

Civil Services under the Constitution

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.

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

- **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)

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. No Job Security
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