
**A CRITICAL EXAMINATION OF THE DOCTRINE OF
PLEASURE AND ITS APPLICABILITY AND SUITABILITY
IN THE CONTEMPORARY INDIAN CONTEXT &
COMPARATIVE ANALYSIS WITH COMMON LAW
COUNTRIES**

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ABSTRACT

Emerging from its roots in common law, the Doctrine of Pleasure was incorporated into the Indian Constitution under Part XIV, Article 310, drawing inspiration from English legal principles. However, in the context of public servants within the Defense and Union civil services, the concept of the Crown's goodwill was replaced with the President's pleasure. Similarly, at the state level, civil service officers' tenure was tied to the governor's pleasure. Despite this, the Constitution offers protections for civil servants, explicitly stating in Article 310 that removal is only permissible for reasons linked to misconduct. Furthermore, Article 311 strengthens safeguards for civil servants, outlining a framework for protection against arbitrary dismissal or demotion. This provision ensures that individuals in civil service roles are granted an opportunity to defend themselves against charges, with penalties or removal contingent on evidence presented during investigations. Notably, the safeguarding of civil servants' interests against unwarranted reduction or dismissal is a primary function of Article 311, reinforced by its enforceability within the court system.

The historical Doctrine of Pleasure, originating during the British colonial period, maintains its relevance today. Consequently, the focal point of this research paper is to meticulously Analyze the rights bestowed upon Indian civil servants in relation to the Doctrine of Pleasure. This exploration will also involve a comparative examination of civil servants' rights in India vis-à-vis those in common law nations.

INTRODUCTION

During the colonial period, India introduced civil services and adapted them to local requirements. After gaining independence, India elevated its civil services to a constitutional status, heavily influenced by English law. One of the concepts inherited from the colonial administration was the "doctrine of pleasure." Under this doctrine, government employees were seen as servants of the government and exercised their duties based on their discretion.

In the United Kingdom, the Crown serves as the Executive Head, and the civil service is an integral part of the Executive branch. The doctrine of pleasure entails that the Crown possesses the authority to terminate the employment of a government servant at any time and without providing a specific reason. This principle implies that government employees serve under the pleasure of the Crown, which carries the inherent risk of sudden dismissal. In such cases, these civil servants are not entitled to challenge their dismissal or seek compensation for any resulting losses. This concept is grounded in considerations of public policy, particularly if the Crown deems it necessary to take corrective measures.

Before delving into a deeper analysis, it is essential to explore the rationale behind the ability to dismiss a civil servant working for the Crown at any moment. The effective functioning of governance requires an underlying sense of loyalty to both the Crown and the broader public interest. Furthermore, it is imperative to take decisive action against government workers who engage in dishonest or disloyal conduct that could undermine the well-being of the public. Let's delve into this study with a comprehensive understanding of these foundational principles.

POSITION OF THE DOCTRINE IN INDIA

In India, a parallel concept to the doctrine of pleasure is in place, bestowing the President with the authority to dismiss civil servants at will, similar to the prerogative of the Crown in England. In its origins, India featured a monarchy wherein the King held complete authority. In the contemporary context, the Indian Constitution incorporates the doctrine of pleasure in Article 310¹, elevating it to a constitutional tenet that can only be modified through constitutional means. Nevertheless, the implementation of this doctrine in India is constrained

¹ INDIA CONSTITUTION. Art. 310.

due to its integration into the Constitution.

Specifically, certain provisions within the Indian Constitution delineate limitations on the application of the doctrine. Distinguishingly, judges of High Courts, judges of the Supreme Court, the Chief Election Commissioner, and the Comptroller and Auditor General of India are exempt from its scope. Furthermore, Article 311² serves to shield civil servants from the blanket application of the doctrine under specific circumstances.

In India's quasi-federal system, the doctrine of pleasure carries notable implications for the interplay between the republican governance at the national level and the authority of the Governor. The actions of the Governor are subject to judicial review in scenarios where the President's decisions to remove them are founded solely on political motivations, devoid of due legal procedures. The Supreme Court has engaged with multiple facets of this doctrine, encompassing its essence, the Governor's role, and the constitutionality of the President's determinations regarding the appointment and removal of Governors.

Over time, the Court has imposed limitations on the President's discretionary power. The concept of pleasure is no longer beyond scrutiny; it is subject to judicial review based on the foundational principles enshrined in the Constitution. The Court places emphasis on upholding the principles of the rule of law, justice, and constitutionality. It has acknowledged the capacity for judicial evaluation of decisions involving dismissals. A pertinent example is the *B. P. Singhal* case,³ wherein the Supreme Court overturned the reasoning of the Central authority, affirming the Executive's prerogative to dismiss a civil servant while empowering the judiciary to review such actions in cases of dispute. In essence, India's adaptation of the doctrine of pleasure within its constitutional framework demonstrates the intricate balance between executive authority and the safeguarding of fundamental constitutional values, rendering it amenable to judicial oversight in certain contexts.

THE DYNAMIC RELATIONSHIP AMONG THE PERTINENT CONSTITUTIONAL CLAUSES

As per Article 367 of the Constitution and Section 219 of the General Clauses Act of 1897, the authority to establish, revise, or alter regulations stipulated by Article 309 of the

² INDIA CONSTITUTION. Art. 311

³ *B. P. Singhal v. Union of India* (2010) 6 SCC 311

Constitution or other statutes also encompasses the power to integrate, amend, or modify the regulations themselves. This grants the government the ability to make adjustments to the regulations that govern the terms of employment for public servants, aligning with the necessities of public service, without necessitating explicit consent from the affected employees. Such actions are permissible as long as they adhere to the provisions of the Constitution.

In the Grewal Rao case,⁴ the Supreme Court recognized that certain regulations related to terms of employment might require occasional amendments due to the exigencies of public service. Requiring individual consent from each government employee impacted by these changes would be unfeasible. It is also plausible for the government to retrospectively revise service regulations, a course of action that could potentially pose challenges for current employees. Nevertheless, in numerous instances, existing employees are provided safeguards to prevent undue hardships.⁵ It's crucial to underline that the entitlements granted under a government employee's terms of service persist even after their retirement.

THE LEGISLATURE'S UNRESTRICTED POWER

In India, the doctrine of pleasure is established through Article 310 of the Constitution. As per Article 310(1), the State holds the discretion to dismiss a public employee, except for explicitly mentioned exceptions in the Constitution. The Supreme Court has affirmed that this power is absolute and cannot be curtailed by legislation. Any contractual clauses attempting to restrict the President's or Governor's prerogative to dismiss employees at will are considered unenforceable and contradictory to Article 310. Such agreements are seen as impeding the exercise of pleasure or contravening the constitutional provision. The government is not permitted to enter into agreements that limit the exercise of this authority, especially when it is explicitly safeguarded by the Constitution.

However, the Supreme Court, as seen in the Satish Chandra Anand v. Union of India⁶ case, has ruled that the government can employ temporary employment contracts and enforce specific provisions on a case-by-case basis, provided they do not run afoul of the Constitution.

⁴ D.S. Garewal v. State of Punjab, AIR 1959 SC 512 (India).

⁵ Abhinav Garg, *Doctrine of Pleasure, An Analytical Study*, Academike Law Journal (April 8, 2015).

⁶ Satish Chandra Anand v. The Union of India, AIR 1953 SC 250.

RESTRICTIONS ON THE DOCTRINE AS UNDER ARTICLE 311

Article 311 within the Indian Constitution introduces exceptions to the application of the doctrine of pleasure, primarily concerning the President's or Governor's exercise of discretion. The execution of this discretion is bound by the procedural safeguards stipulated in Article 311. The Doctrine of Pleasure in India operates within certain boundaries as prescribed by the Constitution. These limitations encompass the following:

1. Agreements governing employment between the government and civil servants retain enforceability.
2. The exercise of pleasure is curtailed by the constitutional assurances of fundamental rights, which prohibit untrammelled access and arbitrary implementation.
3. Articles 14, 15, and 16 of the Constitution impose restrictions on the doctrine of pleasure. Article 141 prevents the unjust exploitation of power under the pleasure doctrine. Article 15 prohibits dismissals based on factors like race, caste, gender, birthplace, religion, or their combinations. Article 16(1) mandates impartial treatment and disallows discriminatory practices.
4. Specific positions are exempted from the reach of the doctrine of pleasure. These positions include judges of the High Court and Supreme Court, the Comptroller and Auditor General (CAG), and the Chief Electoral Officer. Thus, Article 310 establishes the overarching principle that government employees serve at the government's discretion, while Article 311 extends protections and delineates constraints on the government's discretionary authority to terminate employees.⁷

POSITION OF DOCTRINE OF PLEASURE IN U.K.

The Doctrine of Pleasure in the UK establishes that the duration of service for a government employee is subject to the discretion of the Crown. The *Shenton v. Smith*⁸ case clarified that civil service personnel retain their positions based on their affiliation with the Crown, rather than any special privileges. The intent behind the Doctrine of Pleasure is to

⁷ Adarsh Singh Thakur, *The Doctrine of Pleasure*, 1 IJLAD (2016).

⁸ *Shenton v. Smith*, [1895] A.C. 229 (H.L.).

ensure a cooperative relationship between civil servants and ministers, fostering effective decision-making. Nonetheless, government employees possess the right to challenge directives that contravene the Official Secrets Act of 1989, especially if such instructions promote partisan motives or breach legal standards.

Instances where the employer (the Crown) breaches obligations under common law, as exemplified by the *Matthews v. Kuwait Bechtel Corporation* case,⁹ render them accountable for compensating the employee for damages incurred. Furthermore, civil servants retain the right to claim back pay in instances of unjust dismissal, as emphasized in the *Terrell v. Secretary of State for the Colonies* case.¹⁰

The Trade Union and Labour Relations Act of 1992 enabled civil personnel to join unions, with certain exclusions related to security concerns. The Employment Rights Act of 1996 instituted statutory provisions for minimum redundancy pay and term protection, affording civil servants comparable employment rights to those in the private sector. The 2000 report by the Parliamentary Committee on Standards in Public Life underscored the significance of politically unbiased civil officials, prompting the proposal of the Civil Service (No. 2) Bill. This legislation sought to enforce impartial appointments within the Civil Service. The bill mandated that new recruits adhere to the Recruitment Code formulated by the Civil Service Commission.

POSITION OF DOCTRINE OF PLEASURE IN AUSTRALIA

In Australia, the foundation of the principle of pleasure traces back to the colonial administrations of the late 19th century. Nevertheless, significant transformations unfolded from the 19th century onward, leading to a shift in the rights of civil servants within the Australian Public Services. Their primary entitlement evolved into employment for a defined duration. Preceding the establishment of the Australian Government Employees Act in 1984, the executive authority in Australia, as highlighted in the *Shenton v. Smith* case,¹¹ vested the Crown with the rights to recruit, terminate, and oversee civil servants.

The Australian Government Employees Act of 1984 brought about noteworthy

⁹ *Matthews v. Kuwait Bechtel Corp.*, 126 F.3d 1139 (9th Cir. 1997).

¹⁰ *Terrell v. Sec'y of State for the Colonies*, [1953] Q.B. 482, 499 (Eng.).

¹¹ (1895) A.C. 229.

changes. Its objective was to safeguard employees based on merit and establish mechanisms for the assessment of initial grievances lodged by employees, along with the provision for appeals against judgments. The Commonwealth Public Service Regulation No. 5 introduced certain relaxations for civil officials. This regulation ensured that removal from office by the Governor-General was permissible only if negligence in their duties was proven or if they were discovered to be engaged in paid employment while carrying out their official responsibilities.

POSITION OF DOCTRINE OF PLEASURE IN U.S.A.

Furthermore, the federal Public Service Acts of 1902 and 1922 introduced limitations to the Crown's discretionary authority in dismissing civil servants in Australia. The Public Service Act of 1922 brought about substantial changes, including the introduction of fixed-term statutory appointments for senior officials to mitigate unnecessary politicization of the civil service. Nonetheless, this proposal faced contention and underwent modifications in 1999. The objective of this amendment was to confer administrative operational procedures with the power and oversight to manage the intricate and multifaceted nature of civil service tasks. While these alterations aimed at reducing political influence in appointments, it's notable that department secretaries in Australia are still designated by ministers and serve for a predefined period of five years, a point highlighted by Evans (2000). Overall, Australia's legislative evolution has shifted the emphasis away from the principle of pleasure, steering toward fixed-term employment and administrative supervision within the civil service.

In the United States, the origins of the federal employee dismissal authority can be traced back to 1789 when the House of Representatives conferred the President with the right to remove federal employees within the civil service. However, this legislation remained largely theoretical and was not implemented for the initial three decades (Deeben, 2005). Consequently, by 1828, the federal service system had become inefficient and ineffective. To address this, the Tenure of Office Act of 1820 was enacted, imposing four-year terms for civil servants and allowing their removal at the President's discretion during this term. A provision prohibiting the President from dismissing federal employees appointed with Senate consent was ratified by Congress in 1867 (Ellis, 2012). Between 1883 and 1937, the establishment of merit-based standards and political neutrality for civil servants marked a substantial advancement. However, in 1970, a Secretary of State appointed by the governor of Illinois dismissed 1,946 employees due to favoritism. Similarly, around 2,000 state employees

appointed by the Democratic governor in 1971 lost their jobs following the mentioned case (Howard, 2006). These individuals lacked adequate safeguards under civil service regulations.

To address these issues, the Civil Service Reform Act of 1978 was enacted. This legislation aimed to provide federal employees in the United States protection against arbitrary actions and partisan influence. The act prohibited unwarranted interference with the employment and responsibilities of civil servants. It also shielded against unjustified dismissal without evidence of legal violations, mismanagement, or abuse of authority (Kellough and Nigro, 2006). The act aimed to ensure increased fairness and security for federal employees.

POSITION OF DOCTRINE OF PLEASURE IN CANADA

There exist notable resemblances in the employment regulations governing public servants in both Canada and the Australian Public Service, stemming from shared influences of common law. However, significant distinctions also exist between the two nations.

In Canada, the services provided by public sector employees are subject to legislation enacted by Parliament. The selection of individuals to occupy civil service roles draws on recommendations from Commissioners, which Members of Parliament employ. The compensation of civil servants adheres to the collective bargaining system within the Ministerial Treasury Board. In 1967, Canada transitioned from a cost-based approach to employee management and consolidated staff cost administration through a system of budgeting decisions. However, this approach did not yield optimal results.

The Canadian public sector encountered challenges with inefficacious laws until the early 20th century. The eradication of favoritism in recruitment processes wielded substantial influence on the advancement of public service. In 1908, the Canadian government adopted central recruiting as a strategic move to enhance public service efficiency. Subsequently, the Civil Service Act was enacted in 1918, albeit without clearly delineating the roles of the central agency and deputy ministers, instead being focused on the Commission. Following World War II, amendments were introduced to the Civil Service Act, but the Civil Service Commission retained control over appointments and promotions. Moreover, the enactment of the Public Servants Disclosure Protection Act (PSDPA) in 2007 established a framework for addressing retaliation and disclosures, ensuring the safeguarding of public employees.

JUDICIARY ROLE IN DOCTRINE OF PLEASURE IN INDIA

The Supreme Court's verdict in the *Shamsher Singh v. State of Punjab* (1974) case affirmed that the President is typically obligated to adhere to the advice provided by the Council of Ministers. As the nominal head of the State, the President lacks the authority to act contrary to or without the recommendations of the Council of Ministers. Going against their decisions is impermissible, especially if they hold the backing of the majority of Ministers in Parliament. This underscores the similarity between the positions of the Governor and the President, both of whom hold titular roles without substantive decision-making powers. This parallel also extends to the Governor's position, as the Union Minister's tenure is also determined by the "pleasure of the President," stipulated in Article 75(2) of the Indian Constitution. In the *Nabam Rebia v. Deputy Speaker And Ors* (2016) case, the Supreme Court of India endorsed B. R. Ambedkar's viewpoint, which emphasized that the Governor lacks the capacity to fulfill duties independently. The Governor's actions are invariably contingent on the advice provided by Cabinet Ministers. The Governor is devoid of the right to independently exercise any authority and is not granted any constitutional role to take actions autonomously without the guidance of Ministers.

The Indian legal framework entrusts the Judiciary as an independent entity, distinct from the interdependent relationship between the legislature and the executive. This separation ensures that the Judiciary remains impartial and uninfluenced while delivering justice. In the context of the Indian Judicial System, the doctrine of pleasure finds no application. This signifies that judges of the High Courts and the Supreme Court are excluded from the purview of the doctrine of pleasure. This doctrine cannot be used to remove judges from their positions. This exemption extends not only to judges but also to various other categories of individuals such as those in the Indian Audits and Accounts Department, defense personnel, Public Sector undertakings, among others. These individuals are safeguarded against removal under the doctrine of pleasure.

The Judiciary holds a pivotal role in India as the interpreter of laws. While the doctrine of pleasure has been borrowed from English Law, the Indian Judiciary has, through various legal cases, rendered judgments concerning its applicability within India. In the *State of Bihar v. Abdul Majid* case, the Supreme Court ruled on the eligibility of a civil servant's claim for salary arrears. In England, it was established that a servant could not litigate against the Crown

for unpaid salary. This argument was presented in the case where a sub-inspector was discharged from service due to perceived cowardice, only to be reinstated later. He initiated legal action to recover the unpaid salary, yet the Government asserted that the doctrine of pleasure prevented such claims. The Supreme Court determined that this rule didn't extend to India, granting the sub-inspector the right to seek his unpaid salary.

Similarly, the Court also pronounced a judgment concerning another crucial aspect of the doctrine of pleasure. In the *Union of India v. Balbir Singh* case, it was affirmed that the Court possesses the authority to review the satisfaction of the President or the Governor, as appropriate. If the Court ascertains that this satisfaction is founded on grounds unrelated to the State's security, it can deem such satisfaction as being based on irrelevant and extraneous factors. Consequently, the dismissal of a civil servant can be declared invalid.

CONCLUSION

The findings of the study reveal that countries such as India, the US, Canada, the UK, and Australia did not follow an entirely apolitical process when forming their public service agencies. However, influenced by the common law system, these nations aimed to attain neutrality in their public service and underwent a phase in which appointments mirrored principles akin to the doctrine of pleasure. The study concludes that all these countries endorse the impartial recruitment of civil servants. Upon analyzing cases in each nation, it was evident that political engagement in the hiring or dismissal of civil servants doesn't inevitably render the system politically biased. In the US, the selection of civil servants is predominantly shaped by political considerations. Conversely, in other countries, appointments encompass both political and administrative involvement. Each nation has established distinct laws and institutions to supervise and ensure constraints on political influence. These countries have also implemented varied legislation to regulate staffing affairs, guarantee governmental adherence to limitations on their functional roles, and safeguard the tenure of civil servants.

To sum up, while the doctrine of pleasure or analogous principles played a part during the initial establishment of public service, these countries are committed to recruiting civil servants without partisan considerations. They have distinct legal frameworks, institutions, and mechanisms to oversee political participation, uphold civil service tenure, and enforce boundaries on governmental actions.

SUGGESTIONS

Here are some suggestions to consider:

- Enhance the clarity and transparency of the reasons for invoking the Doctrine of Pleasure. Provide a standardized framework for outlining the grounds for dismissal or demotion, ensuring that civil servants understand the basis for such actions.
- Establish a clear and fair process for initiating and conducting proceedings related to the Doctrine of Pleasure. This should include giving civil servants the opportunity to present their case, respond to charges, and access evidence against them.
- Introduce a mechanism for independent review of decisions made under the Doctrine of Pleasure. This can help prevent misuse of this power and ensure that decisions are not arbitrary.
- Define the scope of the Doctrine of Pleasure to ensure that it is not used for trivial or politically motivated reasons. This could involve specifying that it should only be invoked for serious misconduct or performance-related issues.
- Safeguard civil servants from retaliation or victimization for whistleblowing or expressing dissent. Ensure that invoking the Doctrine of Pleasure cannot be used to suppress dissenting voices.
- Consider mechanisms to hold public authorities accountable for decisions made under the Doctrine of Pleasure. This could involve providing avenues for affected civil servants to challenge decisions and seek redress.
- Conduct a comprehensive comparative study of other nations that follow similar doctrines to identify best practices. Learn from their experiences in balancing administrative flexibility with protecting civil servants' rights.