

INDIAN JOURNAL OF LEGAL REVIEW



VOLUME 3 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



Indian Journal of Legal Review [ISSN - 2583-2344]

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 3 and Issue 1 of 2022 (Access Full Issue on – <https://ijlr.iledu.in/volume-3-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>



CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS

Authors: ALEENA MARIA MONCY, Student of Christ (Deemed to be University)

BEST CITATION - ALEENA MARIA MONCY, CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 3 (1) OF 2023, PG. 134-140, ISSN - 2583-2344.

ABSTRACT

In this evolving era, there has been an increase in the demand for civil servants where special emphasis on the conduct of civil servants has been given. The rules and legislations concerning the conduct and safeguards for civil servants has been an issue of concern where various developments have been made based on changing conditions. This paper focuses on the constitutional safeguards concerning civil servants where the rules, regulations, legislations and so on are discussed. The researcher has emphasized on various processes like disciplinary proceedings where an in-depth analysis on the same has been done with the help of different case laws. As civil servants have an integral role in the overall functioning of the society, the significance of safeguarding their interest has been studied considering the surrounding circumstances. The services made available to people by the civil servants as per their needs and requirements are regulated through use of effective rules and laws. The main focus of the researcher is on the safeguards provided to the civil servants where apt measures are taken to enhance the overall functioning of the system.

The processes concerning administrative officials and civil servants have been discussed in this paper where the researcher has analyzed various instances to explain the functions and operations carried out by such authorities. Here

the researcher has analyzed various conditions in which the dismissal or removal of civil servants can be done along with other exceptions to get a clear idea on the same. As there is a significant role for the civil servants in the present society, the researcher has analyzed the concept with the help of different case laws and legal provisions to develop an enhanced understanding about the services provided by civil servants. In this paper, various provisions in the Constitution of India have been analyzed to understand the application of the same with exceptions. The changes in the nature of the civil services can have an impact on the overall functioning of various systems in the society which is carefully analyzed to conduct a better study on various related aspects.

KEYWORDS

Safeguards, constitutional remedies, authority, civil servants

INTRODUCTION

The administrative officials and civil servants have an integral role in the development process of the country where various changes are made based on the changing society based on the needs of the people. They focus on the overall welfare of the people along with the betterment of the society by the efforts put forward by the authorities and officials in specific domain. The security provided to administrative officials and civil servants have been one of the common issues in discussion since a long time as the services provided by them have a significant place in the overall development of the country. The administrative team in the country work together with the civil machinery to manage various systems focused on the development of the nation.

While analyzing the members coming under the term "civil servant," the members in the civil service at the centre and state, members involved in India service, and those members

holding civil post²³³ under the centre or state are included. The people involved in the administration of the union and states comes under the head of civil servants and other officials who have been entrusted with the duty to regulate overall functioning.

CIVIL SERVANTS AND ADMINISTRATIVE OFFICIALS- AN OVERVIEW

While dealing with the role of civil servants, their position in the society is an extremely desired one in the country. Administrative officials and civil servants or bureaucrats can be considered as the backbone of the government in any country. In this modern society, if the role of government is said to be limited to development of laws and policies, the civil servants can be defined as those implementing such laws and policies in the required manner. The main function of civil servants is to ensure that the laws are regulated as per the needs of the people for the smooth functioning of the overall nation.

This execution of laws done by the officials help in better development of society where the functions concerning different systems are carried out in a smooth manner. The meaning of the term "civil post" needs to be carefully analyzed while dealing with the duties and role of civil servants in the society. Civil post is often described as "an office concerning the civil side of the administration"²³⁴ which tells about the civil aspects in the society. As per Article 311 of the Indian Constitution, the protection provided to civil servants²³⁵ is carefully mentioned where those officials holding civil post is given adequate protection from different aspects. Apart from the constitutional safeguards, various committees have been formed to regulate the working conditions of the civil servants as per the need of the society. In *State of Uttar Pradesh v. AN Singh*²³⁶, it was held that

the employer has rights and duties regarding appointing the employees, controlling different functions and so on where the relationship between the employer and employee was established.

Independence of civil services

The independence of those involved in civil services has been a constant point of concern which was often mentioned regarding the process of policy-making and other responsibilities of the civil servants. The functioning of civil services has had a huge impact based on such changes in the society where the involvement of different components has resulted in different outcomes²³⁷. In various instances, different leaders have expressed their opinion on all India services where their right to involve in various functions in the society has been discussed. It can be said that the all-India services are functioning in an effective manner only when there is independence to express their views on different decisions and ideas in the society.

CONSTITUTIONAL REMEDIES AND SAFEGUARDS IN INDIA

The provisions concerning the safeguards and protection provided to civil servants have been carefully mentioned in the Indian Constitution where a certain degree of security is made available to such officials in various instances. Article 311 of the Constitution puts forward a procedural safeguard which has been given importance since the introduction of administrative services in India. In *Purshottam Lal Dhingra v. Union of India*²³⁸, the court held that the protection made available to civil servants under Article 311 includes civil servants who are permanently and temporarily employed in various domains.

The civil servants are provided with certain important constitutional remedies and

²³³Constitutional Law: Civil Servants and the Right to Engage in Political Activity, 22 IND. L.J. 246 (1947)

²³⁴ M P Jain, Indian Constitutional Law 1482 (7th ed. 2014)

²³⁵ Article 311, Constitution of India 1950

²³⁶ State of Uttar Pradesh v. AN Singh, 1965 AIR 360

²³⁷ Supra Note 1

²³⁸ Purshottam Lal Dhingra v. Union of India, 1958 AIR 36

safeguards along with the constitutional status given under Article 308 of the Indian Constitution. Such constitutional safeguards are provided to civil servants as per Constitutional provisions to enhance the confidence of the public on the civil services. This confidence can be maintained along with ensuring that the civil servants can carry out their functions without any kind of removal in an unjust manner. It helps in giving confidence to the public and the civil servants at the same time where various functions and operations can be done in an effective manner.

Constitutional provisions relevant to civil services

Various provisions in the Constitution of India have been discussed regarding civil services where the powers made available to officials are mentioned. Part XIV of the Indian Constitution deals with the services provided to people under the Union and the State. Such provisions talk about the important services provided to customers with the help of civil servants who functions according to the interest of the public. As per Article 309 of the Constitution, the appointment of persons to public services is done by the Parliament and the State Legislature²³⁹ where they have been given specific powers for the same. The provision dealing with the All-India Services in Article 312 where various aspects concerning the services and the authorities involved in it is discussed²⁴⁰.

An Insight into Article 311 (1) and (2) of the Indian Constitution

While dealing with the main constitutional provision concerning civil servants, two main conditions are specified under Article 311 focused on the opportunities made available to people. As per Article 311 (1) of the Constitution, it has been mentioned that those who are

members of a civil service or holds a civil post shall not be dismissed or removed by any subordinate authority to which the person was appointed²⁴¹. In continuation to this provision, it has further stated in Article 311 (2) that an inquiry must be conducted along with a reasonable opportunity to be heard to dismiss or remove or reduce in rank²⁴² as per the nature of the situation.

Different tests were put forward to determine whether a person come under the head of civil servant based on certain important factors. In *State of UP v. AN Singh*²⁴³, different tests were discussed as a qualification criterion for the civil servants which includes the presence of a master-servant relationship, state being the selecting and appointing authority and payment or salary given to the civil servant being done from the treasury of the state. Various instances talks about the application of Article 311 based on the nature of each case. In *Shyam Lal v. State of Uttar Pradesh*²⁴⁴, it was held that compulsory retirement done by a government employee will not come under dismissal or removal and hence no action can be taken as mentioned under Article 311 (2).

Important features of Article 311 of the Indian Constitution- Judicial Perspective

The essential features concerning the clauses of Article 311 of the Constitution talks about the application of various rules and regulations for the smooth functioning of the entire system. The protections mentioned under Article 311 must be analyzed along with exceptions to ensure that no unfair or unjust treatment is done in any manner. The important features of Article 311 are the following:

- **Applicable only to civil servants**
In *VK Nambudri v. Union of India*²⁴⁵, it was held that all the defenses and other

²³⁹ Article 309, Constitution of India 1950

²⁴⁰ Malcolm Wallis, Judges: Servants of Justice or Civil Servants, 129 S. A. L.J. 652 (2012)

²⁴¹ Article 311 (1), Constitution of India 1950

²⁴² Article 311 (2), Constitution of India 1950

²⁴³ Supra Note 4

²⁴⁴ Shyam Lal v. State of Uttar Pradesh, AIR 1954 All 235

²⁴⁵ VK Nambudri v. Union of India, AIR 1961 Ker. 155

safeguards made available to the civil servants will not be applicable to other employees who are not civil servants as Article 311 is specifically applied for civil servants.

- Inquiry and opportunity of being heard**
As mentioned in Article 311 (2), it is important to conduct proper inquiry before finalizing the dismissal or removal of the civil servant. In addition to it, the civil servant needs to be provided with reasonable opportunity of being heard to ensure that the person is not punished in an unfair or unjust manner. If a person is not provided with the opportunity of being heard then Article 14 of the Indian Constitution and principles concerning *Audi Alteram Partem* is being violated along with other principles of natural justice²⁴⁶. In *Khem Chand v. Union of India*²⁴⁷, the Supreme Court emphasized on the importance of the opportunity of being heard in any kind of situation.

Exceptions to the protection of civil servants

The protection provided to the civil servants under Article 311 to ensure that the interest of the officials and the public at large is fulfilled comes with certain exceptions based on certain conditions. When such exceptions come up, the civil servant cannot claim any kind of protection regarding inquiry or opportunity to be heard based on the facts and circumstances of the case. The important provisions dealt under the legal provisions regarding protections and safeguards to civil servants are the following:

- Conviction on a criminal charge**
The opportunity of being heard will not be made available to the person if the person has been convicted for any offence under the criminal law and is held liable for the same. If such a civil servant is found guilty for a criminal offence, the person can be removed

from the position for misconduct without giving any chance to be heard.

- Inquiry is not practicable reasonably**
While looking into the allegations raised against a particular civil servant, if it is found that the inquiry cannot be conducted in the required manner then the inquiry will not be conducted for the case. In *Union of India & Anr. v. Tulsiram Patel and Others*²⁴⁸, the scope of this exception concerning inquiry was explained where the perspective of a reasonable man needs to be considered while dealing with such inquiry related issues.
- Inquiry which is not in the interest of state**
In *Union of India & Anr. V. MM Sharma*²⁴⁹, it was held that a civil servant can be terminated from service in the interest of security of the state based on the facts and circumstances of the case.

Purpose of constitutional safeguards

The main objective behind the constitutional safeguards is to avoid any kind of removal or dismissal of civil servants without any reasonable cause or justification. Such constitutional safeguards help in protecting the bureaucracy from any kind of unnecessary political interferences to ensure that the functions can be carried out effectively in an independent manner. The welfare schemes and other public interest developments can be carried out through such safeguards which will prevent any kind of influences which can disturb the overall process. In *Om Prakash v. State of Uttar Pradesh*²⁵⁰, the court held that in case if the dismissal of the civil servant is found to be unlawful or unfair, the person will be eligible to get the salary from the date of dismissal to

²⁴⁶ Justice Brijesh Kumar, Principles of Natural Justice, 3 JTRI Journal (1995)
²⁴⁷ *Khem Chand v. Union of India*, AIR 1958 SC 307

²⁴⁸ *Union of India v. Tulsiram Patel*, AIR 1985 SC 1483

²⁴⁹ *Union of India & Anr v. M.M. Sharma S.L.P (C) No. 9032 of 2011.*

²⁵⁰ *Om Prakash v. State of Uttar Pradesh*, Appeal (Crl.) No. 629 of 2006

ensure the prevention of arbitrariness within the systems²⁵¹.

Civil servants appear as one of the important reflections of the government that can be approached by the general public to function effectively. The increase in the role of the civil servants in the functioning of the government since Independence has resulted in the overall improvement of various systems. The constitutional provisions and judicial decisions in support of protection of civil servants helps in maintaining their position and enhance the quality of civil services made available to the public at large²⁵². The main purpose behind the provisions under Article 311 are the following:

- It provides enhanced protection against any kind of corruption activities which can lead to the dismissal or removal of honest employees in an arbitrary manner. Such cases where the officials are innocent, it is important to protect their honesty and integrity to maintain the confidence of the public and officials.
- The civil servants who have been framed for a particular act can approach either the State or Central administrative tribunal for getting apt remedies and for effective redressal process.

DOCTRINE OF PLEASURE

The origin of one of the important doctrines focused on civil servants, Doctrine of Pleasure, can be seen in England in the form of a common law rule. The latin phrase "*durante bene placito*" which means "during pleasure" forms one of the parts of the origin of the doctrine which was focused on the British Crown. The introduction of civil services in India was during the time of British rule where the rules and regulations put forward during that time was based on the needs of the country.

²⁵¹ Ekta Gahlawat, Accountability of Civil Servants under Indian Laws: A Critical Analysis, 12 INDIAN J.L. & Just. 123 (2021)

²⁵² Batemo Tom Junior, Enforcement of Civil Servants' Human Rights: An Overview, 4 INDIAN J.L. & Just. 1 (2013)

The civil services obtained Constitutional status after Independence where an influence of the laws of England can be seen on the Indian laws. If the doctrine of pleasure is explained in simple terms, it can be said as the situation where the civil servants serve at the pleasure of the crown where they will be considered as the servants of the crown.

As per Article 310 of the Indian Constitution, it has been mentioned that the civil servants shall hold office during the pleasure of the President or Governor²⁵³ as per the nature of the existing situation. The significance of the doctrine of pleasure can be seen by the actions of the courts where it has been justified when dealing with the cases of public interest and public good. The importance of principles of natural justice can also be seen while dealing with such aspects where the need to follow the inquiry process along with providing opportunity to be heard has been given to the civil servants.

Significance of doctrine of pleasure

The idea of doctrine of pleasure has gained a lot of importance in India even though it was adapted from the English law during the earlier days. In India, this doctrine is practiced under the authority of the President where the civil servants can be dismissed at any time based on the need of the situation. The privileges or pleasure enjoyed by the President, Governor or the Government of India is not absolute where the pleasure exercised by them is having certain restrictions and limitations as per the provisions of Constitution of India²⁵⁴. Certain posts are excluded from the operation of this doctrine of pleasure which includes the Judges of the Supreme Court, Judges of the High Courts, Chief Election Commissioner and the Comptroller and Auditor General of India. Article 310 of the Indian Constitution which is commonly known as the doctrine of pleasure is interlinked with Article 311 in various aspects

²⁵³ Article 310, Constitution of India 1950

²⁵⁴ Om Prakash Motiwal, Doctrine of pleasure and the services in Indian Constitution, 9 Sage Journals 1 (1963)

where separate domains are observed for effective application.

As civil servants have a dignified status in the society, it is important to ensure that their actions are controlled and regulated in the required manner through proper scrutiny and analysis. Such an office attracts various responsibilities and obligations which needs to be fulfilled for the satisfaction of the interest of the people. The concepts of public interest and development of welfare of the people are the important aspects which needs to be considered and maintained throughout different systems in different domains for better outcomes. The legal provisions, case laws, doctrines and so on must be carefully analyzed to get a clear idea on the overall functioning of the government and the society.

ANALYSIS

The constitutional safeguards made available to civil servants help in the effective functioning of government systems where apt measures can be taken based on the need of the case. While such protection is provided to officials, it is important to ensure that the enjoyment of rights should be done with certain limitations to prevent any kind of misuse arising out of the same. As the role of officials continue to increase with time, the rules and regulations made regarding their duties and functioning needs to be considered with utmost importance. The impact of doctrine of pleasure on the constitutional safeguards also needs to be considered while dealing with the changing aspects in the existing framework.

Even though the administrative officials and civil servants are given certain rights and privileges in the form of different rules and safeguards, there is a need to limit the same when required. Equal importance must be given to the limitations concerning the protection provided to civil servants along with the constitutional safeguards made available to them. Such a balanced framework needs to be established to

ensure that the right action is taken in any aspect concerning the protection of public interest and overall welfare of the country.

CONCLUSION AND SUGGESTIONS

The legal provisions mentioned in the Constitution of India is focused on the objective of protecting and safeguarding the rights of the civil servants to prevent any kind of dismissal of civil servants in an arbitrary manner. As civil servants are involved in various governmental operations and functions, it is important to provide adequate protection and safeguards to such officials with certain limitations to avoid any kind of misuse of power. The rights and protection made available to the officials must be regulated through proper means where the public interest and security of the nation needs to be always the top priority. The application of different laws and regulations needs to be in a flexible manner to facilitate various functions of the government carried out through proper systems. In this changing society, in any kind of rules and regulations, it is important to follow the principles of natural justice along with other important aspects to ensure that no arbitrariness or unfairness is tolerated in any manner. The decisions regarding the actions of the civil servants needs to be determined based on proper enquiry and evaluation to understand the facts and circumstances of the case before concluding a particular instance. The disciplinary matters and issues concerning the same must be analyzed properly to understand the role of each member along with the impact of the actions of each person and take appropriate actions effectively.

REFERENCES

Articles

- Constitutional Law: Civil Servants and the Right to Engage in Political Activity, 22 IND. L.J. 246 (1947).
- Ekta Gahlawat, Accountability of Civil Servants under Indian Laws: A Critical

Analysis, 12 INDIAN J.L. & Just. 123 (2021)

- Justice Brijesh Kumar, Principles of Natural Justice, 3 JTRI Journal (1995)
- Malcolm Wallis, Judges: Servants of Justice or Civil Servants, 129 S. A. L.J.652 (2012)
- Nicolae Margarit, Contractual, Civil and Criminal Liability of Public Servants, 7 Persp. L. PUB. ADMIN. 80 (2018)
- Om Prakash Motiwal, Doctrine of pleasure and the services in Indian Constitution, 9 Sage Journals 1 (1963)
- Ratemo Tom Junior, Enforcement of Civil Servants; Human Rights: An Overview, 4 INDIAN J.L. & Just. 1 (2013)

Books

- M P Jain, Indian Constitutional Law 1482 (7th ed. 2014)

Case laws

- Khem Chand v. Union of India, AIR 1958 SC 307
- Om Prakash v. State of Uttar Pradesh, Appeal (Crl.) No. 629 of 2006
- Purshottam Lal Dhingra v. Union of India, 1958 AIR 36
- Shyam Lal v. State of Uttar Pradesh, AIR 1954 All 235
- State of Uttar Pradesh v. AN Singh, 1965 AIR 360
- Union of India & Anr v. M.M. Sharma S.L.P (C) No. 9032 of 2011
- Union of India v. Tulsiram Patel, AIR 1985 SC 1483
- VK Nambudri v. Union of India, AIR 1961 Ker. 155

Statutes

- Constitution of India, 1950