CHAPTER THREE

PERSONS WHO CAN CLAIM CONSTITUTIONAL PROTECTIONS AGAINST
DOCTRINE OF PLEASURE — INGREDIENTS AND TEST.

I. Introduction

Doctrine of pleasure has been embodied in Article 310
of the Constitution of India. So far as the applicability of
the doctrine is concerned, it is applicable on the tenure of
office of holders of 'services' and 'posts' on both i.e. civil
side of administration as well as on defence side of
administration. Various phrases have been given in Article 310
i.e., 'civil service', 'civil post', 'All India Service' which
denote civil side of administration. Whereas the phrases
'Defence service', 'post connected with defence' relate with
defence side of administration in the country. Holders of
civil service or civil post or All India Service are commonly
called 'civil servants'.

The constitutional safeguards or limitations or
protections are provided for civil servants only, under
Article 311 and Fundamental Rights, whenever tenure of these
servants is intended to be terminated at pleasure.

As regards, safeguards for defence servants against
termination of their tenure at pleasure, Fundamental Rights
under Indian Constitution and various Defence Laws and Rules are
provided. Fundamental Rights of defence servants may be
restricted or abrogated by Parliament, by a law so as to
ensure the proper discharge of their duties and the maintenance
of discipline among them.
These are certain other phrases also e.g. 'Public servant' and 'Public Officer' used in section 21 of the Indian Penal Code and section 2(17) of the Code of Civil Procedure respectively. These phrases appear to be synonym with the phrase 'civil servant'. But there is difference in meaning among the three phrases.

Hence, it is very much necessary to know the true meaning, nature and scope of civil service, civil post, All India Service, because the doctrine of pleasure applies to the holders of these services or posts and also the Constitutional limitations are provided for them according to the provision of Article 311, so that persons who can claim constitutional protections can be known. It is also very necessary to know that how far phrases 'Public servant' and 'Public Officer' differ from 'civil servant' in their meaning.

II. Meaning of 'civil servant', 'civil service', 'civil post', 'All India Service', 'Defence Service', 'Post connected with Defence'

The persons mentioned in the five categories in Article 311 viz. (a) civil service of the union, (b) All India Service, (c) civil service of a state, (d) civil post under the union, (e) civil post under state are sometimes generally called as 'civil servants'.

The true meaning of the term 'civil post' has been discussed by the Supreme Court in these cases viz. State 1

1. (a) State of Assam v. Kanak Chandra, AIR 1967 SC 884
In State of Assam v. Kanak Chandra, the Supreme Court pointed out the meaning and scope of the phrase "Civil post" in Articles 310, 311. The Supreme Court observed:

'There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Service Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an All India Service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under the State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. There is relationship of master and servant between State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.'
The Supreme Court further clarified the meaning and scope of the phrase "civil post" in the above case:

"In the context of Article 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds 'office' ....... A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from the independently of the holder of the post. Article 310 (2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post and it emphasizes the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labour is not the holder of a post. A post under the State means a post under the administrative control of the State. The state may create or abolish the post and may regulate the conditions of service of persons appointed to the post."

The Supreme Court further observed in the above case:

"..... But a post outside the regularly constituted services need not necessarily carry "a definite rate of pay". The post of Mauzadar (Mauzadar in the Assam Valley are appointed Revenue Officers and ex-officio Assistant Settlement Officers is holder of civil post) carries with it a remuneration by way of a commission on collection of Govt. dues..... a post outside the regularly constituted services may be a part time employment."

In Dr. S. L. Aggarwal v. The G.M., Hindustan Steel Ltd.,

The Supreme Court observed:

"Clause (2) of the article, which gives the protection opens with the words "no such person as aforesaid" and these words take one back to clause (1) which
describes the person or persons to whom the protection is intended to go. Clause (1) speaks of -

(i) persons who are members of (a) a Civil Service of the Union, or (b) an All India Service or (c) a Civil Service of a State, or

(ii) hold a civil post under the Union or a State. 

(a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain posts which are outside the permanent services. The last category in Article 311 (1) therefore speaks of such posts on the civil side as opposed to the military side. Incumbents of such posts also receive protection'.

"The author submits that the emphasis should be laid not on the control over the post, but on the control of the employee or the person employed in the post. In other words, the meaning of the expression 'holding a post under the Government' is analogous to that of the expression 'person in the service of the Government', as explained by the Supreme Court in K.C. Deo v. Raghunath, while the preceding words of Clause (1) of Article 310 or 311 refers to certain established civil services, the words 'holding any civil post' refer to person who are in Government service - though they may not belong to any of the formally constituted services.' "

Therefore the term used in Article 310 and Article 311 i.e. "'civil service'" means certain established civil services. All India Services are common to the Union and the States.

Indian Administrative Services, Indian Police Services which are administered under union. And various States have their own civil services, for instances Haryana Civil Services, Punjab Civil Services, etc.

Whereas "civil post", in general term means government service, except to those services of Union or States which are formally constituted services (established civil services viz., IAS, IPS, HCS, PCS, etc.). Civil servant is appointed by, or on behalf of the President or Governor as the case may be, to hold a civil post, and to perform public duties and generally but not necessarily, he is paid out of the Consolidated Fund of India or from State's treasury. The members of the civil services hold civil post\(^4\). All posts held by the public servants, other than the posts in the Defence Forces should be deemed to be civil posts\(^4\). A public officer is a public servant, the persons who are called public officers are often called public servants in the Indian Penal Code.\(^4\)

Meaning of 'civil post' and civil service' was also considered in two important cases viz., Mohan Singh v. Pepsu and Brojo Gopal v. Commissioner of Police.

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5. (a) Mohan Singh v. Pepsu, AIR 1954 Pepsu 136
    (b) Brojo Gopal v. Commissioner of Police, AIR 1955 Cal. 556.
In Brojo Gopal v. Commissioner of Police, Bose, J., sitting singly held that the words "civil post" and "civil service" in Article 311 are used in contradiction to services in or posts under the "Defence Forces" of the Government of India.

According to Patnaik, Sri Kalicharan

"But as observed by the Patna High Court in A.I.R. 1956 Pat 398 : I.L.R. 34 Pat 412 the real question finally rests in the following : Before a claim for any relief is made under Article 311 it must be shown that the post is held under the control of the State, and that the State can abolish the post if it so desires, or that the State can regulate the conditions subject to which the post is or will be held. In other words, the real test comprises in establishing the immediate or ultimate control which the State exercises with regard to the post in question."

'Post' means the position or job which denotes to an office. The post may be under the control of the State or Union. The post may relate to civil side of administration or to defence side of administration in the

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country. According to Article 235 of the Constitution 'post' means the office, job or position. For detailed meaning see the heading 'Post' in next pages.

'Post connected with defence' means that post which is controlled by the defence side of administration of the country. 'Defence service' means established defence services for instance under Indian Military Academy, Indian Naval Academy, Indian Air Force, etc.

For detail discussion of the above terms, following headings are enumerated.

1. Test of 'Civil Post'

There is no single criteria for the test. The test for the application of Article 102 or 191 is not relevant for determining the instant question under Article 311. Also the definition of 'State' in Article 12 does not apply for the interpretation of the word 'State' in Article 311(1).

Following factors have to be considered for determination of civil post held under the Union or State (as the case may be):

A. Post

Post means the position or job which denotes to an office. The post may be under the control of the State or Union as the case may be. According to Article 235 of the

Constitution 'post' means the office, job or position. It does not say about the place of posting but emphasis on the assignment to a position. It was held by the Supreme Court that the posts which are specified in the Schedule are the posts in service. The term 'post' may be classified as under:

(i) Permanent Post;
(ii) Temporary Post;
(iii) Tenure Post
(iv) Ex-Cadre Post.

A permanent post means a post carrying a definite rate of pay sanctioned without a limit of time (F.R. Rule 9(22)). The employee has the right to hold the post either under the terms of contract of employment, express or implied, or under the rules governing the conditions of service. Termination of service of a permanent Government servant is regarded per-se as punishment, as it results a forfeiture of his rights and brings about premature end of his employment. An employee on confirmation becomes entitled to a right to the post and to the scale of pay fixed.

(a) Permanent post on substantive basis

A substantive appointment to a permanent post confers normally on the servant so appointed a substantive

right to the post called a lien. A person who has been appointed substantively to a permanent post acquires the legal right to continue on that post until happening of any of the following contingencies:

(i) Superannuation;
(ii) Compulsory retirement according to relevant rules;
(iii) Removal or dismissal in conformity with Article 311(2) of the Constitution;
(iv) Abolition of that post, in the exigencies of public service.

Therefore, if any person, holding permanent post is terminated otherwise than in any of the above four methods, the termination is invalid and hence offends against Article 311(2).

(b) Permanent post on probation basis

A permanent post on probation basis means that the servant so appointed is taken on trial. The duration of probation may be for a specified period or for an unspecified period. The termination of such an appointment, whether

11. Fundamental Rule 9(13).
during or at the end of probation, does not ordinarily amount to punishment.\textsuperscript{16}

(c) **Permanent post on officiating basis**

An appointment to officiate in a permanent post is generally made -

(i) when the incumbent substantively holding the post is on leave or

(ii) when the permanent post is vacant and up till now no substantive appointment has been made to that post.

(ii) **Temporary post**

A temporary post means a post carrying a definite rate of pay sanctioned for a limited time.\textsuperscript{17} The duration of a temporary post may be for unspecified period or for a specified period and thereafter may be renewed from time to time. An appointment to a temporary post may be on substantive basis\textsuperscript{18} or on probation basis or on an officiating basis.

(a) **Temporary post on substantive basis**

A person appointed to a temporary post, even though in a substantive capacity, is a temporary Government servant.\textsuperscript{19} The mere fact that the post subsequently becomes permanent does not, therefore, confer upon such temporary employee a


\textsuperscript{17} F.R. 9 (30).

\textsuperscript{18} Gupta v. Pandey, A. 1988 3.C. 651 (Para 14)

permanent status. A temporary Government servant does not become a permanent Government servant unless
(i) he gets that capacity under some rule; or
(ii) he is declared or appointed by the Government as a permanent Government servant.  

A government servant appointed to a temporary post on substantive basis does not acquire a lien or right to hold the post except where the appointment is for a certain specified period, in such a case, the servant acquires a right to hold that post for a specified period. Appointment on a substantive basis to a temporary post may, however, give a claim to seniority where the Rules so provide.

Supreme Court has improved the status of holders of temporary post which are allowed to continue indefinitely by the 'doctrine of continuous officiation.' When the temporary post is abolished, the holder has no cause of action. But if the services of a temporary Government servant are arbitrarily terminated, while retaining his juniors in service, he may complain of violation of his rights under Article 14 and 16 of the Constitution. Also the persons appointed on ad hoc basis have similar rights.

(b) Temporary post on probation basis.
(c) Temporary post on officiating basis.

21. Fundamental Rule 9 (13)
The incidents of appointment on probation basis or on an officiating basis are similar as in the case of permanent post on probation basis or on an officiating basis. An appointment made on probation basis or on an officiating basis even on a permanent post, does not give any substantive right to the holder of such post, because it is an implied term of such appointment that it may be terminable at any time. An appointment to a permanent post may also be on a temporary basis, e.g., until further orders, in which case the position of the employee is no better than in the case of an appointment on an officiating basis. Appointment to temporary post or permanent appointment on probation or permanent appointment on officiating basis, the government servant has no right to the post which he is holding. The character of employment in each case is transitory, and, therefore employment can be terminated at any time by giving a reasonable notice without assigning any reason; this does not per se amount to dismissal or removal and accordingly, Article 311(2) is not attracted because it is a case of 'discharge' not of a 'punishment'. Hence it is clear that a temporary servant, a probationer and a servant on officiating capacity can be terminated by the Government in either of two ways—

First—in exercise of its powers under the terms of contract or the relevant rules. In such a case it is only a case of discharge.

Second - by punishment in such a case Article 311 is attracted.

(iii) Tenure post

According to Fundamental Rule 9(30-A), Tenure Post is a permanent post which an individual Government may not hold for more than limited period, specifying duration or tenure of the post to be held by that employee. In a recent case Dharam Pal and another v. The State of Haryana\(^27\), the Division Bench of Punjab and Haryana High Court has held that when there is tenure post, after the expiry of tenure period, petitioner is not entitled to claim regularisation of service.

(iv) Ex-cadre post

Fundamental Rule 9(4) defines 'Cadre' as 'The strength of a service or a part of service sanctioned as a separate unit.' Appropriate authority is competent to create a post outside or in addition to the cadre or regular establishment of a particular office.

It was held by the Supreme Court that the administrative control of the office will remain continue over the employee who is holding ex-cadre post attached to the office. If he is confirmed in the ex-cadre post, is not entitled promotion or seniority in the office having administrative control. Also, such employee cannot claim the benefit of Fundamental Rule (F.R.) 113, if in case he is transferred to foreign service.

An employee who is holding a permanent post in a cadre, is appointed substantively to any post outside the cadre, the competent authority may suspend his lien on the

\(^{27}\) 1993(3) S.L.R. 677 (P. and H.) (D.B.)

\(^{28}\) Nohiria Ram v. Union of India, 1966, S.C. A. 579
 cadre post. Yet this suspended lien is revived when his
lien on any other post is ceased or the ex-cadre post is
abolished. Hence, a 'post' in this context, denotes an
office or a position to which duties in connection with the
affairs of the State (i.e. States and Union) are attached
and such post may exist apart from any independently of the
holder of the post. A post under the State means a post
under the administrative control of the State. The State
may create or abolish the post and may regulate the
conditions of service of persons appointed to the post.

B. Civil Side of Administration

Civil post means an appointment or office on the
civil side of the administration as distinguished from a
post under the Defence Forces. Hence only persons who are
excluded from the purview of Article 311 (1) are -
(a) members of Defence Services, and
(b) persons holding any post connected with defence. In other
words, the person excluded from the purview of Article 311(1)
are included in Article 310(1), hence excluded portion is
an exception to the general provision in Article 310(1). All
persons, excepting the above two classes, who hold any post
under the Union or State, hold a civil post.

   (1967) S.C.C.A. 1185/65 dt. 6.2.1967; Mathuradas v. Munshaw,
   S.C. 161 (para 27) C.B.
C. May be permanent or temporary

It is immaterial whether the employee is a member of any of the civil services or whether the Civil Service Rules are applicable to him or not. It is also immaterial whether the employee is a permanent or temporary, or on probation, or on officiating basis, or remuneration is paid, or works on commission or he is protected by industrial and labour law provided the person has been employed by the Union or a State to a post, for the discharge of public duties, not connected with defence.

D. Relationship of Master and Servant

There must be relation of master and servant between the Government and the employee in question for determination of civil post. Source of general law of 'Master and Servant' is English Common Law. Essentially, the relationship of master and servant is contractual. It comes into existence with mutual consent. As the master cannot compel the servant to continue to serve him simultaneously a servant cannot force his services upon the master. This relation is determined on a consideration of all the relevant circumstances in each case. In general, selection by the employer, coupled with payment by him of remuneration

or wages, the right to control the method of work, and power to suspend or remove from employment are indicative of the relation of master and servant. Ordinarily the right of an employer to control the method of doing the work, and the power of superintendence and control may be treated as strongly indicative of the relation which imports the power not only to direct the doing of some work but the power to direct the manner in which the work is to be done. If the employer has that power, prima facie, the relation is that of master and servant, as distinguished from that of an independent contractor (i.e. an employee under contract). "A person cannot be said to be in the service of the Government or to hold a post under the Government, unless there is a relationship of master and servant between him and the Government." In short, several factors may indicate the relationship of master and servant. None may be conclusive. Also no single factor may be considered absolutely essential. These factors are:

(a) the right to appoint,
(b) the right to terminate the employment,
(c) the right to take other disciplinary action,
(d) the right to prescribe the conditions of service

The nature of the duties performed by the employee,
the right to control the employee's manner and method of work,
the right to issue directions to the employee,
the source of payment of salary.

The existence of the relation of master and servant may be established by the presence of all or some of the above factors in conjunction with other circumstances. Hence in each case it is a question of fact whether a relation between Government and the employee is of Master and Servant.

The general law of Master and Servant stands modified by the cases which are covered by the Industrial Dispute Act. It was held by Federal Court that an Industrial Tribunal is not fettered like ordinary courts to enforce a contract and may create obligations or modify contracts in the interest of the workmen to protect and prevent the unfair practice of victimisation and these courts can direct reinstatement of dismissed employees because the discretion is not fettered in any way by the limitations which are applicable on regular courts to direct the reinstatement of dismissed employee.

Hence the general law of Master and Servant is that a servant is at the pleasure of the master subject to the extent to provisions of the Constitution or the Industrial Dispute Act as the case may be.
2. Who holds civil post - Instances

A. Police officers

As per provisions of Article 311, Police officers hold civil posts.\textsuperscript{40} It was held by the Supreme Court that a Police Officer is governed by Police Regulations framed under the Police Act and also by the rules framed under S.241 of the Government of India Act, which are not repealed and are consistent with the Constitution\textsuperscript{41}. The Govt. enjoys the option of proceedings under two sets of Rules above mentioned, but cannot adopt the procedure to the prejudice of the delinquent police officer where there is substantial difference between the procedure of two sets.\textsuperscript{40-42}

No special provision relating to Police officers was embodied in the Constitution as existed in corresponding section 243 of the Government of India Act, 1935. Hence, the Police officers are treated at par with civil servants under Articles 309-311. By virtue of Article 313, continuance of the pre-existing law and regulations made thereunder has been maintained. Hence, The Police Acts (e.g. Calcutta Police Act, the Delhi Police Act, the Police Act, 1861, etc.) and regulations (e.g. Punjab Police Rules, 1934) are still in force except in so far as any provision therein is

\textsuperscript{40} Jagannath v. State of U.P., A. 1961 S.C. 1245
\textsuperscript{42} State of Madras v. Sundaram, 1(1964) S.C.[C.A.400/64].
inconsistent with the provisions of the Constitution, e.g. 310, 311(2). Due to this reason, it has been held that a Police officer may be dismissed not only by the Inspector General or the officers mentioned in Section 7 of the Police Act, but also by the Governor, who is authorised in this behalf by the Police Regulations framed under the Act, read with Article 310 of the Constitution as held in Babu Ram's case.

As regards disciplinary proceedings against Police officers of the subordinate rank, Police Regulations are applied and not Civil Service Rules. But where the rules made under the Police Act are silent, the Civil Service Rules may apply.

Meaning of police officer of 'subordinate rank' has been provided in section 7 of the Police Act, 1861 and hence all Police officers other than (a) the Inspector General, (b) Deputy Inspector General and (c) District Superintendent of Police, are police officer of subordinate rank.

Senior Police officers who belong to Indian Police Service are governed by the All India Services (Discipline and Appeal) Rules whereas those who belong to State Police Service are governed by the Civil Services (classification,

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Control and Appeal) Rules.

Article 33 as amended by 50th Constitutional Amendment Act, 1984, empowers Parliament to restrict the fundamental rights of Police Officers including members of Armed Forces "to ensure proper discharge of their duties and the maintenance of discipline among them." This Article provides an exception to the proposition that Government servants may not lose their fundamental rights by joining Government service.

B. Deputation to another department or office

It was held by Supreme Court that on principle, the service of an officer on deputation to another Department or office, should be treated as equivalent to service in the parent Department. In case of reversion to his parent Department, he is entitled to be given recognition for the satisfactory service discharged by him during deputation, in the case of promotions in the parent department based on 'seniority-cum-merit' basis but not in the promotions to
'selection post'. Adverse remarks and punishments awarded in the deputed department are to be taken into account in the parent department. Such an officer is also entitled the time scale increments and chances of promotion assuming in parent department. On reversion to parent department, the officer is given lower post than that which he was holding during deputation, amounts, prima facie 'reduction in rank'. It was also held that 'deputation' is different from 'transfer'.

According to Article 312, officers of All India Services are common to the Union and the States. In case of transfer from Union to State or vice-versa, does not amount deputation, unless it is expressly mentioned in the order of transfer. The Central posts which are known as 'tenure posts' are not necessarily 'deputation posts'.

Hence an officer holding civil post in parent department, on deputation to another department or reversion

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to parent department, does not lose the status of 'holder of civil post!'

C. Panchayat service

In *State of Gujarat and others v. Raman Lal Kesbav Lal Soni and others*, the Supreme Court held that having regard to sections 203 and 206 and other provisions of the Panchayat Act as also Entry 41 of List II of the Seventh Schedule of the Constitution which suggests that there can be more than one State Public Service under the State. Merely because the Panchayats are declared to be body corporates, it cannot be said that any of the persons working under them cannot be considered as members of a civil service under a State. The Panchayats constituted under the Panchayat Act derive their authority from the statute and are under the control of the State Government. They form part of the Local self Government organisation which the State Government is under an obligation to foster under Article 40 of the Constitution. The Local authorities are included in the definition of the expression 'State' in Article 12 of the Constitution. The Panchayats exercise many governmental functions which the State Government can perform. In addition to the express powers granted to the Panchayats, the State Government is also authorised under the Panchayat

Act to delegate many of its functions to them and to transfer many of its officers and servants to function under their supervision and control as members of the Panchayat Service. Thus the Panchayat Service constituted under Section 203 of the Panchayat Act has all the characteristics of a Civil Service of the State. Under the Statute it may be open to the Panchayats to employ servants for the purpose of administration of the Panchayats who may not be members of the Panchayat Service. But the above view does not necessarily lead to the conclusion that every employee of a Local body who is not a member of the Panchayat Service should be treated as member of the State Civil Service. It is a question of fact to be decided in each case depending on the circumstances of that case.

D. Other instances of holder of 'Civil Post'

Relying the test of master and servant, the following employees were held as holder of 'civil post' under Article 311(1):

(a) Members of the police forces.

(b) A special constable appointed under the Calcutta Suburban Police Act, 1866.

(c) The Manager of the Bank owned by a State.

(d) A Home Guard appointed under the C.P. and Berar Home Guard Act.

(e) A General Manager of Court of Wards.

(f) Officers appointed by a High Court.

(g) A Tehsildar, appointed, in the U.P. to assist a Government treasurer.

(h) Officers appointed by the Government to a Municipal body which the Government has taken over. Where, however, the Municipality is not superseded by the Government, the mere fact that an employee of this Municipality is appointed by the Government under statutory powers, does not make the Municipal employee a State employee.

(i) A Manjadar in Assam Valley.

(j) Extra Departmental Agents of the Postal Department.

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3. Who do not Hold 'Civil Post' - Instances

A. Members of 'Defence Services'

Members of Defence services hold office during pleasure of the President as envisaged by Article 310. But Article 311 does not provide protection because of not holding civil post.

Army Act or Rules having statutory basis, if violated, the writ of mandamus lie but non-statutory rules and regulations which merely give instructions for the guidance of the authorities do not attract the writ of mandamus.

Civilians who are holding posts, connected with 'defence', do not hold 'civil post' under the Union irrespective of the fact of applicability of the Army Act over them. Yet Article 310 covers them, but Article 311 does not extend to them. Hence they cannot take protection of Article 311 and Central Civil Services (Classification, Control and Appeal) Rules.

It does not mean that they are having no remedy. They can seek relief by establishing the violation of the 'Civilians in Defence Service Rules, 1949' which have a


B. Employees of companies

A company incorporated under the companies Act, which constitutes separate legal entity from the State, even if they may adopt the Fundamental Rules for governing the employees, including a Government company, even though its management is responsible to the Government of India. Hence employees of such companies are not holder of civil post.

C. Employees of statutory authorities

Statutory authorities are juristic entities, therefore separate from the State. The employee of statutory authority do not hold civil post. Statutory Corporation, exercising statutory powers, may be State within the purview of Article 12 but the questions under the two provisions (i.e. Article 311 and 12) are different. Being employee is contractual, so that writ of mandamus will not lie to interfere with an order.

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of removal made by such authority, in the absence of breach of statutory duty. The regulations embodying the terms of contract of employment, only a suit for damages for wrongful dismissal will lie.

But even where Article 311(2) is not attracted, the rules of natural justice must be complied with before terminating the services of an employee of a statutory authority, including a charge and a reasonable opportunity to the employee of cross-examining the witnesses examined against him and to lead defence in support of his version.

The employees of a Government who have been transferred to a statutory corporation, with their pre-transfer rights unimpaired, the employees may have their relief against the corporation for violation of their rights under Article 311(1) (2). A Panchayat Service, created by statute, has been held to be a civil service of the State even though the Panchayat itself is a body corporate. If the State or the Union controls a post under a statutory Corporation in such a manner that it can create or abolish the post or can

regulate the conditions subject to which the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union. Hence, in the absence of above circumstances, generally, the employees of Corporations do not hold civil post irrespective of the fact (i) that Union or the State holds the majority shares of the Corporation or (ii) controls its administration by policy directives or (iii) it adopts the Fundamental Rules to govern the service conditions of its employees reason being that a statutory corporation is a separate entity from the Union or States with its own property and its own funds.

D. Other Instances of who do not hold 'Civil Post'.

The following employees were held to be not holder of civil post:

(a) A casual labourer or member of a contingency staff which casually appointed,

(b) extra departmental branch post master,


(c) employees under the Employees' State Insurance Scheme;
(d) an extra-typist, who is occasionally appointed, according to the needs of the time,
(e) members of the Madras Local Authorities Electrical Engineers Service,
(f) the Licencee of a Railway staff in a Railway station even though he has to work under the directions of the Railway administration,
(g) an employee of the Durgapur Steel Project under Hindustan Steel Ltd.,
(h) an employee of the Hindustan Cables Ltd.,
(i) an employee of the Mysore State Road Transport Corporation,
(j) an employee of Murshidabad Institute of Technology,
(k) an employee of State Bank of India,
(l) an employee of Life Insurance Corporation of India,
(m) civilian employee in defence services,

(n) an employee of the Damodar Valley Corporation constituted under the Damodar Valley Corporation Act, it was held that the definition of 'State' in Article 12 is for the purpose of Part III and cannot be imported into Part XIV,
(o) an employee of a municipality. It was held that the definition of 'State' in Article 12 is limited to Part III and services with a local authority do not amount to the holding of a civil post of a State,
(p) an employee of an Improvement Trust,
(q) an employee of State Electricity Board,
(r) an employee of District Board,
(s) a person appointed Secretary to a Village Panchayat,
(t) a notary under notaries Act,
(u) a person appointed under S. 81A, Bihar Hindu Religious Trusts Act, 1951,
(v) malis employed in Raj Bhawan,

94 Mohd Ahmad v. Improvement Trust 1957 2 All. 280.
100 Lachmi v. Military Secretary, 34 Pat. 412 1956 A.P. 398.
(w) A person appointed by government to discharge the functions of the Municipal Committee.

(x) An employee of Banks

(y) An employee of the University. The University is a creation of a State Act and is covered under the term 'other authority' embodied in Article 12, hence a State for the purpose of Part III dealing with Fundamental Rights but not for the purpose of part XIV of the Constitution.

The definition of 'The State' has been provided in Article 12 which includes 'Local or other authorities' also but this definition is applicable on Part III of the Constitution. The phrase 'Local or other authorities' is not applicable on Part XIV of the Constitution which relates to services as held in Rama Rao v. State of A.P.

3. (a) Sher Singh v. Panjab University, AIR 1969 P and H. 391.
   (b) Rama Rao v. State of A.P., AIR 1961 SC 564 (para 9)
   (c) Ajay v. Khalid, A.I.R. 1981 S C 487 (para.12)
   (d) Umesh v. V.N.Singh, A.I.R. 1968 Pa. 3 (F.B)
'Universities' have been held to be included in the phrase 'other authority' in Umesh v. V. N. Singh and hence, it is a State. In other words fundamental rights are enforceable against the universities.

The Supreme Court, in Electricity Board Rajasthan v. Mohan Lal clearly observed that the term 'other authority' will include all authorities created by the Constitution or statute and on whom powers are conferred by law. In this case Electricity Board was held to be a State under the definition provided under Article 12. Therefore the criteria for inclusion of an institution under the phrase 'other authority' is, when it is created by the Constitution or statute empowering power to such an institution.

Universities do not come under the definition of 'State' so far as Part XIV is concerned because the Universities comes under the term 'other authority'. Therefore, employees of the universities are not civil servants and are not entitled the protections provided under Article 311 as held by the Punjab and Haryana High Court in Sher Singh v. Panjab University. Hence, the doctrine of pleasure as embodied in Article 310 is not applicable upon employees of the universities.

Because university is a creation of a Statute, under which the university is to exercise subordinate legislation in relation to higher education and research. Hence, the university exercises the Governmental or statutory powers.
The authority of State is behind the university. The university is to fulfil the requirement of Article 46 i.e. to promote educational interest, of the people which is a duty owed by State. But the ordinances, statutes or regulations framed by the university will have to conform to the Fundamental Rights.

III. Meaning of 'Public Servant'

Section 21 of I.P.C. defines 'public servant' as:

"21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following namely:

First. - (Repealed by the Adaptation of Laws Order, 1950);

Second - Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third - Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth - Every officer of a Court of Justice (including a liquidator, receiver or Commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or
dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, member of a panchayat assisting a Court of Justice or Public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep or expand any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expand any property, to make any
survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh. - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral or to conduct an election or part of an election;

Twelfth. - Every person -

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956.

ILLUSTRATION

A Municipal Commissioner is a public servant.

Explanation 1. - Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.
Explanations. - The word 'election' denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election."

The Indian Penal Code 1860 contains general provisions regarding the offences which are common for public servants and other members of the society. But the Code contains several offences which can only be committed by public servants. These public servants enjoy many privileges peculiar to themselves. In this context the definition of 'public servant' is provided in the Indian Penal Code. In other words the line is drawn between the public servant and other member of society according to the nature of the offence alleged to be committed by a public servant i.e. which are not committed by persons who do not come within the definition of public servant. Whereas the word 'Civil Service' in Article 311 of the Constitution is embodied with the context of protection provided to the employees who come under the definition of civil servants.

In Indian Penal Code, the test to determine whether a person is a public servant is based on:

(a) whether he is in the service or pay of the Government;
(b) whether he is entrusted with the performance of any public duty.

The illustration provided at the end of section relates to Clause 10. The word 'Commissioner' is used in the sense of a Municipal Councillor or member and not merely an officer designated as 'Commissioner'.\textsuperscript{5} According to Madhya Pradesh High Court every Councillor is a public servant under S. 352 of the M.P. Municipalities Act.\textsuperscript{6} Also the Allahabad High Court too has held that by virtue of S. 40 of the U.P. Municipalities Act, 1916 and Clause 10 of S. 21 of I.P.C., a member of the Municipal Board is a public servant. Now it is settled law that an elected member of a municipality is not a public servant within the meaning of S. 21 of the Penal Code. Hence the Supreme Court has held that a public servant is an authority who must be appointed by the Government or Semi-Government body and should be in the pay or salary of the same. So a person like a Municipal Councillor who does not own his appointment to any Governmental authority is not a public servant. He is elected by the people and functions undeterred by the commands or edicts of a Governmental authority.\textsuperscript{8} M.L.A. is not a public servant within the meaning of any of the clauses of S. 21 of I.P.C., including clause twelfth because he gets pay and allowances by way of honorarium. He is not in the pay of the State Government because legislature

\textsuperscript{5} Banshilal Luhadia. A.I.R. 1962 Raj. 250.
\textsuperscript{6} J.M.Pendse v. Chandra Gopal, 1972 Cr.L.J.1207 (M.P.).
\textsuperscript{7} Prem Narain v. State of U.P., 1975 Cr.L.J. 1783 (All).
of a state cannot be comprehended in the expression State Government. Similarly a lecturer in a Government College does not function as a public servant within the meaning of Clause 9 of S. 21, IPC, when he acts as an examiner of a University, for as an examiner appointed by the University he does not become an officer.

It is well settled that Minister is a public servant. It was held by the Supreme Court that a minister while discharging duties as chairman of a District Advisory Committee in accordance with a Government Circular, assaulted and used criminal force against him, such persons were prima facie liable under Sec. 353 and 355 I.P.C. A Chief Minister or a Minister is a public servant as he is in the pay of the Government, even if there is no relationship of master and servant between Minister and the Government. A reference to Article 164 and 167 of the Constitution too shows that a Minister or a Chief Minister is appointed by the Governor and he gets a salary for discharging a public duty and the said salary is paid to him from Government funds. Therefore, these facts, point to one conclusion that he is public servant within the meaning of clause 12 of S. 21, IPC.

11. Dattatraya v. State of Maharashtra, 1975 Cr. L.J. 1490 (S.C.);
   AIR 1975 S.C. 1685.
The employees of a co-operative society under the U.P. Co-operative Societies Act are not public servants within the meaning of Clause 12 of S. 21, IPC, as a co-operative society is merely registered with the Registrar of a co-operative Societies under the State Act and as such it is not a corporation established by or under a Central or State Act. Yet an employee of a nationalised bank is a public servant as it is a Government Company under S. 617 of the Companies Act and it is also a body corporate established under a Central Act. A contrary view has been taken by a single bench of the Delhi High Court.

An I.A.S. officer working in deputation with a co-operative society, e.g., the Super Bazar, cannot be regarded as public servant while working as the General Manager of the Super Bazar and hence no sanction under S. 197 Cr.P.C., is required to prosecute him, being at relevant time he was not an officer in the service or pay of the Government.

IV Meaning of 'Public Officer'

Section 2(17) of C.P.C. defines the phrase 'Public Officer' as follows:

'Public Officer' means a person falling under any of the following descriptions, namely:

(a) every judge;

(b) every member of an All India Service;

13 Kurian v. State of Kerala, 1982 Cr.L.J. 730(Kerala)
Republic of India v. Khagendra Nath Jha,
1982 Cr.L.J. 961 (Orrisa); Kundan Lal v. State of Punjab,
1985 Cr.L.J. 1411 (P.and H).
14. Ragunath Rai Kumar v. B.N.Khanna, 1983 Cr.L.J. NOC 151(Delhi)
(c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government;

(d) every Officer of a Court of Justice whose duty it is, as such officer, to investigate or keep any matter of law or fact or to make, authenticate or keep any document; or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expand any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interest of the Government, or to make, authenticate, or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and
(h) every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

Section 2(17) of Code of Civil Procedure enumerates the definition of 'Public Officer'. This section defined to mean a person falling under any of the eight different descriptions given in clauses (a) to (h). Here no attempt was made to define 'public officers' rather merely describes them by enumeration. Fact that a person is a Public Officer does not necessarily entitle him to the benefit of Article 311 of the Constitution. The benefit of Article 311 is provided for the employee who are holding civil posts or are in civil service under the Union or States.

The definition of 'Public Officer' very nearly corresponds to that of a 'Public Servant' given in section 21 of the Indian Penal Code. But a person may be a public servant and not a public officer e.g., a Municipal Commissioner and Engineer. Similarly, a 'Sarpanch' is not a public officer. It is only for the purpose of the Penal Code that the panch or every member of the village court or village panchayat is regarded as a public servant. Yet he is not regarded as a public servant for all purposes.

16. AIR. 1957 Orissa 112.
The Commissioner of Corporation of Calcutta would not fulfil the description or definition of a public officer. Where the officers of the corporation are in the service and pay of the corporation and are paid out of the funds of Corporation, the officers of the Corporation are not public officers within the meaning of the Sec. 80 of the Code of Civil Procedure.

There are long line of cases which cover an employee in the definition of public officer. Following were held to be public officers: officer in Indian Army, Inspector of Police, Government servant lent to private institution, Minister of State, officer of Government functioning on deputation with State Electricity Board and Income Tax officer.

V. Distinction among 'Civil Servant', 'Public Servant' and 'Public Officer'.

Section 21 of the Indian Penal Code 1860 covers a number of persons under the definition of 'Public Servant'.

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22. 50 I.C. 683; AIR 1918 Bom 32.
23. AIR 1937 All 90.
Simultaneously, Sec. 2 (17) of Code of Civil Procedure contains table of those who are termed as 'Public officers'.

After careful perusal of the above mentioned two provisions, at least this conclusion can be drawn that 'public servant' and 'public officer' which are more or less analogous means Government Servant and also an employee of quasi-public institutions. The term 'Public Servant' is of wider amplitude. It is a general term and hence means all servants employed in public services. Accordingly, employees of defence establishment or defence services are public servants. Article 309 contains the expression 'public service' which indicates all servants employed in public services. Whereas the term 'Civil Servant' means a member of a civil service of the Union or a State or a person holding a civil post under the Union or a State.

According to Webster's International Dictionary and Law Lexicon of British India written by Ram Nath Ayyar, 'civil service' means service rendered to and paid for by the State other than pertaining to 'Naval or Military Service.' Therefore, civil service differs from naval or military service. Persons occupying civil posts and are attached to the Defence and paid for by the Defence Estimates, it is said that they are not civil servants. Furthermore, it has been held that this position would not change even if a civilian is employed

29. 59 Cal W.N. 835 ; AIR 1955 Cal 543.
in Defence Services.

In short, Code of Civil Procedure, 1908 and Indian Penal Code, 1860 are the general laws of the land, therefore section 2(17) of C.P.C. and section 21 of I.P.C. are applicable on defence as well as civil side of administration of the country and almost the terms 'public officer' and 'public servant' are synonyms in their meaning; whereas Article 311 of the Constitution is meant for providing protections to the employees of the civil side of administration i.e., civil servants only, excluding defence servants. But only Commissioned or gazetted officer in the military, naval or air force are included in the terms 'Public Officer' and 'Public Servant' and not every defence servant.

Secondly, section 2(17) of C.P.C. and section 21 of I.P.C. provide the list of persons who fall under the terms 'Public Officer' and 'Public Servant'; whereas Article 311 comprises the terms 'civil service', 'civil post', 'All India Service' and does not specifically provide the list of persons falling under the category of civil servants.

'Public Officer' and 'Public Servant' denote the meaning of 'Government servant' (defence as well as civil servants); Hence, civil servant under Article 311 covers only civil side portion of the government servants.

31. See section 2(17) of C.P.C. and section 21 of I.P.C.
32. See section 2(17) of C.P.C.