

# Doctrine of Pleasure in major Common law Countries: Interpretation & Correlation



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**Abstract:** Article 310 of the Indian Constitution provides that civil and defense servants in the country hold the office during the pleasure of the Governor and the President respectively. This law, which finds its origin in England, is present in all common law countries, and in India, is known as the Doctrine of Pleasure. The aim of this study is to create a comparison of the Doctrine of Pleasure in six common law countries, specifically India, USA, Australia, UK, Canada. Secondary data in the form of existing studies, books, and government websites were used for the purpose. The findings of the study indicate that when it comes to protection of civil servants, all the chosen countries are inclined towards the same objectives such as equalization of opportunities, fair treatment and even the power to file a case against the "Crown" with the exception of UK. The fundamental rights of public service employees are safeguarded with the help of these laws.

**Key Words:** Doctrine of pleasure, Indian Constitution, Article 310, Article 311, Common Law.

## I. INTRODUCTION

The origin of doctrine of pleasure lies in the Common Law of England. The term was used regarding the tenure of a civil or a public servant appointed by the Crown. The rule states that any civil servants appointed under the Crown, by it have the right to hold their offices at the pleasure of the crown and until the Crown deem it necessary to. However, services of these civil servants can be terminated any time at wishes of the Crown. Several other countries like India, US, Canada, and Australia having the common law system adopted the similar rules, where, a person holding their offices during good pleasure of their government cannot be terminated without assigning a cause, anytime. Civil servants are imperative for administration of the country and cannot be removed for their actions not favoring the government at their government's will and such government's action are restricted by the legislation (Madhusri Sharma, 2018). The history of Doctrine of Pleasure in the common law nations can be traced back to its origins in historical laws of the United Kingdom.

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Cases of power to dismissal at pleasure by the crown began in 1780 and observed through the 19th century as well, in the era of administrative decentralization. Under the British Crown, a public servant had no fixed tenure but held their position at the Crown's absolute preference.

The origin for the rule can be traced back to the Latin phrase "durante bene placito" meaning "during good pleasure", or "durante bene placito regis" that is "during good pleasure of the King," as affirmed by the Court of Appeal in *Dunn v R* [(1896) 1 QB 116] (Forsyth, Wade and Wade, 2014). The doctrine was later adopted by other countries using common laws. In India, the doctrine was adopted in Constitutional law of India under Articles 310 and 311. In the US, the Doctrine of Pleasure or practice of patronage began with the Republics, under the leadership of President Washington until the early 1970s (Bryan, 2001). However, both in India and US senior levels public servants in central government serve at the pleasure of the President. In case of Canada, public service appointments were largely the purview of the governing party, which retained the decision to make partisan appointments (Pond, 2008). Further, the early case of potential politicization in Australian Public Service was observed in 1996 that gave rise to the consideration of Public Service Act in the country (Macdermott, 2007). The central aim of the current study is to analyze and compare the provisions, advantages and limitations of the Doctrine of Pleasure in selected common law countries.

## II. DISCUSSION

For the countries following common law, five nations, India, UK, USA, Canada, and Australia have been selected to review different forms of doctrine of pleasure that have been in practice. This comparative difference studied for each country is 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" (Mohan, 2015).



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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 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 ab-initio 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. LAWS(P&H)-1960-11-14, 1960). However, Article 311 is not applicable if the officer is convicted of criminal charges, impracticability, or when the President deems that the retention of a government employee in public service is prejudicial State security (Mathew, 2018).

### 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 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 (Street, 2015). 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 (Alder and Syrett, 2007). Further, the decisions on Matthews v. Kuwait Bechtel Corporation state that 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 (Jones, 1959). 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 (ILO, 2016). 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 (Keter, 2005). Later in 2000, the Parliamentary Committee of UK suggested Standards in Public Life highlighting importance of politically neutral civil servants (House of Commons, 2007). The report further went on to recommend the Civil Service (No. 2) 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 (House of Lords, 2004).

### c) *Australia*

The principle of pleasure was adopted in Australia under the colonial administrations established in the second half of the nineteenth century. However, an important departure occurred after the 19th century and civil servants in the Australian Public Services were conferred their term of contract as their chief right and privilege. Until Australian Government Employees Act was passed in 1984, executive entitlements of the Crown in the country extend to controlling, appointment, and dismissal of civil servants as described in the preceding for Shenton v. Smith, (1895) A. C. 229 (Beatson, Burrows and Cartwright, 2010). The Australian Government Employees Act passed in 1984 was drafted for merit protection and allowed examination of grounds on which grievances against the employee have been lodged and appeal against the decision. In 1902, Commonwealth Public Service, No. 5, provided relief to civil servants by guarantying their suspension from their office by the Governor-General, unless in case proven negligent of duty or hold paid employment outside their duties (Pittard and Weeks, 2007). Further, the federal Public Service Acts of 1902 and 1922 put control on the Crown's power to dismiss at pleasure. The Public Service Act, 1922, amended 1902 law further, to consider fixed-term statutory appointments for civil servants employed as permanent secretaries. The measure received criticism as the fixed term contractual relation would unduly politicize the civil service and was amended in 1999. The amendment provided the civil services with a managerial style of working and control in the complex and fragmented nature of job. The amendments seek to control influence appointments, however, the ministers in Australia are still involved in the selection of department secretaries. They are appointed to a fixed-term of 5 years (Evans, 2000).

#### d) *United States*

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 first thirty years, was not exercised (Deeben, 2005).

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. It was only in 1867 that Congress passed an amendment to the Act prohibited the president from removing federal officials appointed without senatorial approval (Ellis, 2012). Further, for the civil servants, the period between 1883 and 1937 was important for development of merit principles and political neutrality. However, in 1970 a Secretary of State appointed by the governor of Illinois dismissed 1,946 employees from office under patronage dismissal. The case was followed by job loss for around 2,000 state employees, elected by Democratic governor in 1971 (Howard, 2006). These employees were unprotected by civil service laws. Later in 1978, Civil Service Reform Act was formulated that guaranteed federal employees protection against arbitrary action, coercion for partisan and personal favoritism. The act prohibited any influence on the working of civil servants or interference in their discharge of duty. The law further protected civil servants against any action of unlawful removal without evidence of a violation of any law, mismanagement, or abuse of authority (Kellough and Nigro, 2006).

#### e) *Canada*

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 services 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 (Nethercote, 2002; Pittard and Weeks, 2007). Until the early twentieth century, the Canadian public service faced several unsuccessful legislations in design. The public service development suffered the most in process of elimination patronage in the recruitment process. In 1908,

Canadian government concerted their effort to enhance efficiency of public services by adopting central recruitment. Further, the Civil Service Act was enacted a decade later in 1918. However, the act was Commission-centred and omitted to define the roles of the central agency and deputy ministers. After the Second World War, The Civil Service Act was adapted. However, the Civil Service Commission retained its responsibility to control of appointments and promotions. Further, the Public Service Employment Act, 2003, Public Servants Disclosure Protection Act (PSDPA) acted upon in 2007, created disclosure and reprisal complaints process for protection of public servants (Government of Canada, 2004; PSCC, 2008). A comparative assessment has been presented in appendix I.

### III. 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 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. However, for other nations, the appointments coexist with administration level involvement as well. Other than the recruitment process, the countries have different laws for protection of terms under law. Each nation has different institute to watch over their enforcing limitations on level of political involvement. Further, each nation has different laws to control staffing matters as well as ensure government complies with restrictions on their functional roles.

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## APPENDIX I

**Table: Review of Legal Basis of the Civil Service across Common Nation Laws**

Country	Name of law	Article/Section/ Act	Tribunal/ governing body of the Act/ Law	Provisions of the Law	Advantages	Shortcomings/challenges



India	Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State	Article 311	Indian Constitution	Article places restrictions on the exercise of doctrine of pleasure	The article ensures that the two wings of the Government can maintain their individual identity.	The article makes it very difficult to file an action against a civil servant.
United Kingdom	Law on Public Function and Statute of Civil Servant	Article 62	State Government under the direction of center	The article describes Termination of service relation in circumstances that do not depend on the will of parties	Prevents civil servants from undue influence of ministers	Possibility to renew the existing code to face new issues and challenges.
United States	Civil Service Law of 1978	92 Stat. 1111	United States Congress	Abolished the U.S. Civil Service Commission and the Reform Act established the Merit Systems Protection Board and the Office of Personnel Management.	It protects rights of civil servants and reverses personnel actions against them	Political influence on merits ratings of individual performance is still a challenge
Australia	Public Services Act, 1999	No. 147, 1999 as amended	Constitution of Australia	To establish an apolitical public service	Introduction of efficiency dividend to enhance efficiency	The power of balancing the budget will continue to drive potent political imperative.
Canada	ce Employment	Act S.C. 2003, c. 22, ss. 12, 13 )	Parliament of Canada	Moving toward values-based HR decision-making system to control political influence	Redefined merit principle to appointments to be made on the basis of qualifications for the position and candidates	Lack of clear agreement among senior leaders on respective roles and how responsibilities should be handled.