



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL**  
**ISSN: 2581-  
8503**

**Peer - Reviewed & Refereed Journal**

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **DOCTRINE OF PLEASURE IN THE INDIAN CONSTITUTION**

AUTHORED BY - SNEHA THERESSA VERGHESE

## **INTRODUCTION**

Tracing its roots back into English Law, the doctrine of pleasure is a legal concept derived from English common law, which essentially states that the crown is the sole entity with authority to terminate the services of a civil servant at any time, without providing any notice of termination to the servant. According to this doctrine, civil servants worked whenever they pleased and were seen as the crown's servants. The system of civil services was introduced in India during the colonial period of British rule, and therefore as a result of which, as per the requirements of the country, their regulations and rules played a pivotal role in the development of Indian Laws.

The Latin maxim *Durante bene placito*, which translates to "during good pleasure" or "during the pleasure of the appointer," is the source of the Doctrine of Pleasure. In contrast, an office held *Dum bene se gesserit*, which translates to "during good conduct," also goes by the name *Quadiu se bene gesserit*, which means "as long as he shall behave himself well." According to Black's Dictionary, a "pleasure appointment" is when someone is assigned to a job that they can leave at any time without giving notice or having a hearing. This idea is our own, taken from the English Law.

The Indian Constitution, specifically in Article 310, incorporates the doctrine of pleasure. Article 310 stipulates that, unless otherwise specified by the Constitution, all individuals who are part of the defence service, the civil service of the Union, the All India Service, or who hold any position related to the defence or any civil post under the Union hold their positions at the President's pleasure. Similarly, all individuals who are part of the civil service of a State or who hold any position under a State's civil service hold their positions at the Governor of the State's pleasure.

The foundation of the administration is regarded as being composed of civil servants. To



maintain the nation's progress, the administration must be strengthened by shielding civil servants from personal and political influence. As a result, the Indian Constitution contains provisions that safeguard the interests of civil servants in addition to the public interest and national security.

## CONTENT

### HISTORICAL BACKGROUND

The East India Company brought the English-originating doctrine of pleasure to India. India was governed by the British at the time. The Common Law is the source of this idea. This philosophy was brought to India by the British. The Latin expressions "*Durante bene placito*" and "*Durante bene placito regis*"<sup>1</sup> are the source of its origin. It signifies, respectively, the King's pleasant pleasure and good pleasure. Since the King was seen as God's envoy, nobody could challenge the decisions they made. This theory originated with the idea of the Crown, which held that the king is an eternally perfect being. It is thought that the Crown has the authority to choose when to remove its servants from their positions and to hold them in office. Civil servants' terms of employment are not set in stone, and they may be fired at any time without providing prior notice or explanation. The cause for their termination could not be questioned by the civil servants. The Crown was able to fire the civil personnel notwithstanding the existence of a contract. Because the Crown cannot be questioned by the servants over its judgments, it is evident that the connection between the Crown and the civil services is one-sided. 1 During the British administration in India, the Crown used this theory to fire any civil official whenever they pleased. Their only source of employment was the Crown's goodwill. Despite the East India Company's dominance in India, the Crown retained the final say over any public servants it had appointed to positions inside the company. In all sayings, the Crown held the ultimate power. This notion was initially included in the Charter in 1833, and it was later recognized in British India when it was included in Section 240 of the Government of India Act, 1935<sup>2</sup>. Thus, this theory can be regarded as having originated in India before its independence. English law continues to have a significant influence on the Indian legal system in the post-independence age. Thus, this theory, which was developed during the British administration, is seen as significant. One of the significant hypotheses that is still in use in India is this one. According to this theory, government workers and Crown civil servants are

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<sup>1</sup> U. Baxi in his introduction to M. Rama Jois, *Services under the state* (1987) XLV

<sup>2</sup> Motiwal, Om Prakash. "Doctrine of Pleasure and the Services in Indian Constitution." *Indian Journal of Public Administration* 9.1 (1963): 64-73.



comparable in that they fulfill their duties at the employer's discretion. In the event of a dismissal, the employee is not entitled to question the employer

### **RULE IN ENGLAND**

A civil servant in England holds his position for the pleasure of the Crown, according to common law. This suggests that the employee does not have a contract that provides a remedy for a breach. He is free to leave his position at any moment and without giving a reason. For the same reason, a civil servant cannot enforce any of the terms of service through action or seek arrears of salary as damages for wrongful dismissal. The doctrine of pleasure stems from public policy, which mandates that a public servant be removed from office if their continued service would be detrimental to the public interest.

### **RULE IN INDIA**

The doctrine of pleasure has been introduced in Article 310(1) of the Constitution, with the notable qualification that it is subject to express provisions of the Constitution, based on the same policy considerations as previously stated. Article 311 is one of these explicit clauses. The doctrine of pleasure is unconstrained by law or executive orders and regulations, with the exception provided by the constitution. This is one way in which the doctrine is not the same as that of England, where Parliament has unbridled sovereign power to curtail the whims of the monarch.

This case does not follow the English Law rule that states a civil servant cannot file a lawsuit to recover unpaid salary arrears against the State or the Crown. The English law rule that prohibits a civil servant from suing the government or the crown to recover unpaid salary arrears is invalidated by Indian statutory law provisions, and it is not applicable in this country.

### **ARTICLE-310**

Article 310 states that, unless the Constitution specifies otherwise, the President has the authority to remove anyone from their position who is a member of the All-India Service, the Union's civil service, the defence service, or any other position relating to the military.

Cause (1) of Article 310 states that any individual holding a position related to defence or a civil post according to the Union and a member of the defence service, the Union, or an all-India service, shall hold such position for the President's pleasure. In a similar vein, anyone

holding a civil post according to a state or a member of its civil service is appointed to their position at the governor's pleasure. "Except as expressly provided by this Constitution" will apply to the general principle of holding office during the pleasure of the President or the Governor, as the case may be.

The tenure of some positions is specified in the Constitution and is not tied to the state head of state. Therefore, according to the Constitution, the government cannot decide how long judges serve on the High Courts and Supreme Court, the Comptroller and Auditor General of India, the Chief Election Commissioner, the Chairman of the Public Service Commission, or any other position. Since not all civilian employees of the Union are in the established services—some appointments are temporary, while others are non-established—the distinction between a "civil service of the Union" and a "civil post under the Union" is implied.

For example, the position of Advocate General is a civil post under the State. A master-servant relationship is required for a person to be considered a civil servant or for a post to be classified as a civil post under the Union or the State. This requirement varies depending on the specifics of the situation, including the nature of the post, its control, pay, etc.

Clause (2) specifically empowers the government to enter into special contracts with new entrants, qualifying or limiting the application of the rule of dismissal at pleasure. It enacts that the President or the Governor may, for securing the services of persons having special qualifications, include in their contracts of service special provisions for compensation in the event of premature abolition of office or on retirement not due to misconduct. It will be noted that such a contract can be made only with a new entrant, i.e. with a person who is not already a member of a defence service, of an all-India service, or of a civil service of the Union or of a State. In the absence of a stipulation in the contract for the payment of compensation on premature termination of employment, no compensation can be claimed under this clause.

## **ARTICLE 311**

According to Article 311(1), the governor's or President's pleasure is governed by specific provisions, meaning that the area covered by this article is not subject to the doctrine of pleasure. The enjoyment must be used in compliance with Article 311's procedural safeguards. The tenure of the Chief Election Commissioner (Article 324), High Court judges (Article 218), Auditor General of India (Article 148 (2)), Chief Election Court judges (Article 124), Public

Service Commission chairman and members (Article 317), and Auditor General of India is not subject to the whims of the President or the Governor, as the case may be. This is stated in Article 311(2). The doctrine of pleasure expressly excludes these posts from its application.

No one mentioned above may be fired, demoted, or demoted in position<sup>3</sup> without first undergoing an investigation during which he will be made aware of the accusations made against him and given a fair chance to defend himself. It is stipulated that in the event that he is to be subject to any penalty following the inquiry, the proposed penalty may be applied based on the evidence presented during the inquiry. The person in question will not need to be given the chance to express their opinions regarding the proposed penalty.

Furthermore, provided that this clause is not applicable –

- a) When someone is fired, removed, or demoted due to behaviour that resulted in a criminal conviction;
- b) When the authority having the authority to fire, remove, or demote someone finds that it is not reasonably possible to hold an inquiry into the matter; or
- c) When the President or the Governor, as applicable, determines that it is not necessary to hold an inquiry in the interest of the State's security.

The doctrine of pleasure is governed by the fundamental rights, according to Article 311(3). It is stated that the provisions of Article 311 compile the President's or Governor's pleasure; therefore, the area covered by Article 311 is not included in the application of the doctrine of pleasure. The enjoyment must be used in accordance with the procedural protections outlined in Article 311.

## **EXCEPTIONS UNDER ARTICLE 311**

### **1. Removal by Subordinate Authority:**

If someone is removed from their position by a subordinate authority, it does not follow that they will be fired or removed by their direct supervisor or the same authority that appointed them. If the authority removing someone has the same or a higher rank than the authority appointing them, that is sufficient. The Superintendent, Power, and E.I.R. fired the individual appointed by the Divisional Personnel Officer, E.I.R. in the Mahesh

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<sup>3</sup> Chopra, D. S. "Doctrine of Pleasure—Its Scope, Implication and Limitations." Indian Journal of Public Administration 21.1 (1975): 92-108.



v. State of U.P. case. Given that the two officers held the same rank, the court upheld the validity of the dismissal.

2. Reasonable Opportunity to Be Heard:

The Supreme Court stated in the *Khem Chand v. Union of India*<sup>4</sup> case that a "reasonable opportunity" comprises the following:

- a) The opportunity to dispute the charges levelled against him and demonstrate his innocence, which he can only do if he is made aware of the specifics of the accusations and charges.
- b) The opportunity to support his defiance and defend himself by cross-examining both the witness called against him and himself.
- c) The opportunity to contest the imposition of the recommended punishment on oneself.

3. Exclusion of opportunity to Be Heard:

Article 311(2) states that the following situations do not give rise to a reasonable opportunity to be heard: 1. when someone is fired, removed, or demoted due to actions that resulted in a criminal conviction; 2. when the authority having the authority to do so finds that it is not reasonably practical to hold an inquiry into the matter; or 3. when the Governor or the President, as applicable, determines that it is not necessary to hold an inquiry in the interest of the State's security.

## **SCOPE OF DOCTRINE OF PLEASURE IN INDIA**

In India, the doctrine of pleasure, also known as the "doctrine of pleasure and tenure" or the "doctrine of pleasure and power," is a legal concept that governs the interaction between the government and its workers, especially those who work in public service roles. This concept gives the government the power to arbitrarily select, terminate, transfer, or discipline its workforce without facing court scrutiny, as long as the decisions are made within the bounds of the law. Article 310 of the Indian Constitution, specifies that all individuals who are part of the armed forces or hold civil positions under the Union or a State shall hold their positions for the pleasure of the President or the Governor, as the case may be, is the primary source of the

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<sup>4</sup> Singh, Rattan. "THE DOCTRINE OF PLEASURE: CONSTITUTIONAL DISCRETION VIS-A-VIS GOVERNOR'S POWERS." *Panjab University Law Review* 62.1 (2023): 18-32.

doctrine of pleasure in India. Similar protections against arbitrary removal, dismissal, or rank reduction for specific types of public personnel are afforded under Article 311 of the Constitution, which upholds the idea of pleasure. The following is an explanation of the extent of the Indian theory of pleasure:

1. **Executive ability:** Under the doctrine, the government is given broad ability to make decisions about hiring, promoting, transferring, and terminating civil officials. The articles of the Constitution and other laws and regulations about public service provide this jurisdiction.
2. **Protection of Civil Servants:** Although the theory gives the government the authority to impose sanctions on its workers at will, there are measures in place to stop the government from abusing its authority. Civil servants are protected under Article 311, which stipulates that they have the right to self-defence and a hearing before being fired or removed from their position without first conducting an investigation.
3. **Limitations and Exceptions:** The theory of pleasure gives the government a great deal of power, but its implementation is subject to some restrictions. For instance, some groups of federal servants—such as those protected by Article 311—have extra safeguards against being fired arbitrarily. Judicial review is also an option when it comes to accusations that government activities are illegitimate, arbitrary, or violate fundamental rights.
4. **Judicial Review:** The government is granted broad discretion under the theory of pleasure, but the use of that discretion is subject to court review. If courts determine that the government has behaved unfairly, unreasonably, or in violation of statutes or the Constitution, they have the power to step in and take action. The process of judicial review guarantees that the acts of the government align with the fundamental values of natural justice and the rule of law.
5. **Public Policy Considerations:** The theory of pleasure is also impacted by public policy issues, such as the necessity of effective management, public service discipline, and the defense of the public interest. When the government exercises its discretion and takes appropriate action against its personnel, these factors frequently serve as a guide.

Overall, India's theory of pleasure strikes a balance between the government's right to effectively manage its workforce and the defence of civil servants against capricious or unfair treatment. Although it gives the government a great deal of power, it also places restrictions and protections in place to guarantee justice and equity in employment-

related situations.

## **POSITION OF DOCTRINE OF PLEASURE IN INDIA**

India's legal system heavily relies on the notion of pleasure, especially when it comes to issues involving public sector employment. Here is a thorough explanation of its stance:

1. **Constitutional Basis:** Articles 310 and 311 of the Indian Constitution essentially codify the idea of pleasure. All government servants employed by the Union or a State are required under Article 310 to remain in their positions for as long as the President or Governor, whichever is appropriate, so long as they are employed. While upholding the concept of enjoyment, Article 311 offers protections against the capricious termination, removal, or decrease in rank of specific types of government employees.
2. **Executive Authority:** The doctrine gives the government a great deal of executive authority. It gives the executive branch the authority to use its discretion when it comes to hiring, moving, promoting, and firing civil service employees. This power is essential to guaranteeing effective management and adaptability in the handling of public employees.
3. **Scope of Application:** Members of the defense services, civil servants, and other public servants are among the groups of government workers to whom the doctrine of pleasure extends. It applies to both the federal government and the state governments, though it may differ depending on the particular laws and rules that each has passed.
4. **Limitations and protections:** Although the doctrine of pleasure grants government-wide power, there are certain restrictions and protections in place to stop its capricious use. For example, Article 311 prohibits the dismissal or removal from employment of certain types of civil servants without first requiring an investigation and giving them a chance to be heard. This guarantees that natural justice principles influence government acts.
5. **Judicial Review:** The doctrine of enjoyment in India encompasses the right to judicial review as well. If courts determine that government acts are arbitrary, dishonest, or in violation of statutes or the Constitution, they have the power to step in and take action. Judicial review guarantees that the government's enjoyment of its power is constrained by the law and does not violate fundamental rights.



6. **Public Policy Considerations:** Public policy issues frequently have an impact on the notion of pleasure. Public interest, administrative efficiency, and upholding discipline in the public service serve as the guiding principles for government judgments on employment problems. These factors are very important because they influence how the theory is applied in particular situations.
7. **Evolution and Interpretation:** Through court rulings and legislative changes throughout time, the theory of pleasure's standing in India has changed. In several cases, courts have construed its reach and constraints, striking a balance between the rights of employees and the government's discretion. Additionally, changes to the law have been implemented to guarantee greater equity and openness in the pursuit of pleasure.

## **ROLE OF THE INDIAN JUDICIARY ON THE DOCTRINE OF PLEASURE**

Through several significant rulings, the Indian judiciary has significantly contributed to the development and definition of the notion of pleasure's bounds. The following are some significant cases where the court has weighed in on issues about the theory of pleasure:

1. **State of Punjab v. Ram Lubhaya Bagga (1998):**

<sup>5</sup>In this case, the Supreme Court held that the government's arbitrary or dishonest acts could not be covered up by the doctrine of pleasure. The Court underlined that although the government is free to fire or dismiss its workers, it must do so for legitimate grounds and under the natural justice principles. The ruling emphasized the judiciary's responsibility to make sure that government activities falling under the doctrine of pleasure are checked by judges for legality and fairness.

2. **B. Sharma Rao V. Union of India (1987):**

In this judgment, the Supreme Court reaffirmed the fundamental idea that the doctrine of pleasure grants the government extensive powers but does not provide arbitrary authority. The Court made it clear that government activities, even when they fall within the theory of pleasure, had to be reasonable and could not be capricious or random. The ruling emphasizes the judiciary's responsibility to make sure the administration uses its

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<sup>5</sup> State of Punjab & Ors vs Ram Lubhaya Bagga etc. ETC on 26 ... (n.d.). <https://indiankanoon.org/doc/1563564/>

discretion sensibly and compliantly with the law.

3. S.L. Kapoor v. Jagmohan (1980):

<sup>6</sup>In this landmark ruling, the Supreme Court ruled that situations in which workers are engaged under contract or have a legal claim to their employment are not covered by the notion of pleasure. The Court stressed that workers who are entitled to protection under Article 311 of the Constitution and who have a statutory right to their employment cannot have that right taken away from them at the whim of the state. The extent and bounds of the doctrine of enjoyment were made clear by this ruling, especially about situations involving statutory or contractual employment.

4. Durga Shankar Mehta v. Thakur Raghuraj Singh (1954)

<sup>7</sup>One of the first cases the Supreme Court addressed the notion of pleasure was this one. The Court ruled that although the government may fire its workers whenever it pleases, it must do so with due process and justification. The ruling stressed that the theory of pleasure is subject to judicial scrutiny and does not grant the government arbitrary discretion. The foundation for further judicial rulings on the notion of pleasure was established by this case.

### STATEMENT OF PROBLEM:

Taking into account the numerous instances of corruption involving civil servants and other government officials, the extent of applicability and validity of the Doctrine of Pleasure in the current Indian context often remains unquestioned. Thus, it is important to comprehend the precise meaning that our Constitution's framers intended to convey when they introduced the doctrine of pleasure. Are there instances where the doctrine has been abused, leading to unfair terminations or disciplinary actions?

### RESEARCH OBJECTIVES:

By analysing various prominent Indian case laws and comparing the functionality of the doctrine in England and India, the researchers try to analyze the relevance and suitability of the

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<sup>6</sup> S. L. Kapoor vs Jagmohan & Ors on 18 September, 1980. (n.d.-a). <https://indiankanoon.org/doc/1306907/>

<sup>7</sup> Durga Shankar Mehta vs. Thakur Raghuraj Singh & Ors [1954] INSC 68 (19 May 1954). latestlaws.com. (n.d.). <https://www.latestlaws.com/latest-caselaw/1954/may/1954-latest-caselaw-68-sc>

Doctrine of Pleasure in the current Indian context.

## RESEARCH METHODOLOGY:

This research will primarily rely on a comprehensive study of secondary sources, including academic articles, government reports, and scholarly analyses. Historical documents, constitutional amendments, and legislative acts will be examined to trace the evolution of federalism. Comparative analyses and case studies will contextualize India's federal structure within the global framework.

## IMPLICATIONS DURING THE PLEASURE OF THE PRESIDENT

The constitutional doctrine that public servants hold office during the pleasure of the President or the Governors, as the case may be, has two important consequences. Firstly, the government has the right to regulate or determine the tenure of its employees at pleasure, notwithstanding anything in their contract to the contrary, provided that the mandatory provisions laid down in Article 311 have been observed. Secondly, the government has no power to restrict or give up its prerogative of terminating the services of its employees at pleasure under any contract made with the employee except to the extent recognised by clause (2).

In *State of v. Babu Ram Upadhyaya*<sup>8</sup>, the Supreme Court noted that the Governor's discretionary power to remove officials at will, subject to Article 311 provisions, is a constitutional power rather than an executive authority under Article 154 and cannot be transferred to subordinate officers. Subsequently, in *Sardari Lal v. Union of India*<sup>9</sup>, it was also decided that the President could not assign to another person any executive functions of the kind that are assigned by specific articles and which require the President to personally vouch for the existence of certain facts or conditions. The court cited the finding in *Jayantilal Amratlal Shodhan v. F.N. Rana*<sup>10</sup> (Jayantilal Amritlal) to bolster its position, which states that the President's powers under Article 311(2) cannot be transferred. However, following the ruling in *Samsher Singh v. State of Punjab*, these claims were deemed to be incorrect and to no longer constitute sound law. The following propositions were made in that decision:

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<sup>8</sup> AIR 1961 SC 751: (1961) 2 SCR 679

<sup>9</sup> (1971) 1 SCC 411

<sup>10</sup> AIR 1964 SC 648 (1964) 5 SCR 294



- a) the Jayantilal Amritlal case did not conclude that the President is not the constitutional head of state;
- b) both the President and the Governor are the constitutional or formal head of state and exercise their powers and functions under this Constitution with the assistance and advice of their respective Councils of Ministers; and
- c) both the President and the Governor, in the exercise of their discretion under Article 310(1), act with the assistance and advice of their respective Councils of Ministers and are not required to act personally.

It was, therefore, held that the appointment or dismissal or removal of persons belonging to the judicial service of the State is not a personal function but an executive function of the Governor exercised within the rules made in that behalf under the Constitution. Thus, it has now been clearly established that the pleasure of the President or the Governor under Article 310(1) is exercised not in any personal capacity but as head of the government acting on the aid and advice of the Council of Ministers."

The doctrine of pleasure is governed by fundamental rights, according to Article 311(3). It is stated that the provisions of Article 311 compile the President's or Governor's pleasure; therefore, the area covered by Article 311 is not included in the application of the doctrine of pleasure. The enjoyment must be used following the procedural protections outlined in Article 311.

## **CONSTITUTIONAL SAFEGUARDS TO CIVIL SERVANTS**

The general rule that a government employee serves while the government is in office is established in the article before this one. This article imposes two limitations on the right to dismiss someone at will, earning it the moniker "unique in world constitutionalism." These are the following:

- 1) Individuals working for the Union or State in civil capacities may be fired or removed by a body beneath the one that appointed them.
- 2) Only after conducting the inquiry specified in clause (2) may such an individual be fired, demoted, or lowered in status.

The limitations serve as civil servants' constitutional protections.

## CONCLUSION

These days, we witness a great deal of corruption committed by government officials and civil servants. It's intriguing to learn about the legal process that India's constitution provides for punishing them. In a recent case, it was determined that Pradeep Sharma, a Mumbai police encounter specialist, had connections to the underworld. This, along with other accusations of corruption, led to Sharma's dismissal from his position. This ruling demonstrates that civil servants cannot elude the law; if found guilty, they will face consequences regardless of their position. Therefore, the primary justification for the inclusion of Articles 310 and 311 in the constitution is still in place today.

However, it's noteworthy that the framers of the document anticipated corruption in the near future, which is why they included these provisions. Given current events, such as the case of Pradeep Sharma, the Mumbai Police encounter master who has ties to the underworld, is accused of corruption, and lost his job, the intent behind the creation of Articles 310 and 311 of the Constitution remains relevant.

