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Judicial Review of Arbitrary Removal of Civil Servants in India: An Examination of Constitutional Safeguards

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Jaspreet Kaur



Judicial Review of Arbitrary Removal of Civil Servants in India: An Examination of Constitutional Safeguards

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Abstract

The constitutional regulation that regulates the removal of civil servants in India is an attempt to compromise between executive control and the rule of law. While Article 310 of Constitution of India incorporates the doctrine of pleasure, Article 311 brings in the procedural safeguards, which are designed to forestall the arbitrary dismissal, removal or demotion. Notwithstanding these protections, instances of punitive termination and abuse of disciplinary powers have spawned a great deal of constitutional litigation. Judicial review has, therefore, become the major means by which the constitutional restrictions on executive discretion have been enforced. This paper examines the constitutional framework governing removal, considers the central judicial doctrines expressed by the Supreme Court and examines how the judiciary has struck a balance between administrative efficiency and procedural fairness in order to protect civil servants from capricious state action.

Introduction

The civil services consist of the permanent executive machinery of the Indian State and serve as the institutional link between the constitutional form of government and the day-to-day administration of public affairs. Conceived to operate on the principles of political neutrality, continuity and administrative expertise, the civil servants are responsible for carrying out the policies of the elected governments and at the same time remain insulated from the partisan pressures. In view of the above, the security of tenure is not a privilege but an indispensable structural requirement necessary for maintaining the independence of the bureaucracy and the rule-based nature of governance¹.

At the same time, civil servants are still held accountable under the executive branch. The constitutional structure recognizes this duality by

¹ H.M. Seervai, *Constitutional Law of India* 3120 (Universal Law Publishing, New Delhi, 4th edn., 2015).

incorporating the "doctrine of pleasure" with procedural safeguards that restrain it. Articles 310 and 311, as listed in the Constitution of India, creates a calibrated equilibrium whereby civil servants continue to occupy their service positions at the pleasure of the President or the Governor but cannot be removed, dismissed or demoted without following constitutionally prescribed procedures. Such safeguards constitute a conscious departure from the unqualified British doctrine of pleasure and they are the application of the rule of law in the jurisprudence of public service².

Notwithstanding this statutory framework, instances of arbitrary removal, punitive transfers, compulsory retirement, and dismissal without proper inquiry, have continued and this has provided a catalyst for constitutional litigation³. The consequent tension between the demands of administrative efficiency on the one hand and of protection against executive arbitrariness has a history of repeatedly emerging as a central theme in Indian constitutional law⁴. Within this context judicial review has become the key weapon in protecting civil servants against the abuse of disciplinary powers. This paper examines the constitutional bases governing the removal of civil servants, considers the extent and limits of judicial control in these situations and explores the extent to which the judiciary has interpreted and applied procedural guarantees in a manner that prevents arbitrary state action while ensuring the efficacy of administrative discipline.

Constitutional Safeguards Governing Removal

The constitutional framework which governs the removal of civil servants in India is a deliberate attempt to balance between two opposing imperatives - administrative control and protection from executive arbitrariness. Civil servants make up the permanent executive branch and are expected to work with political neutrality and professional independence; however, they are still responsible to the elected government. The balance between these competing objectives is determined largely by Articles 309, 310 and 311 of the Constitution of India⁵.

² Sukhwinder Singh, "Constitutional Safeguards to Civil Servants: An Analysis" 12 *Dehradun Law Review* 72 (2020).

³ Ahmad Shamshad, "Public Services in India: Issues of Neutrality vs. Commitment" 52 *Indian Journal of Public Administration* 522 (2006).

⁴ A.K. Sahu, "Compulsion Retirement Rule in India" 9 *International Journal of Reviews and Research in Social Sciences* 164 (2021).

⁵ Doctrine of Pleasure in India: Constitution and Case Law" 2 *Defacto Law Journal* 18 (2023).

Doctrine of Pleasure and Its Constitutional Limitation

Article 310 incorporates the doctrine of pleasure so that members of civil services of the Union and the States hold office at the pleasure of the President or the Governor. Historically borrowed from the British constitutional principles, this doctrine works for the ouster of serving public servants at the sole discretion of the executive; however, in the Indian constitutional scenario, the doctrine is not absolute and is expressly qualified by Article 311 and the limitations therein⁶.

In contrast to the traditional British model, in which parliamentary supremacy acted as the ultimate check, the Indian Constitution provides for such safeguards to be embodied directly in the constitution. It follows that the power of dismissal of a civil servant is subject to procedural guarantees and is subject to judicial control. Thus, the doctrine of pleasure in India functions not as an absolute executive authority but a power subject to constitutional discipline⁷.

Article 309 further said this structure by empowering the Parliament and the State Legislatures to regulate by law recruitment and conditions of service. In the absence of such statutory provisions, the President or the Governor may make service rules. These rules, which include disciplinary procedures, rules of conduct, and procedures for the inquiry, suspension, penalties and appeals, must function within constitutional boundaries and any rule that is inconsistent with article 311 is held to be invalid. Accordingly, while Article 310 recognizes the authority of the executive, Articles 309 and 311 define and restrict the exercise of such authority.

Article 311: Procedural Guarantees and Exceptions

Article 311 provides the first line of defence against arbitrary dismissal in the constitution. It provides two principal protections. Primarily, no civil servant can be dismissed or removed by an authority who is subordinate to the authority who appointed him. This provision aims to prevent the abuse of the prerogatives of disciplinary action in the lower administrative levels, and ensures that the culmination of the deference is determined by the proper bodies.

Secondly, a civil servant must not be discharged, removed or demoted without having been subjected to an inquiry in which the person in question is informed of the charges brought against him and given a reasonable opportunity of being heard. This clause enshrines the principles of natural

⁶ Madhushri Sharma, "Doctrine of Pleasure (Article 310 and 311)" 2 *International Journal of Trend in Scientific Research and Development* 2385 (2018).

⁷ S.S. Upadhyay, "Protection to Civil Servants Under Constitution & Other Legislations" 4 *Journal of the Indian Law Institute* 56 (2015).

justice which include the right to notice and the right to defence. The stipulation of "reasonable opportunity" goes beyond a formal hearing; it requires procedural fairness that includes the access to evidence, the ability to respond to allegations, and impartial mechanism for adjudication⁸.

The words "dismissal", "removal" and "reduction in rank" have developed different legal meanings. Dismissal carries generally a stigma and may prevent the Party member from any future participation in public service, whereas removal does not. "Reduction in rank" refers to punitive demotion. These differentiations have an importance as the protections under Article 311 are put into effect by the fact that the action must be punitive in nature. If termination is administrative-only, and thus not accompanied by any stigma, or penal consequences, the constitutional safeguards may be inappropriate. Establishing whether the action is punitive in substance, rather than form has emerged to be a critical issue in the body of jurisprudence relating to public services⁹.

Article 311(2) has important exceptions as well. An inquiry may be dispensed with where the civil servant has been convicted on a criminal charge; where it is not reasonably practicable to hold an inquiry; or where the President or Governor is satisfied that the holding of an inquiry will be contrary to the interests of national security¹⁰. These exceptions recognise situations where the procedural requirements can impede urgent or sensitive administrative action. However, they do not create an unfettered discretion. The existence of objective circumstances to justify diving away from the inquiry requirement is open to limited judicial review. Courts have insisted that such exceptions should be used strictly, and not to evade constitutional protections.

Taken together, Articles 310 and 311 set up a calibrated structure. While the executive is still empowered to discipline and remove civil servants to promote efficiency and integrity, this is powered by constitutional due process. The safeguards are not technical rules of service but basic guarantees of the rule of law. Their practical effectiveness, however, is dependent upon judicial interpretation and enforcement, which is the gist of the next section.

⁸ Diganth Raj Sehgal, "Exceptions to the Principles of Natural Justice in India" 3 *International Journal of Law Management & Humanities* 885 (2020).

⁹ Udit Mishra, "Judicial Review of Disciplinary Proceedings" 4 *International Journal of Law and Legal Jurisprudence Studies* 112 (2017).

¹⁰ K.K. Srivastava, "Exceptions to Article 311(2) of the Constitution" 15 *Indian Bar Review* 159 (1988).

Judicial Review: Jurisprudence and Analysis

Judicial review is the main system by which the constitutional guarantees against the arbitrary removal of civil servants are enforced in India. While the power for discipline over public servants mainly rests in the executive, the judiciary makes sure the exercise of such discipline is within the confines of the Constitution. Courts which exercise jurisdiction under the provisions of Article 32 and Article 226 of Constitution of India are not steward of appeal of departmental proceedings rather they look into the legality, procedural regularity and constitutional validity of executive action. Over the years, the Supreme Court has developed a built-up body of service jurisprudence that helps understand how and when removal becomes punitive, how Article [(311)] is to be read, and to what extent exceptions may be provided.

At the basic level the scope of judicial review of service matters is limited but substantive. Courts do not typically reappraise evidence or replace findings of their own for the determinations of disciplinary authorities. Interference is only warranted in cases of violation of natural justice, lack of jurisdiction, mala fides, consideration of irrelevant materials, perversity of findings and disproportionation of punishment. This restrained approach is a recognition by the courts of administrative autonomy, despite preserving constitutional supremacy¹¹.

One of the first and most significant decisions in this area is Parshotam Lal Dhingra v. Union of India. The Court further explained the meaning of termination simpliciter and punitive dismissal. In that regard it held that Article 311 safeguards are attracted, not by the mere form of the order but by its substance and consequences. When termination causes forfeiture of rights, stigma or penal consequences, it must be considered punitive and hence, it must comply with article 311(2). This decision created a "substance over form" doctrine that prohibits the executive from getting around the constitutional protection by cleverly worded orders¹².

Subsequent cases developed this principle, especially as applied to probationers and temporary employees. In State of Orissa v. Ram Narayan Das the Court held that termination of a probationer does not automatically attract Article 311. However, if the order is based on allegations of misconduct and carries a stigma along with it, it is punitive in effect. This also raise the crucial point of difference between "motive" and "foundation." If misconduct is the pure cause of termination, Article 311

¹¹ Dr. Niranjana Parida, "Constitutional Safeguards and Protection to Civil Servants in India: A Critical Study of Judicial Process" 1 *Fastforward Justice* 12 (2025).

¹² P.S. Sangal, "Administrative Law and the Civil Servant" 14 *Delhi Law Review* 1 (1992).

may not apply, but if it serves as the basis of the order, then constitutional guarantees become mandatory. Judicial review is therefore a process of looking at the roots of executive action rather than considering its formal description.

The interpretation of exceptions under Article 311(2) was given authoritative treatment in *Union of India v. Tulsiram Patel*. The validity of the second provision was upheld by the Constitution Bench which explained that the power to dispense with inquiry is not free from judicial scrutiny. In particular, in terms of the clause "not reasonably practicable to hold an inquiry," the Court underlined that such impracticability must be actual and grounded on objective circumstances. Administrative inconvenience or subjective satisfaction is not sufficient. Although the courts give the executive deference in making this assessment, the courts have the power to review whether the conditions precedent for invoking the proviso actually was in existence.

The decision also concerned national security as a reason for dismissing the inquiry. While acknowledging the sensitivity of such matters, the Court upheld restricted review of the satisfaction of the President or Governor. Judicial restraint does work here, however, not to exclude review entirely. The judiciary, therefore, has what one can call a constitutional balancing job by ensuring that exceptional powers are not converted into routine powers of administrative expediency¹³.

Another important aspect of judicial review is the doctrine of proportionality. Historically the courts of India were based on the *Wednesbury* test of reasonableness so that interference was made only when punishment was so disproportionate that it shocks the conscience. Over the years, particularly with the growth of the Article 14 jurisprudence, courts have been increasingly using proportionality analysis in the context of services. If a penalty is grossly out of proportion to the misconduct proven, judicial intervention may be called for. This development reinforces substantive fairness without turning courts into the courts of discipline.

Natural justice is still the core of judicial oversight. Denial of reasonable opportunity, bias in the prosecution of proceedings of inquiry, failure to provide relevant documents or reliance on extraneous material have all been grounds for quashing orders of removal. The judiciary insists that procedural safeguards are not mere empty formalities but essential elements of fair decision-making. Even where there is silence in statutory rules courts may read principles of natural justice into disciplinary processes unless

¹³ A Critical Examination of the Doctrine of Pleasure and its Applicability in Contemporary Indian Context" 3 *International Journal of Integrated Research in Law* 1 (2023).

expressly excluded by provision of the Constitution. Judicial review has also happened in the issues of mala fides and colourable exercise of power¹⁴. Where removal is based on political vendetta or personal hostility or extraneous considerations, courts have not had qualms about invalidating such orders. However, defeat of mala fides is a high evidentiary burden. Courts demand certain pleadings and credible material in acknowledgment that allegations of bad faith, in terms of public authorities, have to be supported rigorously.

An additional area of development of jurisprudence concerns compulsory retirement for the public interest. Although not strictly classified as dismissal or removal, compulsory retirement may have civil consequences of great importance. Courts have ruled that such action must be based upon objective evaluation of service records and cannot be a disguised form of punishment¹⁵. Judicial review ensures that power that is exercised is exercised to be efficient rather than to penalise without inquiry¹⁶. Despite these guarantees, the judiciary continually echoes that the authority of disciplinary control is largely an administrative responsibility. The operation of interference is justified only in those instances where constitutional or legal requirements are violated. This restrained model reflects separation of power and administrative practicality. At the same time, it guarantees that Article 311 does not lose its substantive vitality and instead becomes an empty guarantee.

Much thinking from this jurisprudence can be summed up under two broad themes. First, the courts have moved in general from a formalistic to a functional approach. Instead of focusing on the words of removal orders, they focus on the actual nature and effect of executive action. This has led to a significant decrease of opportunities for evasion of constitutional protections. Second, the judiciary has tried to cushion the effects of efficiency and fairness. While recognising that in certain circumstances there is need for swift administrative action, it insists that exceptions should be narrowly construed.

Furthermore, modern jurisprudence on the topic of public service has tried to place the procedural safeguards of Article 311 in a wider context of fundamental rights, especially at the intersection of Articles 14 and 21 of the Constitution. Modern judicial review no longer sees the arbitrary firing

¹⁴ The Principle of Natural Justice in Administrative Law" 13 *Journal of Emerging Technologies and Innovative Research* 12 (2021).

¹⁵ R.K. Gupta, "Analytical Study of the Doctrine of Pleasure" 4 *Global Journal of Transformation in Law* 22 (2019).

¹⁶ Equality of Opportunity in Matters of Public Employment and the Indian Supreme Court" 7 *Singapore Journal of Legal Studies* 113 (1965).

of a civil servant as merely a breach of statute, or as a simple violation of the doctrine of pleasure. Rather, the Supreme Court has held progressively that such a right to livelihood, which is an integral component of a right to life under Article 21, cannot be imperiled by capricious executive action. When the dismissing of a civil servant is not strictly followed by due process, such actions are today considered a direct breach of fundamental rights and therefore attract a much higher level of judicial scrutiny. This rights-based approach reinforces the Article 14 proportionality analysis by making it clear that "manifest arbitrariness" in disciplinary proceedings - such as reliance on unverified preliminary reports or denial of the right to cross-examination - makes a removal unconstitutional.

Consequently, this changing constitutional view has altered the remedial jurisprudence of the courts. While traditional remedies often have meant automatic reinstatement with full back wages when it was found that one had been illegally terminated, modern courts leave a very nuanced, equitable discretion. By means of the doctrine of proportionality, the judiciary plays an active role in modulating the relief in light of the balance between the civil servant's right to restitution and the public exchequer and the severity of the procedural lapse. For example, where the dismissal is quashed on purely technical procedural grounds rather than on substantive exoneration on merits, courts often order a de novo inquiry from the point of the defect rather than order unconditional reinstatement. This balancing act further reflects the functional attitude of the judiciary whereby the incorporation of fundamental rights into the law of service, is such that it secures on the one hand, the fundamental right of every person to be free from arbitrary deprivation of livelihood, while on the other, it always ensures the operational integrity of public administration.

Conclusion

The constitutional scheme of removal of civil servants in India is a carefully worked out balance between the executive power and the rule of law. While Article 310 makes recognition of the doctrine of pleasure and the disciplinary jurisdiction of the executive clear, Article 311 establishes substantive procedural safeguards which are designed to prevent arbitrary dismissal, removal, or demotion in rank. In connection with Article 309, these provisions create the possibility of a hierarchy of checks and balances in which a system of administrative efficiency is limited by the constitutional restraints placed on it; the framers of the Constitution expressly rejected an unfettered plebiscitary doctrine of pleasure and instead modified the constitutional text directly to include due-process limitations.

Judicial review has played a fundamental role in giving practical meaning to these safeguards. Through principles such as "substance over form," the distinction between motive and foundation, strict interpretation of the exceptions as per the Article 311 (2), and the use of proportionality, the judiciary has thwarted attempts to circumvent constitutional safeguards through formalistic exercises of desire or ostensible exercises of power. Concurrently, courts have used institutional restraint in refusing to act as appellate courts of fact on departmental findings. This calculated approach respects the doctrine of separation of power while providing accountability. Nevertheless, the effectiveness of the judicial safeguards ultimately depends on vigilant judicial supervision and principled conduct on the part of the executive branch. Excessive deference in exceptional cases or delays in litigation procedures in practice may rupture the effectiveness of protection. Strengthening transparency in disciplinary proceedings, ensuring rational orders in the exercise of exceptions, and reinforcing adherence to natural justice can strengthen the integrity of the system. In sum, the jurisprudence of the arbitrary removal of civil servants highlights the continuing relevance of constitutional due process in the context of administrative law; a system of judicial review serves as less a tool of mechanism for corrective control than as a structural guarantee of the fact that public power serves as an authority that is circumscribed by legality, fairness, and constitutional discipline.

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