

PART XIV

SERVICES UNDER THE UNION AND THE STATES

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 bureaucracy thus helps the political executive in the governance of the country. The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fair play so that he may work and function efficiently and give his best to the country. Nevertheless, the overriding power of the government to dismiss or demote a servant has been kept intact, even though safeguards have been provided subject to which only such a power can be exercised. Articles 309 to 323 of the Constitution make elaborate provisions for the Central and State services.

{A. 309 } Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Further, the power to make rules lies with the President or governor.

It is not obligatory on the government to frame rules for creating a service, or a post, Article 309 does not abridge the

When a rule has been However, if a rule or a law is in or to lay down qualifications for a post or service, or to recruit people for the same, as the government can proceed to do so under its executive power.

Doctrine of Pleasure

This is the common-law doctrine . 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 at common-law to take recourse to the courts, or claim any damages for wrongful dismissal. He cannot file a case for arrears of his salary. The Crown is not bound even by any special contract between it and a civil servant, or the theory is that the Crown could not fetter its future executive action by entering into a contract in matters concerning the welfare of the country. **The justification for the rule is that the Crown should not be bound to continue in public service any person whose conduct is not satisfactory.**

Restrictions on the Doctrine of Pleasure: The Doctrine of Pleasure embodied in Article 310, though not subject to legislative power is not, however, unlimited. On its exercise, the Constitution imposes the following several qualifications:

The “pleasure” under Article 310 cannot be exercised in a discriminatory manner and is controlled by the Fundamental Rights, especially, Articles 14, 15 and 16.

Under Article 320(3)(c), the Union or the State Public Services Commission is to be consulted on all disciplinary matters affecting a person serving in a civil capacity under the Central or a State Government.

A.310. Tenure of office of persons serving the Union or a State:- holds office during the pleasure of the President/governor.

A similar rule is embodied in Article 310 (1) which lays down that the defence personnel and civil servants 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”.

Implications of the Doctrine of Pleasure

The Supreme Court has justified the pleasure doctrine on the basis of “public policy”, “public interest” and “public good” insofar as inefficient, dishonest or corrupt persons, or those who have become a security risk, should not continue in service.

However, the supreme court has reiterated at several instances that, if a civil servant was wrongly dismissed and later he was reinstated to services he could claim the arrears from the government.

A. 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State **shall be dismissed or removed by an authority subordinate to that by which he was appointed.**

(2) **Cannot be 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.

Exception to this rule: (these opportunity may not be given to)

- where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
- where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry
- when in the interest of the security of the State it is not expedient to hold such inquiry.

312. All-India services:

- if the **Council of States has declared by resolution supported by not less than two-thirds of the members present and voting** that Parliament may by law provide for the creation of

one or more all India services Parliament may by law provide for the creation of one or more all India services

- it may also regulate the recruitment, and the conditions of service of persons appointed, to any such service
- The all-India judicial service referred to in clause (1) **shall not include any post inferior to that of a district judge as defined in article 236**
- The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of
- Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of article 368.]

315. Public Service Commissions for the Union and for the States

(1) there shall be a Public Service Commission for the Union and a Public Service Commission for each State

(2) **Joint Public Service Commission:** If the legislatures of two or more state passes a resolution to that effect, parliament may by law create the a joint public service for them.

(3) The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

For Composition and other features of UPSC- See the table below.

- A person who holds **office as a member of a Public Service Commission shall**, on the expiration of his term of office, be ineligible for re-appointment to that office.

Bar on Future Appointments {Article 315}

- The Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- Member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission.
- A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or another member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission.

{Article 322}**The expenses** of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, **shall be charged on the Consolidated Fund of India or that of state.**

Official Languages: PART XVII

India is a multilingual country having numerous languages. This creates various problems and tensions in the country. Federalism in India is subjected to a unique challenge, the like of which it has not been faced by any other country, for here it has to bind together a much larger number of linguistic and cultural groups than are to be found in any other federation. In the U.S.A. and Australia, there is lingual homogeneity, as English is the language of administration and education in these countries. Though in Canada racial and linguistic problems arise, yet even here there are only two language groups and both English and French languages are recognised as the official languages.

India has two major linguistic families: Indo-Aryan and Dravidian. The Indo-Aryan languages, eleven in number, are derived from Sanskrit, are spoken by nearly 75 per cent people, of whom Hindi is spoken by nearly 42 per cent people. The Dravidian languages, spoken by nearly 24 per cent people, prevail in the South of India and of these, Telugu is spoken by the largest group. Some of the Indian languages are very old and have a rich cultural and literary heritage. All these languages are prevalent in fairly compact areas.

Constitutional Provisions:

The Constitution contains detailed provisions regarding the language problem. These provisions represent a compromise between the conflicting views held by the Hindi enthusiasts and others. The Constitutional formula has a number of inter-related elements, viz.:

- (1) English would continue as the official language for 15 years;
- (2) Hindi is to take its place thereafter;
- (3) **steps are to be taken to promote the growth of Hindi in the meantime;**
- (4) any State may adopt any other language as its official language

According to Art. 343(1), **Hindi written in Devanagari script is to be the 'official' language of the Union.**

Art. 343(2), inter alia, provides for the **continued use of English for all official purposes of the Union for a period of 15 years from the commencement of the Constitution.** The Constitution does not, however, regard the 15 year period as an absolute deadline; some flexibility has been introduced in the arrangement.

Thus, Art. 343(3)(a) **authorises Parliament to provide by law for the continued use of the English language** for such purposes as may be specified in the law even after that period. Parliament could thus permit the use of the English language beyond the 15 year period for some or all official purposes of the Union.

OFFICIAL LANGUAGE COMMISSION

Art. 344(1) provides for the **appointment by the President of a Commission on Official Language after five years from the commencement of the Constitution, and thereafter at the expiry of ten years from such commencement.** The Commission is to consist of a Chairman and such other

members representing the various regional languages mentioned in the VIII Schedule to the Constitution as the

President may appoint. According to Art. 344(2), the duty of the Commission is to make recommendations as to—

- (a) **The progressive use of the Hindi language for the official purpose of the Union;**
- (b) Restrictions on the use of the English language for all or any of the Union official purposes;
- (c) The language to be used for proceedings in the Supreme Court and the High Courts, for Central and State legislation and delegated legislation made thereunder etc.;
- (d) Form of numerals to be used for the official purposes of the Union;
- (e) Any other matter which the President may refer to it regarding the official language of the Union and the language of communication between the Union and a State, or between one State and another.

{345} Official Language of the states:

Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

{346} INTERGOVERNMENTAL COMMUNICATION

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union.

if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

{A 348} Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc until Parliament by law otherwise provides—

- (a) all proceedings in the Supreme Court and in every High Court,
- (b) **the authoritative texts—**
 - (i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
 - (ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, and.
 - (iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any

official purposes of the State, in proceedings in the High Court having its principal seat in that State:

Special Directives to the state:

{A. 350} Language to be used in representations for redress of grievances. — Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be

{350A}. Facilities for instruction in mother-tongue at primary stage.—It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.

350B. Special Officer for linguistic minorities. —(1) There shall be a **Special Officer for linguistic minorities to be appointed by the President.**

(2) It shall be the duty of the Special Officer **to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct**, and the President shall cause all such reports to be **laid before each House of Parliament and sent to the Governments of the States concerned.**

{351} Directive for development of the Hindi language. —It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India

	Formation	Appointment and Composition	Removal	Tenure	Salient Features
Election Commission of India	Under Article 324	<ol style="list-style-type: none"> Appointed by President (Recent Judgment of SC has held that Chief Election Commissioner and the Election Commissioners shall be made by the President on the advice of a Committee consisting of the Prime Minister, the Leader of the Opposition of the Lok Sabha and Chief Justice of India (CJI). established in accordance with the Constitution on 25th January 1950 (celebrated as national voters' day) <p>15 October 1989, the</p>	<ol style="list-style-type: none"> They can resign anytime or can also be removed before the expiry of their term. The CEC can be removed from office only through a process of removal similar to that of a SC judge by Parliament. 	<p>fixed tenure of six years, or up to the age of 65 years, whichever is earlier.</p> <ul style="list-style-type: none"> The Constitution has not prescribed the qualifications, not specified the and not debarred the retiring election commissioners from any further appointment by the government. 	<ul style="list-style-type: none"> The Commission is vested with quasi-judicial power to settle disputes relating to splits/mergers of recognised political parties. Commission has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures It prepares and periodically revise electoral rolls and to register all eligible voters. It grants recognition to political parties and allot election symbols to them.

		<p>election commission functioned as a single member body. Made multimember in 1989 till 1990 and again in 1993- Since then multimember.</p>			
Attorney General	Article 76	<p>BY President</p> <p>A person who is qualified to be appointed as the judge of the Supreme Court</p>	Traditionally resigns with govt	During pleasure of president	<p>Highest Law officer of the country.</p> <ul style="list-style-type: none"> • AG has the right to audience in all the courts in the territory of India. • He has the right to speak and take part in the parliamentary proceedings. However, he doesn't enjoy the right to vote. • All the privileges and immunities available to a member of parliament are granted to the AG.
Comptroller and Auditor General of India		<p>President of India appoints CAG by a warrant under his hand and seal.</p> <p>Their conditions of service and tenure of office are also</p>	CAG can be removed from his office in the same manner as a judge of the Supreme Court	He holds office for a period of six years or up to the age of 65 years, whichever is earlier.	<p>Guardian of Public Purse</p> <ol style="list-style-type: none"> 1. The duties and powers of CAG are mentioned in article 149 of the Constitution. 2. All the accounts related to the expenses from the Consolidated Fund of India, Consolidated Fund of the States, and Union Territories are audited by CAG.

		determined by the President			<p>3. Also, the expenditure from Contingency Fund and Public Account of India and States are audited by CAG.</p> <p>4. The net proceeds of any tax or duty are ascertained and certified by CAG.</p> <p>5. CAG acts as a guide, friend, and philosopher of the Public Accounts Committee.</p> <p>6. All the receipts and expenditure of bodies financed from the central or state revenue are also audited by CAG.</p> <p>7. The audits of any other body as and when requested by the President or Governor are audited by CAG.</p> <p>8. Three reports are submitted by CAG to the President. They are: (1) Audit report on appropriation accounts (2) Audit report on finance accounts (3) Audit report on public undertakings</p>
Union Public Service Commission		<p>1. One chairman and other members appointed by the president of India.</p> <p>2. president to determine</p>	<ul style="list-style-type: none"> • adjudged an insolvent • he engages in any paid employment • outside the duties of his office; or 	<p>Tenure of 6 Years</p> <p>Retirement:</p> <p>UPSC: 65 Years of age</p> <p>JPSC and SPSC: 62 years of age</p>	

		<p>the conditions of service</p> <p>At least one half of the members should have the experience of at least 10 years in the government service.</p>	<ul style="list-style-type: none">• If he is, unfit (body or mind) <p>Also on ground of misbehaviour- but here inquiry has to be conducted by apex court and the advice of apex court is binding upon president.</p> <p>UPSC, JPSC and SPSC members and Chairman can be removed only by President</p>		
Inter-State Council	Article 263	<p>the President can establish such a council if at any time it appears to him that the public interest would be served by its establishment</p> <p>The Sarkaria Commission on Centre-State Relations (1983–88) recommended for the establishment of a permanent Inter-State Council under Article 263 of the Constitution. Later, the Janata Dal Government headed by V. P. Singh established the Inter-State Council in 1990</p> <ul style="list-style-type: none">(i) Prime minister as the Chairman(ii) Chief ministers of all the states/UTs having assemblies(iii) Administrators of union territories not having legislative assemblies(iv) Governors of States under President’s rule(v) Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister. <p>Five Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime</p>		<p>The council is a recommendatory body.</p> <p>The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus.</p> <p>The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils</p>	

		Minister) are permanent invitees to the Council.			
GST Council	Article 279A 101st Amendment Act of 2016	<ul style="list-style-type: none"> The Union Finance Minister as the Chairperson The Union Minister of State in-charge of Revenue or Finance The Minister in-charge of Finance or Taxation or any other Minister nominated by each state government Chairperson of the Central Board of Excise and Customs (CBEC) now CBIT&C as a permanent invitee (non-voting) to all proceedings of the Council 			Every decision of the Council is to be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting at the meeting. (1/3 rd to Union and 2/rd to States)
Finance Commission	Article 280	<ol style="list-style-type: none"> By president at expiry of 5 years or even before. consists of a chairman 			<ul style="list-style-type: none"> It is a quasi-judicial body. <p>Functions:</p> <ul style="list-style-type: none"> The distribution of the net proceeds of taxes to be shared

		<p>and four other members.</p> <p>recommendations made by the Finance Commission are only of advisory nature and hence, not binding</p>			<p>between the Centre and the states, and the allocation between the states of the respective shares of such proceeds.</p> <ul style="list-style-type: none"> The principles that should govern the grants-in-aid to the states by the Centre (i.e., out of the consolidated fund of India). The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities
National Commission for Scheduled Caste	338	<p>By President</p> <p>It consists of</p> <ol style="list-style-type: none"> a chairperson, a vice-chairperson and three other members 		<p>the 65th Constitutional Amendment Act of 1990 provided for the establishment of a high level multi-member National Commission for SCs and STs in the place of a single Special Officer for SCs and STs.</p> <p>Again, the 89th Constitutional Amendment Act of 2003</p>	<p>Functions:</p> <p>(a) investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;</p> <p>(b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;</p> <p>(c) To participate and advise on the planning process of socioeconomic development of the SCs and to evaluate the progress of their development under the Union or a state;</p>

				<p>bifurcated the combined National Commission for SCs and STs</p> <p>(d) To present to the President, annually and at such other times as it may deem fit, reports upon the working of those safeguards</p> <p>The Commission is also required to discharge similar functions with regard to the Anglo-Indian Community as it does with respect to the SCs.</p>
National Commission for Scheduled Tribes	Article 338A			<p>It also preforms similar function vis-à-vis NCSC as it does for SC and beside w.e.f from 2005 additionally:-</p> <p>(i) Measures to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas</p> <p>(ii) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc., as per law</p> <p>(iii) Measures to be taken for the development of tribals and to work for more viable livelihood strategies</p> <p>(iv) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects</p> <p>(v) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place</p> <p>(vi) Measures to be taken to elicit maximum cooperation and</p>

				<p>involvement of tribal communities for protecting forests and undertaking social afforestation</p> <p>(vii) Measures to be taken to ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996</p> <p>(viii) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribals that lead to their continuous disempowerment and degradation of land and the environment</p>
National Commission for Backward Classes	Article 338B	<p>BY President consists of a chairperson, a vice-chairperson and three other members</p> <p>Conditions and office terms are decided by President</p>		<p>In the Mandal case judgement (1992), the Supreme Court directed the central government to constitute a permanent statutory body to examine the complaints of under inclusion, overinclusion or non-inclusion of any class of citizens in the list of backward classes. Accordingly, the National Commission for Backward Classes (NCBC) was set up in 1993 . Later, the 102nd Amendment Act of 2018 conferred a constitutional status on the Commission. For this purpose, the amendment inserted a new Article 338-B in the constitution.</p>
Special Officer for Linguistic Minorities	Article 350-B			<p>Originally, the Constitution of India did not make any provision with respect to the Special Officer for Linguistic Minorities. Later, the States Reorganisation Commission (1953–55) made a recommendation in this regard. Accordingly, the Seventh Constitutional Amendment Act of 1956 inserted a new Article 350- B in Part XVII of the Constitution.</p> <p>duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic</p>

				<p>minorities under the Constitution³. He would report to the President upon those matters at such intervals as the President may direct. The President should place all such reports before each House of Parliament and send to the governments of the states concerned.</p> <p>matters pertaining to the grievances arising out of the non-implementation of the Constitutional and Nationally Agreed Scheme of Safeguards provided to linguistic minorities that come to its notice or are brought to its knowledge by the linguistic minority individuals, groups, associations or organisations at the highest political and administrative levels of the state governments and UT administrations and recommends remedial actions to be taken</p>
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Delimitation of constituencies

- Delimitation is the act of redrawing boundaries of Lok Sabha and state Assembly seats to represent changes in population.
- The main objective of delimitation is to provide equal representation to equal segments of a population.
- It also aims at a fair division of geographical areas so that one political party doesn't have an advantage over others in an election.
- Delimitation is carried out by an independent Delimitation Commission.
- The Constitution mandates that its orders are final and cannot be questioned before any court as it would hold up an election indefinitely.
- The power to alter the constituencies has been conferred to the president of India after consultation with ECI.
- Article 82: Provides for the delimitation of Constituencies after every census.

Constitution of Delimitation Commission:

- **Parliament Enacts Delimitation act** and then a commission is set up under Retd Supreme court judge, CEC and respective state election commissioner.
- The Commission is supposed to determine the number and boundaries of constituencies in a way that the population of all seats, so far as practicable, is the same.
- The draft proposals of the Delimitation Commission are published for public feedback.
- The Commission also holds public sittings. After hearing the public, it considers objections and suggestions, and carries out changes, if any, in the draft proposal.
- The final order is published in the Gazette of India and the State Gazette concerned and comes into force on a date specified by the President.

The first delimitation exercise in 1950-51 was carried out by the President (with the help of the Election Commission). Another delimitation was due after the 1951 Census. Pointing out that the first delimitation had left many political parties and individuals unhappy, the EC advised the government that all future exercises should be carried out by an independent commission. Delimitation Commissions have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002. There was no delimitation of Lok Sabha Constituencies after the 1981 and 1991 Censuses.

Why was Delimitation Paused:

- The Constitution mandates that the number of Lok Sabha seats allotted to a state would be such that the ratio between that number and the population of the state is, as far as practicable, the same for all states.
- The southern states that promoted family planning faced the possibility of having their seats reduced.
- Constitution was amended during Indira Gandhi's Emergency rule in 1976 to suspend delimitation until 2001.

- **This ban on readjustment was extended for another 25 years (i.e., up to 2026) by the 84th Amendment Act of 2001**, with the same objective of encouraging population limiting measures.
- Later, the **87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census**. However, **this can be done without altering the number of seats allotted to each state in the Lok Sabha**.

How is delimitation done in areas which have disadvantaged groups?

1. Depending on the percentage of SC or ST residents in a State, a certain number of seats must be reserved there.
2. The Delimitation Commission examines the population distribution in each constituency after drawing the boundaries. ST is only allowed in the districts with the highest percentage of Scheduled Tribe residents.
3. The Delimitation Commission considers two factors when deciding how to divide up Scheduled Castes.
4. It chooses congressional districts where the population of Scheduled Castes is more prevalent.
5. However, it also disperses these constituencies across the State's various regions.
6. Because the population of Scheduled Castes is typically distributed evenly across the nation, this is done.
7. Every time the Delimitation exercise is carried out, these reserved constituencies can be switched out.
8. Other underprivileged groups are not similarly protected by the Constitution.