

Centre State Relations in India

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**Week 02: All India Services; Public Service Commission; Administrative Relations during
Emergency**

**Lecture 12: Introduction to Services under Constitution, Public and Joint Public Service
Commissions**

Greetings to all of you. So, we are studying module 3 where we have discussed administrative relations during emergency and in today's session we will be studying on Services as it has been laid down under the Constitution and what are the powers and functions of Public Service Commissions and the relevance of the doctrine of pleasure included in relation to Services. So, these are the areas which we would be covering today in today's lecture. We will cover the historical background of Services under the Constitution. We will look at the historical background of the Public Service Commission for the Union and the States and what is the history scope and exception laid down in relation to the doctrine of pleasure which plays an important role in the matter of appointment of the public servants. Now why this topic becomes very important we need to understand because of the very fact that when any policies are being made, when any programs are being formulated for the welfare of the people it is important that that program or policy gets implemented in its entirety and in its truest way and that is why it becomes very important that the individuals or the machinery which is involved in implementing the policy or the program they are well equipped to give a very strategic force to such policies and programs and for the same it has been rightly thought that Services should be part of the constitutional discourse. So that the machineries involved in giving effect to those policies and programs they should not get unnecessarily affected because of political developments, political priorities and it is expected that the machineries or institutions known as Public Service Commission they act in insulation they should not get unnecessarily influenced from those political beliefs and political developments.

That is why this subject becomes important and that's the reason why we are discussing this subject here in this NPTEL course on the Centre State relations.

Now as I said that it is desirable that there shall be a kind of close coordination between the Union and the States on the matter of formulation and the implementation of policies and the program because quality of life is demanded for everyone who is residing in this country, for every citizen of this country and therefore the close coordination between the Union and the States is required. That's why it has been suggested that let the Legislature be made a forum or platform who shall ensure the accountability of the elected government but then it is important that this elected government they get guidance or they get this policies or programs implemented through the civil servants. So, then what you look at it that that the civil servant which is appropriately to be called as public servant not as a civil servant. So, the public servants are of two kinds. One who are selected through the comparative process and the other is the elected public servant. So, Ministers are elected public servants whereas those who are getting into the Services through the comparative exams which is conducted by the Public Service Commission they are to be seen as selected public servants. So, what do you find is that that we do have public servants who are integral part of the administration and they have given a very defined responsibility to assist the elected government in the formulation of the policy and the implementation of the of the policy and why it is important to have a very good coordination and close cooperation between the Union and the States and for that cooperation or coordination public servants play very important role because at the end of the day it is important that that national goals are being achieved. For the same these public servants they play instrumental role in ensuring the same.

Now when you look at the history of this Services in India it goes back to the colonial rule. What you find is that when the colonial rule was here in India there was a well-organized civil service structure which further got concretized and institutionalized in the Government of India Act 1919 where specific provisions were included where Secretary of State was empowered to formulate Rules for regulating the classification of civil services in India. Rule relating to the method of recruitment and what are what should be their conditions of service, pay and allowances. The 1919 Act was also based on this official declaration that there shall be increased in Indianization of the Services where it is suggested that let the Indian people be encouraged to join civil services so that their insight can play a valuable role in implementing the policies of the government. Now what

happened is that at the end of the First World War it was suggested that the top of the important Services working under the Provincial government consisted of all India Services which includes the Indian Civil Service or Indian Police Service or Forest Service or Agriculture Service they need to work under the Provincial government or the State government and the other number of other services were there which were directly under the control of the Secretary of State. So that is what a kind of development which you find which took place in India when it comes to Services and something similar which has some on the subject again what we find is that Government of India 1935 Act also deals with that where dual system was established Governor General was given a responsibility to make an appointment with regard to Central Services whereas Provincial Services was brought in within the scope of the Governor and accordingly the power to regulate the conditions of Service was divided Governor General was given the responsibility for Central Services whereas appropriate Provincial government or the State government was given the responsibility for the State Services. Additionally, it was also suggested that let the legislature appropriate legislature so Provincial legislature or the Union legislature they is been given a responsibility that they can lay down a broader guidelines on the conditions of service and if the legislature decides to give the guidelines then the responsibility on the Governor General or the Governor to exercise their power on the lines of what has been approved by the legislative body. The Act has also provided a kind of safeguards where it says that the procedure to be followed for the dismissal removal or reduction in rank of civil servants and a special responsibility has been bestowed on the Governor General and the Governors.

So, you can very well look at it that the idea was that this civil servant they should not be seen as an ordinary employee because larger responsible interested upon them and therefore for their dismissal for the removal or reduction in rank there was a responsibility entrusted on the highest office the office of the Governor General or the Governor under the Government of India Act 1935. So, in this background there was a discussion which took place in the Constituent Assembly when the framers they sat together and they decided to formulate the Constitution for independent India. We see that there is a dedicated part under the Indian Constitution which talks about Services that is Part XIV of the Indian Constitution where you have Article 308 to 314 which deals with the Services. When you look at the debate what you find is that it is been largely taken from the structuring given under Government of India Act 1935. Whereas what you find is that the several

Committees were constituted to give a recommendation that what shall be the framework of the Constitution one such important Committee was the Union Constitution Committee and that recommended that all India Services recruitment shall be regulated by the Union law or by the federal law.

The constitutional advisor of the Constituent Assembly BN Rao he made the provision with regard to civil and defense services in the first draft for services which was there on the lines of Government of India Act 1935. Now defense services reference was dropped when the Draft Committee deliberated on the issues of civil services were included. So, the Draft Constitution was circulated for the comments to the Ministers and to the judges of the Federal Court and what I find is that the Ministry of Home emphasized that let there be Indian Administrative Services and Indian Police Services be seen as all India Services and there should be a constitutional protection given to them. The rationale given by the Minister who was heading that Ministry Sri Vallabhbhai Patel what he suggested is that why constitutional protection is needed because services needs to be kept above the political party lines and political considerations relating to appointment and discipline are to be of minimal level if it cannot be eliminated completely at least it should be of minimal interference and then it is also suggested that let all India Services be regulated on the basis of uniformity. So that is why you can very well look at that that how this all India Services they play important role in strengthening the central state relations because it is desirable that whatever policies are made whatever programs are made, whatever schemes are there in the place all these requires to be implemented on a very uniformed basis without bringing any parochial considerations without bringing in any regional factors into account and that is why it was suggested in the constitutional assembly by Sri Vallabhbhai Patel that let the services be insulated from political influences so that they can act independently.

So, the discussion took place in the month of September on 7th and 8th 1949 where Draft Articles of 282, 282A, 282B and 282C was discussed. Article 282C was absent in the Draft Constitution which was there in 1948. This Draft Article was again discussed on 8th September 1949 where it was suggested that let there be power given to the Parliament to establish one or more all India Services if resolution is coming from the Council of States and if such a resolution is coming from not less than two-thirds of the members present and voting. Now this becomes a very important provision. This becomes a very important provision because of very fact that that if situation

demands that this kind of all India Services are required in other discipline then the situation should not be of such nature where there would be no way out and that is why it was suggested that let the responsibility be there with the Parliament and Council of States being considered as representative of the States - provincial unit, they can pass a resolution. So, you can look at it that the way this provision has been incorporated is something where an indirect authorization is given to the parliament to formulate to establish all India Services on such subject matters which are not been considered as all India from the commencement of the Constitution and in fact, we have Indian Forest Service which is considered as all India Services. The other two services which were also being discussed as to be brought within the ambit of all India services that services related to engineers and public health but somehow, they have not been brought within the ambit of all India Services. Another member Mr. Brajeshwar Prashad he suggested that let there be substitution of this Article 282C where the responsibility may be given to Union Public Service Commission with regard to creation of the all India Services. Now the members have also argued that the idea of Article 282C is to protect the federal foundation of the Constitution. The Chairman of the Drafting Committee Dr. Ambedkar was of the view that because the Council of States Rajya Sabha represents the States and therefore it would be very appropriate that let the resolution come from the Upper House which would be seen as a kind of authorization coming from the States. That's how you find that we do have a provision where when the Council of States passes the resolution, it is suggested that services can be given the status of all India Services in fact that's what is the debate also going on in relation to all India Judicial Service that let this all India Judicial Service be brought into effect and reality. All India Judicial Services is being referred also in the Constitution and there is a debate discussion going on that should it be brought into effect should it be given kind of structuring so that there shall be a kind of uniformity on the matter of judicial process, the judicial activity very informally across the country.

‘Now we do have a provision with regard to Public and Joint Public Service Commissions these bodies are responsible for making the recommending the appointments. So, as I said Part XIV of the Constitution which deals with Public Service Commission that is Article 315 - Article 323. Article 315 which talks about Public Service Commission for Union and the States, Article 316 talks about the appointment and the term of the office of the Public Service Commission, Article 317 talks about the removal and suspension of a member, Article 318 talks about regulation of

conditions of services by the President for the Union Public Service Commission and the State Public Service Commission and Article 320 talks about functions of the Public Service Commission. Now the idea underlying this constitutional status is that this Public Service Commission they must act independently and they must act so that the interest of the Constitution gets served. That is why they have been given a status of constitutional body. That is what is the significance of having this provisions under the Constitution and in fact you can very well visualize and justify that why the Indian Constitution is the bulkiest Constitution, why it is the lengthiest Constitution because of provisions under the Constitution where you find that specific task has been entrusted upon the executive body or administrative body with an idea that they should have an autonomy directly under the Constitution so that their role function powers should not get disturbed and compromised based on any extraneous considerations. This is what is the history of Public Service Commission. The Commission came into existence on the recommendation of Motagu-Chelmsford Reform where first time it was suggested that let there be a Public Service Commission. This provision was added under Section 96C of the Government of India Act 1919 where it was suggested that let there be a Public Service Commission where there shall be not more than five members. This establishment of Public Service Commission revived by the Lee Commission or the Royal Commission on superior services in India in 1924 and this Lee Commission recommended that Public Service Commission be set up with the members free from political associations with the status of the High Court judges.

So, you can very well make out that the idea is that that the government of the day should not unnecessarily influence the functioning of the Public Service Commission and that is the reason why it is expected that Public Service Commission must act independently. This historical background conveys this message very strongly that this Public Service Commission is a constitutional body and the only thing we should guide them is the constitutional spirit and constitutional ethos. This is what is the history of Public Service Commission as I said Public Service Commission was set up in 1926 with an advisory function primarily for all India Services and provisions were made also for State Services or Provincial Services then we have got a province where the province was in favor of establishing a separate State Public Service Commission. Madras is the first State which has got a state Public Service Commission in the year 1930. Then there was a white paper which was published in the year 1933 which formed the basis

of Government of India Act 1935 which recommended a separate Public Service Commission for the States and separate for the Centre or the Union. That's how you find that Section 264 of the Government of India Act 1935 provided for the establishment of Federal Public Service Commission and the State Public Service Commission for each province or possibility of having a Joint Public Service Commission for two or more provinces. Now when it comes to the debate on the Public Service Commission in the Constitutional Assembly it was debated by both the Union Constitution Committee and the Provincial Constitution Committee. They suggested that let the Public Service Commission continue on the lines of as it was given under Government of India Act 1935. The constitutional advisor suggested that the provisions related to Public Service Commission should be something on a similar line of because it was tested one. Then it was suggested that let the members of Public Service Commission both at the Centre as well as at the States to be governed by the President and the Governor respectively. The President would act on the advice of the Cabinet while the Governor will authorize to act in his discretion that is what was suggested and then this Drafting Committee suggested also a kind of technical change where it was suggested that Union be substituted for federation and State should be substituted for province. In 1966 Administrative Reform Commission was has given a set of recommendation and one important recommendation which has given with regard to the all India Services it says that the all India recruitment is required in order to have a kind of inform standard administration throughout the country and it will also ensure that the best talent is now taken into the services. Additionally it was also suggested that when the people are recruited through all India services and when they are going to serve the State then there is a possibility that the senior officials they will give a different outlook all together to the issues faced by the State and they will bring in a different perspective for resolving the issues, for addressing the issues and also for laying down the pathway for implementing the vision of the government. That's why it was suggested that let there be a systematic deputation from the States to the Union to broaden the visions of the officers so deputed and brings to the Union the experience close to the actual reality. So that is why it was suggested that let there be officers moving from the State coming to the Union or going from the Union to the State in order to get a kind of holistic experience on the matter of different services.

Another important commission- Sarkaria Commission is it also suggested that all India Services are very important. They are playing a vital role in administration in Union-State relations and that

is why it was suggested that this all India Services they are not only helping in implementing the policies or ensuring the uniform applicability of the policies across the country, they are one of the important institutions for maintaining unity of the country. So that is another important aspect to look at it when you are talking about the relevance of all India Services. So, Sarkaria Commission said that any attempt to disband all India Services or to permit a State government to opt out of the scheme must be regarded as regressive one and it must not be accepted because it would cause a larger harm to the interest of the country. It was suggested that the all India Services is well planned, it is something which is time tested and therefore they must be engaged in a much better way so that they shall be effective implementation and for that what is needed is that let there be a proper training, let there be a proper deployment and promotion policies of the personnels appointed under this all India Services. It is also suggested that let there be a compulsion in the matter of deputation of officers of all India services to the Union. So that they get a kind of closer look on the they get a hands-on experience on the policy formulation which takes place at the central level at the macro level.

This is another important aspect with regard to all India Services which is on a matter of appointment and it is being discussed as a separate sub module or sub unit in this lecture tool. Now appointment of personnel's, appointment of officials under all India services are based on pleasure doctrine. Now this doctrine of pleasure is a very primitive one it is it is derived from the common law practice of England wherein it was suggested that the crown can dispense with the services of anyone at any time without giving any notice. This doctrine is derived from a Latin phrase *durante bene placito* which means that “during the good pleasure” and *durante bene placito regis* meaning “no one could hold an official position against the Kings will”. So, the power has been given to the crown to dismiss at pleasure and there is a no reason to give any justification for such removal. The justification for the rule is that that that the crown should not be bound to continue in public service of any person whose conduct is not satisfactory.

So, that is what is the kind of positioning of public servant that they are into such an important role that they must always act in the interest of the Constitution. This doctrine of pleasure has come before the court and has become a subject matter of judicial scrutiny. One of the cases BP Singhal Case where the court was examining in fact the issue with regard to the removal of the Governor, but then as we know that even the removal of the Governor is based on pleasure doctrine. In that

context the court has in general talked about that pleasure appointment is something where assignment of someone to employment that can be taken away at any time with no requirement of notice or hearing. That's how the court explains the scope of pleasure doctrine in a very prominent case of BP Singhal in the year 2010. In fact, we do have a also finding from Queen's Bench where you find that very old judgment of 19th century Dunn v. R where it says that employment in the service of the Crown hold their employment at the pleasure of the Crown. Again, you have cases from Privy Council where you find that the what the court says is that that the difficulty of dismissing servants whose continuance in office is detrimental to the State would if it were necessary to prove some offence to the satisfactory of a jury be such as to seriously impede the working of the public service. Because public servicing is of such a vital nature, is such an important thing that one should not wait for a kind of ordinary procedure to take place in order to ensure the removal.

It can be done in no time so that larger harm should not be there. So, this is the historical development with regard to pleasure doctrine and which has been well accepted also under the Indian Constitution you find that Article 310 of the Indian Constitution talks about appointment of people by the public service through the Public Service Commission is done on the pleasure doctrine. This all India Services people they are appointed on a pleasure doctrine basis that is what was said under Article 310 of the Constitution which was a part of Draft Article 282A which was originally not there in the Draft Constitution later on it was included. It was suggested very categorically that let the appointment of the civil servants or public servants is based on the pleasure doctrine. So, this is a chronological development that pleasure doctrine was there under Government of India Act 1919 which was there under Section 96B. Then we had statutory mention of this doctrine was also found in Section 240 of the Government of India Act 1935 and then as I said Article 310 also talks about this doctrine in a very clear term.

It categorically says and it says that except as expressly provided by the Constitution every person who is a member of defence service or a civil service of the Union or a State or all India Service or holds any post connected with defence or civil post under the Union all these individuals all these personnel they hold such office during the pleasure of the President or the pleasure of the Governor as the case may be. Meaning thereby that we personnel of defence service or a civil service of the Union or the State or all India Services that is IAS, IPS they are appointed on the

terms and conditions based on pleasure doctrine. Obviously, this except as otherwise provided with this Constitution because there are other appointments also taking place based on the pleasure doctrine. So, they are they are to be seen on a different terms, different perspective and that is how when you look at Articles 124, 148, 217, 218 or 324 which talks about appointment of Judges of the Supreme Court or Judges of the High Court or the appointment of Comptroller and Auditor General or the Chief Election Commissioner. It says that those appointments are also the appointment based on pleasure doctrine but then their removal process is different, their removal process is let down under the Constitution separately they should not be read in reference to Article 310. So, the doctrine of pleasure deals with three different categories of post. One is which are held during the pleasure of the President or the Governor, second is offices held during the pleasure of the President or the Governor but subject to some restrictions against removal and third category is the offices held for a specified term but with immunity against removal except by impeachment that is with regard to Judges, Comptroller and Auditor General. The third category of post is not subject to doctrine of pleasure where the appointment is happening on an ordinary way where doctrine of pleasure plays no role.

But there is an exception because ours is a constitutional democracy and where we find that it is the Constitution which guides every institution. That's why it suggested is that that though the appointment is based on pleasure doctrine, though pleasure doctrine says that the removal can be there without giving any notice without hearing the party but the same time it suggests two safeguards. One safeguard is that no person who is a member of civil service of the Union shall be dismissed or removed by authority subordinate to that by which he was appointed. Second one order of dismissal or removal of a civil service can be passed only after holding an enquiry and opportunity should be given to the delinquent officer that he should be allowed to present his case and making a representation in respect to the charges which are made and on penalty purpose. So, you can look at it that exception is created for Article 310 under Article 311 where these two important safeguards are there. So, though pleasure doctrine is there but then enquiry has to be there, removal must not be there by an authority which is subordinate. So, these are important provisions and important exceptions which complies with the requirement of principles of natural justice because any removal must be based on that well known principles of natural justice that is *audi alteram partem*. That's what the court has said in this famous case of Union of India v.

Tulsiram Patel where the court has expanded the ambit of Article 14 and said that even Article 14 makes the mandate of principles of natural justice and that is how the court says and I read: *“In England, except where otherwise provided by statute, all public officers and servants of the Crown hold their appointments at the pleasure of the Crown or durante bene placito (“during good pleasure” or “during the pleasure of the appointor”) as opposed to an office held dum bene se gesserit (“during good conduct”), also called quadiu se bene gesserit (“as long as he shall behave himself well”). When a person holds office during the pleasure of the Crown, his appointment can be terminated at any time without assigning cause. The exercise of pleasure by the Crown can, however, be restricted by legislation enacted by Parliament because in the United Kingdom Parliament is sovereign.....”*

This is what the court has decided on the scope the case of State of Bihar v. Abdul Majid where the court says that the tenure of the office of a public servant except where it is otherwise provided by an ordinary law passed by the Legislature can be terminated at any time without cause assigned. The true scope and effect of this expression is that if a special contract has been made with a civil servant the Crown is not bound thereby. So, if there is a contract that contract would not govern the service condition this constitutional provision will come into effect and there can be a possibility of premature termination of these of the services. Then we have a case of Moti Ram Deka v. North East Frontier Railway where it says that any order of termination will be invalid if Article 14 is violated and Article 14 here means that if it is arbitrary or that requirement of principles of natural justice has not been followed.

Another important judgment coming from the constitution bench in State of Uttar Pradesh v. Babu Ram. It was suggested that the power to dismiss a government servant at pleasure is subject only to those exceptions which were provided in the Constitution itself as the Legislature cannot take away or fetter the right of the State to dismiss a public servant at its pleasure. So, look at it even the court in this case has also said that Legislature also cannot tweak with the power which is conferred upon the Governor or the President on the matter of pleasure doctrine-based appointment. So again, in another important case which is a latest judgment coming from the Supreme Court in the State of Himachal Pradesh v. Raj Kumar, where the court categorically said *“the legislative power conferred on Parliament or a State Legislature, to make laws, or the*

executive power conferred on the President or the Governor to make rules under Article 309 is controlled by the doctrine of pleasure embodied in Article 310.”

So, Rules can be made by Parliament or can be made by the President, but then those Rules are subject to pleasure doctrine. So, pleasure doctrine will continue to have a kind of overriding effect. So, if a situation comes in where conflict is there between the rules and Article 310 it is Article 310, we shall prevail that is what is the mandate of Article 310 and that is how the reconciliation should be done between Article 309 and Article 310 if any conflict arises. These are the references for this lecture. Thank you very much.