 1:

- **On June 12, 2024, Ankit was insulted by Bablu in the presence of Ankit's colleagues, including physically assaulting him, for not repaying a debt Ankit owes to Bablu. Ankit decides to retaliate by planning to kill Bablu. For this purpose, he purchases a knife and writes a letter to Kumar, his brother, stating his determination to kill Bablu. Before the letter is posted, Ankit's roommate happens to read the letter and hands it over to the police. Is Ankit liable for committing any offence?**

Stages of crime

- Intention: Not necessary for waging war /sedition
 - Preparation
 - Attempt
 - Commission

Preparation

- i) Preparation to commit Dacoity
- ii) Waging war (Max P=Life)
- iii) Preparation for counterfeiting coins and government stamps;

Conspiracy [Ss.61(1)(2)]

- Conspiracy basically means *an agreement between two or more persons to commit an unlawful act.*
- Thus, the conspirators must actively agree and prepare themselves to commit that offence, it becomes a conspiracy. Furthermore, *the act which the conspirators conspire to commit itself must be illegal or punishable.*
- ‘Conspiracy’ consists in the agreement of two or more persons to do an unlawful act *or to do a lawful act by unlawful means (Giving a house/job for money)*

Caselet 1:

- **Trivikram and Akram own land next to each other. But they've been disputing vigorously lately about where their land ends. On May 23, 2024, they started arguing and insulting each other again. While they were arguing, Trivikram's friend Vikram placed an axe in the hand of Trivikram. But other neighbors stepped in and stopped the fight between the two of them, so the quarrel stopped for the day. Discuss the criminal liability of Vikram.**

Caselet 2:

- **Trivikram and Akram own land next to each other. But they've been disputing vigorously lately about where their land ends. On May 23, 2024, they started arguing and insulting each other again. While they were arguing, Trivikram's friend Vikram placed an axe in the hand of Trivikram. No one interfered between the two, and Trivikram used the axe to kill Akram and murdered Akram. Discuss the criminal liability of Vikram**

Caselet 3:

- Trivikram and Akram own land next to each other. But they've been disputing vigorously lately about where their land ends. On May 23, 2024, they started arguing and insulting each other again. While they were arguing, Trivikram asked his friend Vikram to give him an axe which is there a little far at a certain place mentioning the place where the axe is there. Vikram brought the axe and gave it to his friend Trivikram. However, other neighbors stepped in and stopped the fight between the two of them, so the quarrel stopped for the day. Discuss the criminal liability of Vikram

CASE STUDY

- The marriage of Saroj Rani and Sudarshan Kumar took place in March 2021. Both are high caste Hindus belonging to Telangana. The marriage was not registered. Sudarshan Kumar is a Hardware engineer in a Private Company at Hyderabad. Saroj Rani was born in January 2005 and Sudarshan Kumar was born in December 1998. Saroj Rani was quite unhappy with Sudarshan Kumar from the beginning and in fact in December 2021 she left the husband's house without even informing Sudarshan Kumar and started living with her parents in Warangal. Sudarshan Kumar repeatedly requested Saroj Rani to come back and join him mentioning his right for restitution of conjugal rights under section 9 of the Hindu Marriage Act, instead she sent a “consent and no objection letter” for his second marriage requesting him to marry another woman and not to pester her any more.

Case Study

- In August 2023, Sudarshan Kumar made a proposal to one of his colleagues Mini (also a Telugu and a Hindu) explaining the situation and asking her to be his companion. She consulted her parents and agreed to the proposal, after which, both have exchanged garlands in a temple before a small gathering of relatives of Sudarshan Kumar and Mini. They started living together and Mini gave birth to a child in October 2024. Saroj Rani has lodged a complaint in January 2025 against Sudarshan Kumar alleging that he has committed the offence of bigamy as well as filed a petition for maintenance under the B NSS, 2023.

Ascertaining various sources of law:

1. Law governing registration of marriage =Legislation
2. Law governing child marriage= Legislation
3. Law governing 'restitution of conjugal rights'= Legislation
4. Law governing 'consent and no objection letter for the second marriage'=Precedent
5. Law clarifying the various rites and rituals of marriage=Custom
6. Law clarifying whether exchange of garlands by Hindus constitute marriage= Precedent
7. Law governing legitimacy of a child born out of void marriage is legitimate= Legislation
8. Law governing maintenance of a wife by the husband under the BNSS = Legislation