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An In-depth analytical study on the History and Origin of 'The Doctrine of Pleasure' in the Common Law system

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Abstract

The 'Pleasure Doctrine' concept lies in the Common Law of England. This legal doctrine's origin and development can be traced back into the early common law system in England. We also find traces of it in other common law countries. In India, it is best known as the Doctrine of Pleasure. Similar provisions like that in England and other countries have been incorporated into the Constitution of India to safeguard the interests of civil servants and safeguard national security and general interest. Under the Indian Constitution, Art 310 provides that a civil servant of the Union works at the pleasure of the President and a civil servant under a State works at the pleasure of the Governor of that State. Several other countries like India, the US, Canada, and Australia, having the common law system adopted similar rules. A person holding their offices during the good pleasure of their government cannot be terminated without assigning a cause, anytime. The primary aim of this paper is to provide in-depth research and analysis on the historical context of the doctrine of pleasure in England with the help of existing studies, books, and government websites. This paper also focuses on providing Interpretation and correlation of the Doctrine of Pleasure amongst the common law countries and India.

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Key Words: Common Law countries, History, origin, civil, England, India, Doctrine of pleasure, Indian Constitution, Article 310

Research Objectives

- To find proof on the concept that the Indian law intact has only few limitations on the executive's power.

- To look into the possibility of whether there is a chance of being able to gift independence to civil servants.
- Where there should and can be a specific procedure laid down through a statute, to regulate appointment, removal, remuneration, etc. of civil servants.
- And if such acts and provisions exist, how effective have they proven to be in history
- To make an attempt at giving a layman description into the doctrine of pleasure , explain its further development throughtout the years under few common law jurisdictions.
- Paper focuses in drawing a comparative study between them in different jurisdictions.
- Lastly to analyse whether the present form of application in India adequate for the protection of civil servants.

Literature Review

Doctrine of Pleasure as under the Indian Constitution —

This article gives a brief account of how doctrine of pleasure exists under the Indian Constitution. It speakes about the discrepancies like corruption to creep into the civil services, so in order not to grant 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.

The Doctrine of Pleasure and the modifications made in India —

This Article is written by Adarsh Singh Thakur, 3rd-year student, Indore Institute of Law. He discusses the Doctrine of Pleasure and the modifications made in India. The judiciary has played a key role in balancing the arbitrary aspects of this doctrine by their power of judicial review. The article explaisn in depth

about the principle 'the King can do no wrong' not being suitable to the Indian scenario. Despite the judicial intervention, the exceptions to the protection can still be misused. Therefore instead of reviewing each and every instance of arbitrariness, it would be better if certain guidelines are provided which have to be followed while availing these exceptions.

Critically analysis of Doctrine of Pleasure —

This article is written by: Shashwat Agarwal - Semester V student of Nirma University. This paper revolves aroun dthe idea that effective and efficient governance is the expectation of every civilized society.The civil servants, who are also known as to be the members of the Executive wing of the nation, who are also known as the non-political and non elected functionaries thus helping them to prevail in the nation a proper law and order situation. And to limit their powers, the Indian Constitution has provided Articles 309 to 323. Articles 309 to 323 of the Indian Constitution have elaborately discussed the provisions relating to the Centre and the State services. The Constitution thus seeks to inculcate in the civil servants a sense of security and fair play and to give the best to the nation.

Introduction

Doctrine of pleasure which will be referred to as DP from the continuing text was a term introduced at the time of the Crown in Mid century England and is a term that lies only in the country of the House of commons. The term was introduced to explain the working class civil officers or public officials working for the crown. The Doctrine revolves around the idea express regarding how sich public officials were appointed and further explained their duties and functions and the rights conferred on them by the crown. The term of their offices were based on the crowns discretions and their appointment were in a state of being terminated any time based on the crowns desires.

All the countries that happen to adopt the Common law system and included the common law

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regulations and rights along with others into their constitutuions and legal documents.

Several other countries such as India, USA, Canada and Australia have common law systems that have adopted similar rules whereby a person holding office in his or her government's will cannot be impeached /terminated without specifying a reason any time. Public servants are imperative orders for the governance of the country and cannot be removed because their actions do not favor the government according to the will of the government and those actions of the government are limited regulated by law.

History of Doctrine Pleasure in common law states traces its roots to its origins in the historical codes of Great Britain. Cases of power removed at will by the crown began in 1780 and were also seen throughout the 19th century, during the era of administrative decentralization. Under the British Crown, a civil servant was not has a fixed term but holds office according to the absolute preference of the Crown.

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The origin of this rule can be traced back to the Latin phrase "durante mun bong da" meaning "in good joy", or "durante mun bong da" meaning "in good joy". beauty of the king", as stated the Court of Appeal at Dunn v R (1896).

Doctrine was later applied by other countries by common laws. In India, doctrine is enacted into the Constitutional Law of India under Sections 310 and 311. In the United States, Doctrine of Pleasure or Practice of Patronage begins with the republics, under their leadership of President Washington until the early 1970s.

However, in both India and the United States, 4 senior central government officials serve at the will of the president. In the case of Canada, civil appointments are largely made by the ruling party, which still decides to appoint by patronage . In addition, the first instance of politicization

in Australia's
public services was observed in 1996, which led to a review of public service law in the country. The central objective of this study was to analyze and compare the regulations, advantages and limitations of the Pleasure Doctrine in certain common-law countries.

The Development of Pleasure Doctrine

Pleasure Doctrine is a widely accepted principle in India. The powers of the Queen or the Crown are exercised by the President and Governor, as Head of Union and of State, respectively. According to the doctrine, the President and the Governor are empowered to dismiss a public servant. In a practical sense, this doctrine grants full authority to effect such termination without giving cause or notice. So a civil servant carries out his duties with the joy of the Crown.

The doctrine entered India after the founding of the East India Company. The British introduced civil services for better governance. Although the Company has the power to appoint and dismiss officials, the Crown remains the ultimate authority. The source of its strength came from the doctrine. This was even incorporated into the Charter in 1833.

Furthermore, after the Government of India Act was enacted, this doctrine became part of the law. Study India. [1] But after the Constitution was adopted, the doctrine was supplemented with some amendments. The authoritarian power conferred by the doctrine has been modified to include certain limitations. In addition, there is a change in the use of words. "The Goodwill of the Crown" has been replaced by "the good pleasure of the President". The doctrine in its present form is included in Section XIV, s. 310 of the Indian Constitution.

Art. as follows:
"Except as provided for by the Constitution, an officer of the Union acting in the will of the President and an official of a State acting in the will of the Governor of that State."

[1] Section 240, the Government of India Act, 1935

Art. Provided that the power conferred is subject to the provisions of the Constitution[2]

Limitations on the Application of the Doctrine

The application of doctrine is subject to certain limitations, which ensure reasonableness of the President's decision. The basic common law limitation is nonarbitrariness. Any termination made as per the doctrine should not be arbitrary. Further the Section itself provides that the exercise of such authority shall not in conflict with other provisions of the Constitution. The power can be challenged if it is exercised in violation of the Fundamental Rights guaranteed under Art. 14, 15, 16, etc. [3]

In addition to the above, articles. 311[4] also extends protection to civil servants. Two major warranties are listed in the art.

Not fired by the competent subordinate who appointed him. An OFFICIAL EMPLOYEE may be appointed only by an equivalent holder or superior of the person who appointed him.

Reasonable chance to be heard. Clause (2) of the Terms. Provides for a three-step process. An investigation must be conducted, the accused officer must be informed of the charges against him and he must be given a reasonable opportunity to defend himself.

Any withdrawal or termination without following these steps is void. [5]Any claim against illegal eviction must be made by lawful means. The Supreme Court has ruled that the Court has the right to judicial review of the president's satisfaction. If this satisfaction is based on an unrelated reason, it may be

[2] Art. 310(1)
[3] Mathew, A. M. (2018) 'Doctrine of Pleasure Whether an Impediment to Governor's Functioning', International Journal of Legal Developments & Allied Issues, 4(5). http://ijldai.thelawbrigade.com/wpcontent/uploads/2018/09/Anne-Maria-Mathew.pdf
[4] Article 311 of Constitution of India
[5] Khem Chand vs. Union of India, (1987) 0 CALLT 56 HC

cancelled. [6]

All these measures ensure that public servants are not arbitrarily fired or dismissed and ensure job security[7]

DISCUSSION

For common law countries, five countries namely India, Great Britain, USA, Canada and Australia were selected to examine how different forms of hedonic theory have been put into practice. This comparative difference is studied for each country as follows:

a) India

Owing to its origin to common law, the Doctrine of Pleasure was adopted from England in the Indian Constitution under part XIV, Article 310. However, at provision of goodwill of the Crown was replaced by pleasure of the President in case of public servants in Defense services or civil services of the union.

Similarly, in the states, officers in civil services could hold their office at the pleasure of governor. The Constitution, however, guarantees the safeguard of civil servants by explicitly mentioning in the article "Except as expressly provided by this Constitution" and make provision for removal from duty only in case of with reasons "connected with any misconduct on his part" .Further, in Article 311, safeguard to civil servants is laid down under the provisions of protection of removal of office by an authority subordinate or without an inquiry based on charges against him.

The article guarantees that the person holding a position in civil services will be provided with an opportunity of being heard on the charges on him and only on the basis of evidence produced

[6] State Of Bihar v. Abdul Majid, AIR 1954 245

[7] Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36

during the investigation is he liable for penalty or removal from office. The procedure prescribed under Article 311 is envisioned to assure, to extent security of tenure to
appointees of civil service, who are covered by the Article (Parshotam Lal Dhingra v/s Union of India,
1957). Additionally, benefit of Article 311 in the Indian Constitution is to ascertain safeguarding interest of the civil services employees against arbitrary dismissal or reduction
to a lower rank. Indian Constitution further guarantees safeguard of tenure to the civil services government employees by making Article 311 provisions enforceable in a court of law. While in case of infringement of Article 311, the disciplinary authorities' orders are considered void abinitio and in the eye of law and deemed any action on the government servant is not validates or considered lawful (KHEM CHAND Vs. UNION OF INDIA (UOI) AND
ORS. LAW (P&H) 19601114, 1960). However, Section 311 does not apply if the officer has been convicted of a criminal offense, is unfeasible, or when the President considers that keeping a public employee in public office is prejudicial to state security. state (Mathew, 2018).

Application of doctrine in other countries

b) United Kingdom

The Doctrine of Pleasure in UK has specific mention of that term of employment of a civil servant is during good pleasure of the crown. In case presiding over Shenton v. Smith, Lord Hobhouse addressed the confusion regarding the issue. The judge highlighted that unless in a specific case, civil servants hold their office because of terms of their engagement with the Crown and not as a result of any exceptional privilege of the Crown.

The doctrine was first established in England. All countries that follow the doctrine trace its origin to Great Britain. In the United Kingdom there is a clear regulation that public servants must carry out their duties according to the will of the Crown.[8] The rule is absolute, meaning that public servants have little claim against any arbitrary act of this power. The first instance

[8] Madhusudan Saharay, Adoption of Foreign Doctrines by the Supreme Court 308 (Eastern Law House, ed., 2011)

where the courts tried to interpret the rule was in Shelton v. Smith [9] . It is assumed that the Royal Family has absolute power to dismiss any public servant, including those appointed for a limited time. This view was later confirmed by many other statements. [10]

Later in Riordan v. The War Office [11] held that the Crown's power was absolute and could only be limited by law. The purpose of the doctrine was to create an "organic unity" between the Crown and the official. This will ensure a smooth flow of power and better governance. [12]

The Official Secrecy Act of 1989 places a restriction on the rule. Where power is used by the Crown to carry out orders that compel an officer to act illegally or to perform politically biased actions. Public servants may apply to the Public Service Commission. [13]

Under the Civil Service Status and Civil Service Act, the state government under the leadership of the central government has added procedures for dismissing civil servants beyond the control of the parties. In addition, Crown is liable for damages for injuries caused by common law obligations.

In addition, under various laws such as Trade Unions and the Labor Relations Act 1992, there are provisions allowing civil servants to form unions and exercise their right to collective bargaining. The Employment Rights Act provides protection to public servants by imposing certain restrictions on the powers of the Crown. Except for reasons of national security, a minister cannot dismiss a civil servant.

BLIND FOLD LEGAL JOURNAL

[9] [1895], A.C. 229
[10] Dunn v. The Queen, [1896], 1 Q.B. 116
[11] [1959] 1 W.L.R. 1046
[12] Shakti Mohan, Legislative Provisions Regarding Civil Servants After Independence And Their Relationship With Doctrine Of Pleasure, Indian Streams Research Journal.
[13] Siddharth Thapliyal, Poonam Rawat, Doctrine of Pleasure in major Common law Countries: Interpretation & Correlation, International Journal of Recent Technology and Engineering (IJRTE) ISSN: 2277-3878, Volume-8 Issue-2, July 2019.

The Doctrine of Pleasure devised to ensure that civil servants need to be 'reciprocal' towards the government and there should be organic unity between the civil servants and minister to enhance decision making .However, in the situation where a civil servant is asked to act on political partisan purposes, or even break the law while obeying orders of a superior, have the right to appeal under Official Secrets Act 1989, to the independent Civil Service Commission. Further, the decisions on Matthews v. Kuwait Bechtel Corporation statethat the Crown was liable to pay damages in case of injury of a servant as a result of a breach of common law duties on part of the employer's. Lord Goddard C.J, further highlighted that civil servants in case of erroneous removal also entitle them to recover arrears of remuneration (Terrell V Secretary of State For The Colonies: 1953 Q.B. 482, 499) Additionally, except under special machinery that applies to security issues, the Trade Union and Labour Relations Act consolidated in 1992, allowed civil servants to form unions and engage in collective bargaining .The only exception is the Crown employment's right to statutory minimum redundancy pay. This falls under Part of Employment Rights Act 1996, section 193 provided civil servants protection of term. The Act ensured that without a probable cause, a minister cannot issue a certificate, or remove any civil servant, except on grounds of national security. This act also entitled civil servants with similar employment rights as those employed in private sector .Later in 2000, the Parliamentary Committee of UK suggested Standards in Public Life highlighting importance of politically neutral civil servants. The report further went on to recommend the Civil Service .
Bill in the House of Lords to ensure that appointment to the Civil Service, is free from political bias by ensuring that appointees only comply with the Recruitment Code of Civil Service Commission .

c) Australia

The hedonistic principle applied in Australia under colonial governments established in the second half of the century 19. However, a significant change occurred in following the century.

19th century and public service officials in Australia considered contract length to be their primary right

and prerogative. Until the passage of the Australian Government's Employee Act in 1984, the power of Crown executives in country had extended to control, appoint and fire public servants, as described above for Shenton v. Smith, (1895) A.C. 229 . As a consequence of the colonial rule the application of the doctrine is well founded on the British administration of the doctrine. The rule laid down in Shenton v. Smith[23] was applied in concurrence. After the introduction of the doctrine to the Australia legal regime, the application of the same took a great shift after the 19th century. Unlike England, public service in Australia was termed contractual in nature. Thus, the terms of their contract provided rights and privileges. His contract was termed 'his chief right'.

The Australian Government Employees Act passed in 1984 was drafted to protect merit and to allow review of the grounds on which grievance bases against employees were filed and appealed the decision. The enactment of Australian Government Employees Act in 1984 was part of the contemporary approach of the protection against arbitrary removal.[14] Through this legislation it was clear that the Crown's power to remove civil servants on pleasure is lost.[15]

In 1902, the 5th Public Authority of the Commonwealth dismissed public servants by forcible dismissal of their civil servants by the Governor-General, except in cases where it was proved to be negligent in duty or earned. employment outside of their functions . In the landmark case of Lucy v Commonwealth[16], Court highlighted S. 84 of the Constitution and S. 60 of Commonwealth Public services Act, in restricting the Crown's power to remove on pleasure.
Even though legislations were brought in for the protection of the CIVIL SERVANTs against arbitrary removal. They were either subject to the powers of the Crown or regulated only some aspects of removal. Thus, even when there was no express rule of the doctrine Courts were always bound by implied expressions.[17]

[14] Supra Note 13
[15] Dixon v Commonwealth [1981] FCA 80
[16] Lucy v Commonwealth (1923) 33 CLR 229
[17] http://press-files.anu.edu.au/downloads/press/p81291/mobile/ch02.html.

The federal Public Service Act of 1902, passed by the Parliament, restricted the power of the Crown in exercising pleasure. The Act was amended in 1922 to make fix termed of employment to civil servants, but was removed in 1999. The amendment was breakthrough in the protection of civil servants. Numerous Comm. like Disciplinary Appeals Comm., Promotion Appeals Comm. and Re-appointments Review Comm., was introduced.

In addition, Federal Public Service Acts of 1902 and 1922 placed control over Crown power to fired at will. Public Affairs Act 1922 amends Act 1902 to provide statutory term appointments to public servants employed as permanent secretaries. The Comm. comprised of an independent officer appointed by the Public Service Board. [18]
This measure was criticized as a fixed-term contractual relationship that would unduly politicize the civil service, and was revised in 1999. The amendment gave the civil services a style work and management control in the complex and distributed nature of work. The amendments are intended to control influential appointments, however, Australian ministers are still involved in the selection of department secretaries. They are appointed for a fixed term of five years.

d) United States

The application of the doctrine in the country began in 1789, along with the drafting of the Constitution. The Constitution provided that the President along with the senate shall be sole authority to make appointments in the post of civil servants.[19] In regard to the question of removal the constitution was silent. Later the Supreme Court clarified the position and held the power of removal shall vest with the appointing authority.[20] Hence, the President was conferred with absolute authority to remove federal employees.[21] It was in 1789 that the House of Representatives conferred to the President the absolute power over removal of federal employees those in employed in civil services. The law, however, was established in principle and for the

[18] Ibid
[19] Art. II of Constitution of U.S.
[20] Ex parte Hennen, 38 U.S. (12 Pet.) 230 (1839)
[21] Tenure of Office Act of 1820

first thirty years, was not exercised .

The resultant effect was that by 1828, the entire system of federal services had become inefficient. To prevent inefficiency, the Tenure of Office Act of 1820 was enacted upon, limit the term of civil servants four years and the act prescribed that removal of officers during the term was at the pleasure of the President. Later in 1867 an amendment was brought about in the 1820 Act[22] which prevented unilateral removal of federal officers without the Senate's approval. But in 1970 and 1971, there was huge retrenchment of state employees, who were appointed by the previous government.[23] It was only in 1867 that Congress passed an amendment to the Act prohibited the president from removing federal officials appointed without senatorial approval . Also for civil servants the period 1883-1937 was an important period in the development of the principles of merit and political neutrality. In addition to the two Tenure of Office Acts and the Civil Service Reforms Act, the Pendleton Act of 1883 and the Hatch Act of 1939 ensured interfered

discharge of duties by civil servants.[24] Also, these legislations were aimed at granting protection to the civil servants against arbitrary removal without proper evidence or lawful cause. Also, these Legislations simply disregarded the application of Doctrine of Pleasure in the appointment and removal of civil servants. There were more specific procedures laid down to regulate the removal of civil servants who held their office for a fixed period.

However, in 1970, the Secretary of State, appointed by the Governor of Illinois, laid off 1,946 employees from the office.Following this incident, some 2,000 civil servants elected by the 4,Democratic governors in 1971 lost 4, jobs . These 4, employees were not protected by the Civil Service Act. Thus, the Civil Service Reforms Act was enacted in 1978, which was aimed at providing protection against arbitrary removal, simply based on personal or political favouritism.[25] Law

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[22] Ibid
[23] Mark R. Joelson, Legal Problems in the Dismissal of Committees in the United States, Britain, and France, 12 AM. J. COMP. L. 149 (1963).
[24] JAMES, S., 2005. Patronage Regimes and American Party Development from 'The Age of Jackson' to the Progressive Era. British Journal of Political Science, 36(1), pp.39-60.
[25] Supra Note 13

prohibited the influence of public officials on their work or interference in the performance of their duties. Act further protected public officials from unfair dismissal without evidence of violation of the law, mismanagement, or abuse of power .

e) Canada

The origin and development of doctrine of pleasure in Canada was very similar to that of Australia. Both of them followed the path of other common law countries. The unique feature of the Canadian Constitution was it indorsed the appointment of civil servants by the Members of Parliament based on the recommendations made by the Commissioners. Also, the Ministerial Treasury Board made the payments towards the civil servants under the collective bargaining structure.[26] Numerous legislations were passed to restrict the Crown's arbitrary exercise of power after 1849. But all of them suffered weaknesses due the colonial clutches.

The rules governing the working of public service employees in Canada has important resemblances with those in the Australian Public Service. Both the countries share correspondence in the doctrines of role and responsibilities of civil servant as reflected by countries governed by the common law. However, there are several conspicuous differences as well. For example, the services of the public service employees in Canada are governed by the Parliamentary legislated code under. The law subscribes
that appointments to posts in civil services are made by Members of Parliament with recommendation of Commissioners. Additionally, civil services pay fall under the collective bargaining structure under the Ministerial Treasury Board. Canada abandoned the method of staff control based on their cost in 1967. Canadian civil service integrated the management of staff costs through budgeting system program. Although the system meant monitoring of grading through pay system, it was not a fairly active measure .

Until the early twentieth century, the Canadian public service faced several unsuccessful

[26] Supra Note 14

legislations in design.

The development of civil servants suffered the most from the removal of sponsorship from the recruitment process. After the Canadian independence in 1867, a new Act named the Civil Services Act 1868 was brought in.[27] The Act could not completely fulfil its purpose, as appointments were even then based on political patronage. Later in 1882 another Civil Service Act was brought in. It established a system called the Board of Civil Service Examiners, who examined the candidates and appointed them based on merit.[28] Even though the new Act made no much a difference, but at the least could prevent appointment of illiterates. In 1908, the government of Canada worked together to increase the efficiency of public services by centralizing workers. It was only in 1908, that a unified central recruitment system was established for the appointment of independent and efficient civil servants.[29]

The Act of 1908 established a Commission solely for appointment of civil servant on the basis of competitive examinations. The World War I, disrupted the whole system. Finally, in 1917, then Prime Minister Borden took a genuine effort to completely reform the civil servant appointment system. As a consequence ten years later, in 1918, the Civil Service Act was passed.[30] However, this Act was a committee-oriented law and did not stipulate the roles of the central agency and the Deputy Minister. After World War II, Civil Service Act was adopted. However, the Public Services Commission is responsible for overseeing appointments and promotions. In addition, Public Service Employment Act of 2003 and Public Official Information Disclosure Protection Act (PSDPA) of 2007 established Public Complaints and Retaliation Procedures to protect civil servants

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Conclusion

The findings of the study indicate that all countries while drafting their public service agencies did not witness an apolitical process of appointment. However, the nations governed by common law, including India, US, Canada, UK, and Australia in process of searching for public service

[27] http://faculty.marianopolis.edu/c.belanger/quebechistory/encyclopedia/Civilservice-CanadianHistory.htm
[28] Ibid
[29] Supra Note 13
[30] https://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1145&context=major-papers

neutrality, had to go through the phase where appointments were based on the laws similar to the doctrine of pleasure.

Conclusively, the findings of the study highlight that nonpartisanship hiring of the civil servants espoused by all countries. Review of the cases for each of the country further revealed that involvement of politicians in either appointment or dismissals of the civil servants does not make the system politically partisan. Review of different types of doctrine of pleasure observed in different nation revealed that in the US the recruitment of civil servants is entirely politically driven.

Other destination countries, however, also coexist with participation at the administrative level. In addition to the recruitment process, countries have other laws to protect conditions under the law. Each country has its own agency that monitors compliance with the political participation restrictions, and each country has other laws governing personnel matters, requiring governments to comply with restrictions on functional roles.

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