




# **Constitutional Safeguards for Civil servants**

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# Objectives of the session


- ▶ **The objectives of the session are to:**
  - ▶ **Study the constitutional safeguards available to civil servants**
  - ▶ **Understand the need and importance of these safeguards, and**
  - ▶ **Appreciate the legal principles laid down by courts regarding condition of service of civil servants**
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- ▶ **The Civil servant is indispensable to the governance of the country in the modern administrative age.**
  - ▶ **Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants.**
  - ▶ **The Constitution, therefore, seeks to inculcate in civil servant a sense of security so that he is able to function efficiently and give his best to the country.**
  - ▶ **Articles 309 to 323 of the Constitution make elaborate provisions for the Central and State services.**
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- ▶ **The service jurisprudence in India is complex**
  - ▶ **intertwined with legislation, rules, directions, practices, judicial decisions and with principles of Administrative Law, Constitutional Law, Fundamental Rights and Natural Justice.**
  - ▶ **The role of the courts in this area is crucial**
  - ▶ **As they seek to draw a balance between the twin needs of the civil service, viz., (1) the need to maintain discipline in the ranks of the civil servants; and (2) the need to ensure that the disciplinary authorities exercise their powers properly and fairly**
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# Civil servant- Meaning

- ▶ **Civil servant includes members of a civil service of the Centre or a State, or of an all-India service, or all those who hold civil posts under the Centre or a State.**
  - ▶ **A 'civil post' means an appointment or office on the civil side and includes all personnel employed in the civil administration of the Union or a State.**
  - ▶ **The relation of master and servant between the state and the employee is necessary to make a civil post 'under the Government'.**
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- ▶ **The term civil servant does not include a member of a defence service, or even a civilian employee in defence service who is paid salary out of the estimates of the Ministry of Defence.**
  - ▶ **These persons, therefore, while falling under Articles 309 and 310 do not enjoy the protection of Article 311.**
  - ▶ **A member of the police force, however, is a ‘civil servant’.**
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- ▶ **According to Art.309, appropriate Legislature has been empowered to frame rules regarding recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or the State.**
  - ▶ **Proviso to Art 309 further provides that until such legislation is enacted , the President, or the Governor, or any person authorized by him, may make rules in this respect.**
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# Doctrine of Pleasure

- ▶ **Article 310 (1) lays down that the defense personnel and civil servant of the Union and the members of an All-India service, hold office during the 'Pleasure of the President'. Similarly, a civil servant in a state holds office 'during the pleasure of the Governor'.**
  - ▶ **This pleasure doctrine has been imported from England. In Britain, traditionally, a servant of the crown holds office during the pleasure of the crown.**
  - ▶ **The tenure of office of a civil servant, except where it is otherwise provided by a statute, can be terminated at any time at will without assigning any cause, without notice.**
  - ▶ **The civil servant has no right to take recourse to the courts, or claim any claim any damages for wrongful dismissal.**
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- ▶ **The justification for the rule that the crown should not be bound to continue in public service any person whose conduct is not satisfactory.**
  - ▶ **The general rules which operates “doctrine of pleasure” is subject to general constitutional limitations.**
  - ▶ **Therefore, when there is a specific provision in the constitution giving to servant tenure different from that provided in Article 310, then that servant would be excluded from the operation of the doctrine of pleasure.**
  - ▶ **The Supreme Court Judges , Auditor-General, High Court Judges, a member of a Public Service Commission, and the Chief Election Commissioner have been expressly excluded by the Constitution from the rules of pleasure.**
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# Doctrine of Pleasure-Restrictions


- ▶ **The doctrine of Pleasure as developed in England has not been accepted in full in India**
- ▶ **It is subject to provisions of Article 311 which lays down procedural safeguards for civil servants.**
- ▶ **The doctrine of pleasure is further restricted by general law of land which empowers any civil servant to file suit in court of law for enforcing any condition of service.**
- ▶ **Clause 2 of Art 310 empowers govt to enter into service contracts with person having special qualifications. The pleasure doctrine can be qualified by such agreement**


# Safeguards to Civil Servants-Article 311

- ▶ **Article 311 provides the following safeguards to civil servants against any arbitrary dismissal from their posts:**
- ▶ **Firstly No person holding a civil post shall be dismissed, or removed by authority subordinate to that by which he was appointed.**
- ▶ **This does not mean that the removed or dismissed must be by the same authority who made the appointment or by his direct superior.**
- ▶ **It is enough if the removing authority is of the same or co-ordinate rank as the appointing authority.**
- ▶ **Second it provides that no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.**

- ▶ **Originally, the opportunity to defend was given to a civil servant at two stages:**
  - (1) At the enquiry stage,**
  - (2) At the punishment stage,**
- ▶ **The Constitution (42<sup>nd</sup> Amendment) Act, 1976, has abolished the right of the Government servant to make representation at the second stage of the inquiry.**
- ▶ **The newly added proviso to Art.311 (2) makes it clear that if after inquiry it is proposed to impose upon a person any of the three punishments will be imposed on the basis of the evidence adduced during the time of inquiry of charges against the Government servant.**

- ▶ **The expression civil post means appointment on civil side of administration distinguished from military side.**
  - ▶ **The safeguards under Art 311 are not available to the members of defence forces or any post connected with defense**
  - ▶ **Civil post signifies there must exist master servant relationship**
  - ▶ **Protection of Art 311 applies both to permanent and temporary employees**
  - ▶ **However it does not apply to compulsory retirement in public interest, termination of service during probation, or termination of service which is temporary and for fixed period.**
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- ▶ **The protection of Art.311 is available only when ‘the dismissal, removal or reduction in rank is by way of punishment’.**
  - ▶ **The main question, therefore, is determine as to when an order for termination of service or reduction in rank amounts to punishment.**
  - ▶ **the Supreme Court has laid down two tests to determine whether the termination is by way of punishment-**
    - (1) Whether the servant had a right to hold the post or the rank;**
    - (2) Whether he has been visited with evil consequences.**
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- ▶ **The suspension of a Government servant from service is neither dismissal or removal nor reduction in rank; therefore, if a Government servant is suspended he cannot claim the constitutional guarantee of reasonable opportunity.**
  - ▶ **When, the services of a Government servant are terminated for bonafide reasons as a consequence of the abolition of the post held by him, Art. 311(2) need not be complied with.**
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- ▶ **The second proviso to Art 311 (2), lays down three situations with Art 311 (2) does not apply.**
- ▶ **here a civil servant is dismissed or removed or reduced in rank**
- ▶ **on the ground of conduct which has led to his conviction on a criminal charge**
- ▶ **or Where the competent authority is satisfied that, for some reason to be recorded by it in writing, it is not reasonably practicable to hold such inquiry**
- ▶ **In deciding whether Holding of the inquiry is not practicable the test of a reasonable man taking a reasonable view is applied.**
- ▶ **thirdly Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the state, it is not expedient to give to a civil servant such an opportunity**



**Thank You**