THE DOCTRINE OF PLEASURE

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ABSTRACT

The doctrine of pleasure originated in England where a servant of the Crown holds office during the pleasure of the Crown and he can be dismissed from the service at pleasure of the crown. Doctrine of pleasure in India is also based on the same content as it existed under the common law in England but has not been accepted completely, some restrictions were implemented on the same. The doctrine is embodied in Article 310 of Indian Constitution and the words 'except as expressly provided by the Constitution' inserted in Article 310(1) clearly denotes that the pleasure of the President is very much controlled by and subject to certain constitutional principles, the word ‘except’ excludes the services of the tenure of the Judges of the High Courts and Supreme court, of the comptroller and Auditor-General of India, of the Chief Election Commissioner and the Chairman and Members of Public service commission is not at the pleasure of the Government. And furthermore Article 311 also imposes restrictions on the privilege of dismissal at the pleasure. President doesn’t get the absolute power as the crown gets in England.

INTRODUCTION

The doctrine of pleasure has it origin from common law. The common rule is that a civil servant of the Crown holds his office during the pleasure of the Crown as a result of which his services can be terminated at any time by the Crown, except where it is otherwise provided by a statute without assigning any reason. Even though there is a contract of employment between the Crown and the civil servant, the Crown is not bound by it and the civil servant cannot even claim arrears of salary or damages for premature termination of the contract. Even if any special contract exists between the Crown and the civil servant, the Crown is not bound by it, for 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. To make it more precise, the civil servant can be dismissed without notice and he cannot claim damages for wrongful dismissal or immature termination of service. The doctrine is based on the public policy, which can be modified by an act of Parliament.
In India, the same rule is embodied in Art. 310 of the constitution but at the same time the rules have not been completely adopted in this article. As in England no civil servant can maintain an action against the crown for any arrears of salary. The assumption underlying this rule is that the only claim of the civil servants is on the bounty of the crown and not for contractual debt\(^{371}\) But in India the civil servant can sue the crown for arrears of salary. As in the case of \textbf{State of Bihar v. Abdul Majid}\(^{372}\) the Supreme Court upheld his claims for arrears of salary on the ground of contract. In the case of \textbf{Om Prakash v. state of Uttar Pradesh}\(^{373}\) the Supreme Court reiterated the above decision and held that when dismissal of a civil servant was found to be unlawful, he was entitled to get his salary from the date of dismissal to the date when his dismissal was declared unlawful.

Art. 310 of the constitution expressly provides that all persons who are members of defense services or civil services of the union hold office during the pleasure of the president. In the same way the state services hold the office during the pleasure of the governor. The Article starts with the sentence, except as expressly provided by the constitution. Art. 310 itself places restrictions and limitations on the exercise of the doctrine. The doctrine is not absolute, but qualified by the constitutional restrictions\(^{374}\)

In addition to that Art. 311(2) also provides restriction to the doctrine embodied in Art. 310. In the case of \textbf{union of India v. Tulsiram Patel}\(^{375}\) the court observed that Art. 311(2) is an exception to the doctrine of pleasure that is embodied in Art. 310(1). It gives constitutional mandate to the \textit{Audi alteram partem}\(^{376}\) rule of natural justice. The second proviso in Art. 311(2) itself stands as an exception to the same. The second proviso has been introduced in public interest and public good and has been strictly construed. The word “this clause shall not apply” are mandatory and are in the nature of constitutional prohibitory injunction restraining the disciplinary authority from holding the enquiry where one of the three clause of the Second proviso becomes applicable.

\(^{371}\) M.P.Jain, Indian Constitutional Law  
\(^{372}\) AIR 1954 S.C 245  
\(^{373}\) AIR 1955 S.C 600  
\(^{374}\) State of Uttar Pradesh Vs. Chandra Mohan Nigam, A.I.R 1977 S.C 2411  
\(^{375}\) (1985) 3 S.C.C 398  
\(^{376}\) It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.
HISTORY

IN ENGLAND

“The King can do no wrong” – a prerogative amongst others enjoyed by the King. The doctrine of *durante bene placito* originated from the above prerogative. Therefore, termination of a civil servant by Crown-ad-arbitrium (without assigning any reason), does not give right to that servant for any action in Queen’s court for damages for wrongful termination. Hence he could be terminated at pleasure. The relation of Crown with its servants is unilateral. Hence the principle of Master and servant applied in the services. It is a historical rule of common law that a public servant under the British Crown had no fixed tenure, but held his/her position at the absolute discretion of the Crown. Such rule had its origin in the Latin phrase “*durante bene placito*” (“during good pleasure”), or “*durante bene placito regis*” (“during good pleasure of the King”).

The doctrine is well defined and described in Halsbury’s Laws of England

Except where it is expressly provided by statute all public officials and servants of the Crown hold their appointment at the pleasure of the Crown, and in general, are subject to dismissal at any time without cause assigned, nor will an action for wrongful dismissal be entertained ever though a special contract be proved. In England, the exercise of pleasure by the Crown can be restricted by Parliament because of the concept of Parliamentary Sovereignty. The courts can only interpret the meaning of Acts passed by Parliament, and cannot set it aside or declare it to be void. In *Chelliah Kodeeswaran v. Attorney General of Ceylon*, Lord Diplock of the Privy council observed that 'any appointment as a crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation.' The concept of pleasure has undergone a change. Collective agreements between the Crown and representative of its staff provide that causes of action may be brought for breaches of any conditions of service, covered by such agreements. Even action for unfair dismissal may be brought by a civil servant, but remedy is confined to

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377 *during good pleasure*
recovery of damages for wrongful dismissal, since a civil servant cannot insist on continuing in employment\textsuperscript{379}.

**IN INDIA**

**PRE-INDEPENDENCE ERA**

The concept of the 'Doctrine of Pleasure' in India and its adoption can be traced to the Charter Act of 1833. Prior to it, in the Act of 1793 sections 35 and 36 provided for the removal or recall of any person holding any office, employment or commission in a civil or military capacity in the company, at the will and pleasure of His Majesty, heirs or successors and the court of Directors respectively. The concept of the doctrine was introduced in India by Statute of William the IV\textsuperscript{380}:

> Nothing in this Act shall take away the powers of the said Court of Directors, to remove or dismiss any of the officers or servants of the said company, but the said court shall and may at times have full liberty to remove or dismiss away such officer or servant at their will and pleasure.

Section 74 of the government of India Act, 1833\textsuperscript{381} stated that all servants of the East India Company - civil and military - were to hold office during the pleasure of the Crown. They were subject to dismissal, without any reason being assigned for such dismissal. In other words, the services of the company's servants were subject to the pleasure of the Crown, if appointed by the Crown, and in other cases, subject to the pleasure of the Court of Directors. Civil servants had, therefore, no remedy against such dismissal. The position was restated by the Queen's proclamation in November, 1858. It thus retained the power to dismiss any government servant at its absolute pleasure, by giving 100 statutory recognition to the 'Doctrine of Pleasure', under section 16 of the Government of India Act, 1858. The Act did not provide any remedy to civil servant even against any arbitrary dismissal. Under the aforesaid Act, the Secretary of State for India came to exercise the power of pleasure, which hitherto was exercised by the Court of

\textsuperscript{379} Tenure At Pleasure , Shodhganga a reservoir of Indian Thesis , http://shodhganga.inflibnet.ac.in/bitstream/10603/68357/10/10_chapter%203.pdf

\textsuperscript{380} Section 75, Statute of William the IV , Doctrine of Pleasure. Its Scope Implication and Limitation. Indian Journal of Public Administration

\textsuperscript{381} ibid
Directors. Though the Secretary of State-in- Council came to be entrusted with the power of framing rules in respect of the civil servants, they were subject to the overall power of the Crown to dismiss any employee at pleasure. Further, The Government of India adopted a resolution on 27th July, 1879 providing that in all cases of dismissal or removal of civil servants, the charges should invariably be reduced in writing and also provided for the examination of witnesses, as far as possible, in the presence of delinquent officials. Besides, it also provided for a right of cross-examination. However, this provision did not apply in respect of those persons suffering from punishment awarded by a court of law. This resolution continued to remain a mere assurance, as it was not acted upon. The resolution did not confer any right upon a civil servant in respect of his wrongful dismissal, since the Government could act independently of any enquiry, without assigning any reason by taking recourse to the 'Doctrine of Pleasure'. The existing service regulations, were mere directions to the Government of the colonies by the Crown for their guidance, and did not confer any right upon the civil servants. Eventually this was reflected in the decision of the Privy Council in *Shenton v. Smith* it was held that the civil servants hold their office subject to the pleasure of the Crown and therefore, remedy need not be in the form of any law suit, but by way of an appeal of an official or political kind.

**POST-CONSTITUTIONAL ERA**

The 'Doctrine of Pleasure' was introduced in the Constitution in the interest of discipline and efficiency. In England, this doctrine was based on public policy and the same has been incorporated in the constitution. The doctrine has been embodied under Art. 310 of the constitution of India. If we look into the constituent assembly debates it is clear that there was an attempt by the draft constitution moved by Dr. B.R.Ambedkar to embody the doctrine in Art. 282(A) which was hurriedly put through without allowing sufficient time full deliberations. Two minor amendments were moved during the debate on draft of Art 282(A). However, both these amendments were rejected. And finally embodied in Art. 310, this is very much evident that Section 240(1) of the Govt. Of India Act, 1935 has been reproduced in the said article. The doctrine

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382 Development of Legal Rights of Servants in India., Journal of Indian Law Institute  
of pleasure is regarded as a right conferred on the govt. over its servants, but it is further subject to restrictions that is laid down in Art. 311. Even though the concept of doctrine is same as provided in England but as provided in the constitution it is different from that provided in England, In England the pleasure of the crown is considered to be absolute but in India the same is not absolute as limitations have been incorporated in the doctrine in order to safeguard against arbitrary dismissal from service.

In the case of **B.P. Singhal v. Union of India & Another**, the court has categorically stated that the ‘Doctrine of Pleasure’ in its absolute unrestricted application does not exist in India. The court further said that “The said doctrine is severely curtailed in the case of government employment, as will be evident from clause (2) of Article 310 and clauses (1) and (2) of Article 311. Even in regard to cases falling within the proviso to clause (2) of Article 311, the application of the doctrine is not unrestricted, but moderately restricted in the sense that the circumstances mentioned therein should exist for its operation. ”

**CONSTITUTIONAL PROVISIONS FOR THE DOCTRINE**

The doctrine has been embodied in Part XIV namely Services under the union and the states, chapter 1 Services of the constitution. The service provisions under Part XIV of the constitution do not enshrine any fundamental right of the citizens, but relate to recruitment condition and tenure of service condition of the person, citizens, appointed to a civil service or to post in connection with the affairs of the union or any state. Art. 310(1) embodies doctrine of pleasure which is as follows

“Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State”

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The words 'except as expressly provided by the Constitution' inserted in Article 310(1) clearly denotes that the pleasure of the President is very much controlled by and subject to certain constitutional principles, as provided in Articles 311 of the Constitution.

The word except as expressly provided by constitution in Art. 310. Excludes the service of the below mentioned:

1. Tenure of Supreme Court judges {Article124}
2. Tenure of high court judges {Article148(2)}
3. The chief election commissioner(Article324)
4. Chairman and member of public- service commission (Article317)

In the case of **Chandra Bhan Vena v. Union of India**, the Bombay High Court took the view that statutory power being subject to constitutional provisions, cannot control the pleasure of the President or Governor under Article 310 of the Constitution, to terminate the services of a government servant. Taking a similar view, the Rajasthan High Court held that rules could however be framed, laying down the manner in which the pleasure could be exercised. Such service rules could not withdraw the power of the President, since such rules would be inconsistent with Article 310 of the Constitution. In England, the exercise of pleasure by the Crown can be restricted by Parliament because of the concept of Parliamentary Sovereignty. The courts can only interpret the meaning of Acts passed by Parliament, and cannot set it aside or declare it to be void. But in India it is not subject to any law of parliament but restricted by the constitutional provisions, as the constitution being the supreme law of the land the court may set aside or declare any act passed by the parliament that contravenes or is inconsistent with the constitution. In the case of **State of Uttar Pradesh v Baburam Upadhaya**, the Supreme Court held that neither the Parliament nor a state legislature can make a law abrogating or modifying the power conferred on the President or Governor under Article 310 of the Constitution. The pleasure of the President or Governor cannot be fettered by ordinary legislation, rule or regulation made under Article 309, as the said Article is subject to the Constitution, including Article 310(1). As power given to the

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387 Jagdish Dabiji v. Advocate General, Bombay, A.I.R 1958, Bombay 283 (289)
388 A.I.R 1961, SC 751 (761)
president and the governor is given by the constitution and subsequently that cannot be taken away by the parliament by enacting a mere legislation.

Article 310 empowers the State with supreme and effective control over the tenure of public servants, but the same is subject to the safeguards contained in Article 311. Further the apex Court in the case of Motiram Deka v. General Manager, N.F.Railway\textsuperscript{390} has observed that the 'Doctrine of Pleasure ' has to be exercised in accordance with the requirements of Article 311 of the Constitution. Once the true scope of Article 311 is determined, the scope and effect of Article 310(1) must be exercised within the requirements of Article 311 of the Constitution.

Article 310 (1) is always read together with Articles 309 and 311 of the Constitution

Art. 309 of the constitution is as follows -

“Recruitment and conditions of service of persons serving the Union or a State 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;”

Article 309 empowers the Parliament and the State legislature regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union\textsuperscript{391} or of any State respectively. At the same time it also authorities the President to make rules for the above purposes until provision in that behalf is made by or under an Act of Parliament.

In the case of Union of India v. Tulsiram Patel the court observed that functions are to be performed with respect to not only persons employed in civil capacities but with respect to all persons appointed to public services and posts in connection with the affairs of the union or any state by authorities appointed under specified act made under Art. 309 or rules made under such acts or made under the proviso of that article.

\textsuperscript{390} A.I.R 1964, SC 600 (a)

\textsuperscript{391} State of Karnataka & Ors. v. Ameerbi & Ors., 2006 (13) SCALE 319.
RESTRICTIONS ON THE DOCTRINE

In the case of State of Uttar Pradesh v. Chandra Mohan Nigam the court held that the pleasure doctrine under Article 310 is conditioned by constitutional restrictions under Article 311.

Article 311 states that –

“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 a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or 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.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply –

(a) 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; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.
(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

The pleasure of the President or Governor is controlled by provisions of Article 311, so the field covered by Article 311 is excluded from the operation of the doctrine of pleasure.\(^{392}\) The pleasure must be exercised in accordance with the procedural safeguards provided by Article 311. Under Indian Constitution several restrictions has been placed on Doctrine of Pleasure. They are as follows\(^{393}\):

1. The service contract entered between the civil servant and government may be enforced.

2. The fundamental rights guaranteed under the constitution are restrictions on the pleasure doctrine and therefore this doctrine cannot be resorted too freely and unfairly, Articles 14, 15 and 16 of the Constitution imposed limitations on free exercise of Pleasure Doctrine. Article 14 embodies the principle of reasonableness the principle of reasonableness is antithesis of arbitrariness. In this way, Article 14 prohibits arbitrary exercise of power under pleasure doctrine. In addition to article 14 of the constitution Article 15 also restricts arbitrary exercise of power in matters of services. Article 15 prohibits termination of service on grounds of religion, race, caste, sex or place of birth or any of them. Another limitation is under Article 16(1) which obligates equal treatment and bars arbitrary discrimination.

3. Further the doctrine of pleasure is subject to many more limitations and a number of posts have been kept outside the scope of pleasure doctrine. Under the constitution the tenure of the Judges of the High Courts and Supreme court, of the comptroller and Auditor-General of India, of the Chief Election Commissioner and the Chairman and Members of Public service commission is not at the pleasure of the Government.

Thus, the general principle relating to civil services has been laid down under Article 310 of the Constitution to the effect that government servants hold office during the pleasure

\(^{392}\) Motiram v. North Eastern Frontier Railway, A.I.R 1964 SC 600

\(^{393}\) M.P Jain, Indian Constitutional Law
of the government and Article 311 imposes restrictions on the privilege of dismissal at the pleasure in the form of safeguards.

**ARE ARTICLES 310 AND 311 CONTRARY TO ARTICLE 20(2) OF THE INDIAN CONSTITUTION OR TO THE PRINCIPLES OF NATURAL JUSTICE**

When a government servant is punished for the same misconduct under the Army Act and also under Central Civil Services (Classification and Control and Appeal) Rules 1965 then the question arises that can it be brought within the ambit of double jeopardy. The answer was given by the Honorable Supreme Court in the case of **UOI v. Sunil Kumar Sarkar**, held that the court martial proceedings is different from that of central rules, the former deals with the personal aspect of misconduct and latter deals with disciplinary aspect of misconduct.

Ordinarily, natural justice does not postulate a right to be presented or assisted by a lawyer, in departmental inquiries but in extreme or particular situation the rules of natural justice or fairness may require that the person should be given professional help.

In a landmark case of five Judge Constitution Bench held that since the denial of the report of the enquiry officer First Schedule reasonable opportunity to the employee to prove his innocence and a breach of principles of natural justice, it follows that the statutory rules if any, which deny the report to the employee, are against the principles of natural justice and, therefore, invalid. The delinquent employee will therefore be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The reason why the enquiry officer’s report is considered an essential part of the reasonable opportunity at the first and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions.

The mandate of ‘reasonable opportunity of being heard’ in departmental inquiry encompasses the Principles of Natural Justice which is a wider and elastic concept to accommodate a number of
norms on fair hearing. Violation of Principles of Natural Justice enables the courts to set aside the disciplinary proceedings on grounds of bias and procedural defects\textsuperscript{394}.

**CONCLUSION**

As the doctrine of pleasure first developed in England, as we know many laws were accepted or adopted from England, in the same way this doctrine of pleasure is accepted in India but, it has not been accepted completely in India. It is subject to restrictions by the provisions of Article 311 which provides for procedural safeguards for civil servants. Thus it can be assumed that the Constitution makers at that time had knowledge or idea about the discrepancies like corruption that may creep into the civil services, so in order to avoid granting immunity from summary dismissal to dishonest or corrupt government servants so that they continue in service for months together “at the public expense and to Public detriment”. Also at the same time the judiciary with its limited judicial review and departmental appeal has ensured that the power to dismiss has not been misused by the authority.