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# Power, Privilege, and Public Service: Unraveling the Doctrine of Pleasure in the US, UK, and India – A Comparative Legal Odyssey

RAMANDEEP KAUR DHILLON[1] AND DR. BHAWNA ARORA[2]

## ABSTRACT

*This article contrasts the Doctrine of Pleasure, the constitutional hallmark of tenure of public servants vis-à-vis the executive, which obviously is derived from the prerogatives of the British sovereign, under whom the time-servants like ambassadors, royal secretaries and many others may be removed at her sweet will without any need of assigning to that effect, even to the extent that there may not be any assigned reason save to the extent that a statutory or legal restriction will be violated. The Article traces the development of the Doctrine in the USA, the UK as well as in India, and how the curbing of the executive power against the rights of the public servant marked three directions, by statutory reforms, judicial interpretations and constitutional provisions. The subtleness of its approach is recognizable by the way it is applied to secure the efficiency of administration and the rights of the public servant against arbitrariness.*

***Keywords****: Doctrine of Pleasure, Public Officials, Constitutional Law, US, UK, India, Administrative Law, Public Service.*

## I. INTRODUCTION

A complex of public administration brings with it its conditions of existence: besides salt, soil, water, light, circulation and seasons, the historical debris lying underground, under the trees that shade the palace or that turn the mill, also includes these formations of power, privilege and public service. At the center of it all is, for example, the Doctrine of Pleasure, the legal doctrine governing the tenure of public offices that underpins the modern legal regimes of power across the world. In the constitutional law and practice of the US, the UK and India, it acts as the legal justification for executive unilateralism in the dismissal of public servants. It is a power joyfully exercised within an infrastructure of legal constraints put in place to constrain its exercise.

[1] Author is a LL.M. student at Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand, India, India.
[2] Author is an Associate Professor at Law College Dehradun, Uttaranchal University, Dehradun, Uttarakhand, India.

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The Doctrine of Pleasure, in modern parlance, refers to a rule in the US that some 'officers' of government, who can be removed only by the executive authority that appointed them, can be removed from office 'at pleasure' – that is, without cause – by the officer who appointed them. Its origins lie in a practice in English common law that created total insecurity in the tenure of such public 'officers'. The doctrine of pleasure, however, has long been compromised by limits – from statute, judicial interpretation and constitutional protection – in an ongoing pendulum swing between the demands of architectural flexibility in the executive use of its officers on the one hand, and the need to protect the entitlements of such officers on the other.

In the UK, the roots of the Doctrine of Pleasure lie in royal prerogative. Originally, public officials were courtiers at the service of the Crown, holding office at the sovereign's will. One of the most famous expressions of that principle is a Latin maxim – 'durante bene placito' (during pleasure) – which was understood to mean that office-holding was dependent on the good pleasure of the Crown. Over centuries, as the constitutional monarchy developed, and parliamentary democracy became more firmly entrenched, the working of the doctrine changed. The civil service reforms of the 19th and 20th century – starting with the Northcote-Trevelyan Report of 1854 that led to the Civil Service Act of 1870 – began the process of depoliticizing the civil service, so that civil servants were protected from arbitrary dismissal.

The US also incorporated the standard from English common law into its federal structure. Nowhere in the US Constitution is the tenure of public officials directly addressed, but repeatedly since the early days of the Republic the Supreme Court has interpreted that Constitution to allow executive branch officials to serve at the will of their appointing authorities. But the principle is not absolute. *Myers v. United States* declared that the president could unilaterally fire executive branch officials. But that has not been the end of it, and since Myers there have been a number of rulings that represent a new and perhaps more nuanced understanding of what exactly constitutes a purely executive officer, and how a more independently empowered quasi-judicial or quasi-legislative position might also be distinguished from a merely executive office.

When India inherited the structure, legal and administrative, of the British colonial regime, the Doctrine of Pleasure entered the body of the Constitution of India in the form of article 310. Article (310) of the Constitution of India, states: 'The holding of any person as a member of the service of the Union or of a State is not secure and may be terminated by an authority empowered to appoint such person on the grounds specified in article 311.' The Doctrine of Pleasure has inherent powers to invert established practices, in that it authorizes dismissals without being bound by entrenched principles, like natural justice The British colonial Doctrine

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of Pleasure did not feature any scope for protection from arbitrary dismissals. And while the Indian Constitution also cleared the way for official dismissals, through its article 311, in which Parliament codified the Doctrine of Pleasure, Indians also inherited some important safeguards. While the appointed individual may be dismissed or removed before the completion of a specified probationary period 'on the grounds specified in article 311, no minor pretext or caprice can justify the dismissal of an incompetent officer … and no officer, however junior, can be removed without a formal inquiry into the charges against him, except in the case of conviction, misconduct or national necessity'.

The Doctrine of Pleasure in these three jurisdictions illustrates an interesting evolution from the executive prerogative of a kingdom of absolute monarchy to what has evolved into a legal doctrine in which executive freedom of discretion is tempered with officials' protection. In thinking about this evolution one can trace a nuance of the constitutional and democratic ethos of each of these countries as power, privilege and the imperatives of public duty ebb and flow.

## II. THEORETICAL FRAMEWORK

The Doctrine of Pleasure is a constitutional doctrine that entrenches the executive prerogative with the discretion to remove some public officers at will. This entrenched doctrine, which reflects the state's power over the public servant and the delicate balance between the administrative needs of the state and the protection of the public servant, finds application in varying forms throughout the administrative law of several jurisdictions. Although the Doctrine of Pleasure takes different forms and affects diverse categories of public officers in different jurisdictions, all forms emphasise the executive's power of removal independent of just cause, modulated by constitutional and statutory constraints.

### (A) Constitutional Underpinnings in Each Country

*US: At-will Employment vs. Public Service Protections*

In the US, while the constitutional foundations of the Doctrine of Pleasure are not expressly acknowledged, they are inferred from pointing to the powers invested in the executive branch. As in Commonwealth countries, at-will employment (i.e., employment terminable at any time) provides affiliates with rights only if they have entered into contracts with their employees allowing the employees to decide to leave their job for a certain period of time. But there are many protections of public employees that counter-balance the at-will employment principle – from legislative constraints, to bargaining rights and provisions to civil service systems that replace arbitrary dismissal with due process.

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*UK: Crown Prerogatives and Public Service*

Courts in the UK base this application of the Doctrine of Pleasure on the Crown's prerogatives – a large category of historical powers that allowed the monarch to dispose of appointments and removals in the public service. Modern versions have been dramatically displaced, and the doctrine operates under a regime of the rule of law and parliamentary sovereignty: the terms under which public servants can be dismissed and thereby the exercise of the Crown's prerogatives is set out under the Civil Service Management Code and in employment laws.

Today, India's constitution entrenches reference to the Doctrine of Pleasure in Articles 310 and 311 of the Constitution (the former reproducing the British administrative tradition of absolute power, the later entrenching indigenous elements of democratic values & foreign & Commonwealth affairs). Article 310 states that every person employed [under the] central or state Government who is not an employee as defined in clause (2) of article 309 holds office only at the discretion of the President or the Governor, as the case may be. Article (3) of the same constitution, however, places significant exceptions to the doctrine of flexible tenure: Article 311: No person who is an employee as defined in clause (2) of article 309 shall be dismissed or removed or reduced in rank only by an order made in accordance with the principles of natural justice. Breach of discipline – Like the other two instances where this clause of due process and natural justice comes up, it remains one of the Indian state's established laws.

## III. PHILOSOPHICAL AND LEGAL JUSTIFICATIONS

The Doctrine of Pleasure's normative, philosophical and legal underpinnings are rooted in the desire to strike the right balance between state efficiency and employee security. From a governance perspective, the doctrine grants the state the capacity to reorganize its workforce and enshrine policies without undue interference. It also illustrates the values of accountability – ensuring the removal of public officials in the event that they do not fulfil the duties of public service or – more bluntly – if the continuation of their employment is not in the public interest.

But the power of such discretion carries with it a corresponding risk of abuse, and the courts stepped in to ensure that public employment could not be terminated in an arbitrary and capricious manner, by affording protections to employees dismissed from public employment. This juridical approach to the problem reflects the continuation of a philosophical commitment to justice and equity, and also to stability and security in the area of public employment. The common-law writ of habeas corpus was not intended to interfere in the business of the sovereign, but it nonetheless stayed the hand of absolute power in England the US, the UK and

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India have all responded to this dilemma in different ways, reflecting their own history, culture and constitutional tradition.

### (A) Comparative Analysis of the Doctrine's Philosophical Origins

The philosophical roots of the Doctrine of Pleasure are therefore linked to conceptions of sovereignty and social contract theory. In the UK, the doctrine traces its lineage to royal prerogatives, meaning the sovereign's absolute authority over the state machinery. It was modified by conceptions of constitutional monarchy and later parliamentary democracy, but it still informs employment policy in the public services.

By contrast, the growing basis in the US for the prerogative acts in relation to the executive rests in notions of federalism and the separation of powers, such that the power to dismiss public officers at-will is seen to lie at the heart of the executive's responsiveness and accountability, reflecting more deeply-rooted aspects of a commitment to liberty, individualism and the protection of the citizen from an excessive state power.

This amalgamation of colonial administrative practices and democratic aspirations in India offers us an important instance of the governmental adoption and indigenization of the Doctrine of Pleasure. The constitutional provisions embodied a sophisticated understanding of the concept of the indulged in a way that gave due consideration to the fundamental requirements of the administrative expediency and efficiency, while retaining the core tenets of the Doctrine of Pleasure and employee protection.

### (B) The Doctrine of Pleasure in the United Kingdom

The Doctrine of Pleasure provides a marvelous example of change over many years in relations among the Crown, government and public servants. When it first arose in the rulings dealing with prerogative powers of the monarch, the sovereign was free to appoint or remove public functionaries at his or her pleasure. Over time, as the constitutional monarchy came of age under parliamentary democracy, the doctrine underwent a process of evolution to keep pace with changing ideas of fairness, responsiveness and the rule of law.

This move was underscored by legislative changes. The Civil Service (Management Functions) Act 1992 transferred many of the Crown's prerogatives concerning its civil servants to ministers and their departmental heads 'so that functions important for the accountability of ministers and heads of departments may be exercised by them'. The next clear step in codifying principles and practices about how the civil service works came under the Constitutional Reform and Governance Act 2010. It sought to formalize practice and enhance the independence of the civil service from the executive. Placed as a constitutional issue within the legislation, the act

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provided an interpretation of devolution and EU policy competences, offering concrete guidance on how these powers should be exercised and what limits they apply to. The statute restricts the arrangements for ministerial advisers ('special advisers'), trainees and job applications to the civil service. It also establishes merit and political impartiality as requirements of the overarching national framework in appointing civil servants.

### (C) Application in Modern Public Service

Even in present times, the Doctrine of Pleasure has continued and retains (some) theoretical force in law, but has been rationally and legally constrained through surface etiquette in order to make arbitrary sacking impossible. Until recently, public employment in the UK was (and largely still is) governed by a whole series of employment laws, regulations and codes of conduct, rendering it as fair, transparent and justifiable as possible.

Several leading cases and precedents have confirmed, or further narrowed the ambit of, the Doctrine of Pleasure, most notably the case of *Council of Civil Service Unions v. Minister for the Civil Service* (also known as the GCHQ case). Here, the House of Lords upheld the importance of judicial review over executive decisions affecting civil servants, nevertheless holding that national security required the exclusion of GCHQ employees from collective bargaining. But, at the same time, the House upheld the capacity of the law to subject executive decisions to legal review, thus showing that the doctrine could hardly be used to enable arbitrary or capricious dismissals.

## IV. Legal Limitations and Protections Against Misuse

What is less well-known is that there is strong statutory foundation protecting against the Doctrine of Pleasure being used capriciously in the field of public service employment in the UK. This legal framework sets out various limitations and protections. Workers under the Employment Rights Act 1996 are generally protected against unfair dismissal, and can therefore enforce a requirement on an employer (including a public sector employer) to give a fair reason for dismissing workers, and to comply with fair process in doing so. The Public Interest Disclosure Act 1998 protects whistleblowers and others who wish to make disclosures about wrongdoing in the public interest from suffering any detriment (i.e., being fired through the Doctrine of Pleasure) for doing so. A dismissal that targets such an individual could easily veer into seeming like a firing through caprice, so much more like the foregoing definition of arbitrary than justified. This in turn ensures that raising legitimate concerns does not trigger otherwise punitive approaches concerning those who are acting in the name of public interest.

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### (A) Role of the Civil Service Code

When applied in the UK, the Doctrine of Pleasure is also tempered by the Civil Service Code, a rule book laying down the duties and obligations that guide civil servants in their conduct. It sets out the 'standards of behaviour expected of civil servants and the associated values of intellectual rigor, integrity, honesty, objectivity and impartiality'. It governs the way that civil servants are treated, and promises that decisions relating to civil servants will be 'based on merit' and 'free from discrimination'. For example, if civil servants feel that they have suffered an injustice then the Code provides for a complaints process that acts as a 'check and balance' on the otherwise 'untrammelled' Doctrine of Pleasure.

### (B) The Doctrine of Pleasure in the United States

In the US context, although the origins of the doctrine of pleasure are conceptual and traceable to British common law, its application had been adapted to the constitutional and legal system of a democratic republic rather than the prerogatives of the Crown. This difference has led to a distinctive evolution of the doctrine here, in particular in the concerns it raises for the rights of public servants and the operational needs of the federal government.

#### Federal and State-level Employment Laws

Federal and state employment laws in the US do the same, by implementing the Doctrine of Pleasure in statutory form. For example, the Civil Service Reform Act (CSRA) of 1978 created and defines a statutory employment relationship for federal employees, complete with statutory discipline and grievance procedures, and it presumes the retention of federal employees indefinitely – that is, as well as the five-year statutory probationary period and various other protections against arbitrary exercises of power found in the merit system at all levels of the federal workforce. Likewise, while state laws on employment for the public sector vary considerably, most states have some sort of civil service laws and regulations that narrow the scope of the at-will doctrine and protect public employees from arbitrary termination.

### (C) Distinction Between At-will Employment and Public Service Positions

At will employment, the default principle in the US private sector whereby 'either party [employee or employer] may terminate employment at any time for any reason not prohibited by law' applies, although with some important exceptions such as for public service. Employees in the public sector often have greater job security and protections under law than those in the private sector in recognition of their role as agents through which the public interest is served. The difference is in the legal frameworks that govern the employment of public servants (that impose restrictions on the application of the Doctrine of Pleasure and require just cause for

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termination in most cases).

### (D) Notable Exceptions and Legal Protections

There are several important carve-outs and protections against arbitrary termination – called the Doctrine of Pleasure – in the US political system preventing public servants from dismissal on a whim, including:

- Merit Systems Protection Board (MSPB): Created under the CSRA, it serves as a means of redress for federal employees challenging wrongful termination, thereby enforcing ongoing adherence to merit system principles.
- Whistleblower Protections: Federal laws, such as the Whistleblower Protection Act of 1989, help protect the interests of those reporting governmental misconduct by making them 'whistleblowers' immune from retaliation.
- Due Process Rights: Limited to some public employees under the Fifth and Fourteenth amendments to the US Constitution, which require a procedure that provides unfettered, documented notice and allows for a hearing, before termination.

## V. JUDICIAL INTERPRETATIONS AND LANDMARK CASES

The US judiciary has interpreted and shaped the implementation of the Doctrine of Pleasure – as well as individual courts have – with significant cases that provide key precedents, for example:

- Myers v. United States: The president has power to remove executive branch officials as he sees fit without any input or oversight from Congress or outside entities. This case also cemented the executive's purview over the cabinet.
- *Humphrey's Executor v. United States*: Citing Myers as standing for a slightly broader proposition, this decision restricted the President's removal power in respect of officials in independent regulatory agencies. It distinguished between purely executive officials and those who performed quasi-legislative or quasi-judicial functions.
- *Wiener v. United States*: Soon after McGrain, another decision clarified the executive's inability to avoid the consequences of a congressional determination that participation of certain agency members critically depended on their ability to be insulated from executive authority.

These cases, and many others, show just how dynamic and changing the US Doctrine of Pleasure can be, despite the longstanding tension between allowing strong executive discretion

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and safeguarding the rights of public servants.

### (A) The Doctrine of Pleasure in India

The Indian version of the Doctrine of Pleasure, codified in the Indian constitution, has a high profile in the constitutional edifice, here expressly incorporated by Article 310 of the Constitution of India, which says: 'All persons appointed to public services or posts under the Union or included in any of the authorities or bodies referred to in Part II of the First Schedule; or appointed to posts under the control of the Union or included in any of the authorities or bodies corresponding to those Part II of the First Schedule shall hold office during the pleasure of the President; and … All persons … commissioned in the military, naval or air forces of the Union; or appointed to posts under the control of the Union, or included in any of the authorities or bodies corresponding to those Part II of the First Schedule shall hold office during the pleasure of the President …' Similar provisions apply to those in the service of states, holding 'any civil service or post under the state' or 'any cadre of the state civil service … included in any of the authorities or bodies … for the time being corresponding to those [Part II] mentioned in the First Schedule.' However, this span of freedom is being limited by an article of exception to preserve security of service and guard against corruption. The details are in Article 311 as follows.

### (B) Article 310 and its Exceptions

This basic principle of the Doctrine of Pleasure, found in Article 310 of the Indian constitution, is inseparable from Article 311, which lays out two important safeguards for civil servants:

- No Dismissal or Removal by an Authority Subordinate: That a civil servant cannot be dismissed or removed by authority lower to the one who appointed him.
- Inquiry before dismissal: It requires a reasoned inquiry as to why a worker is dismissed, and that worker gets a chance to be heard, thus incorporating the principles of natural justice into the employment relationship.

These exceptions provide an intentional departure from the theory of the Doctrine of Pleasure as it applies to civil service, giving the appropriate balance between the need for administrative discretion and the interest of public servants.

### (C) Judicial Oversight and Key Judgements

Perhaps most importantly, the Indian judiciary has assumed many of the functions of interpreting and applying the Doctrine of Pleasure, frequently intervening to ensure that Article 311 does not become ineffective. The most notable judgments on this constitutional failure are

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as follows:

- *Union of India v. Tulsiram Patel*: The Supreme Court here settled the scope of Article 311, saying that, in some cases, the mandatory precondition of an inquiry by a judicial officer could be dispensed with, particularly in the event of misconduct amounting to criminal offences or a threat to security. Thus, in the event of flagrant misconduct situations, discipline had to be enforced while protecting the interests of civil servants.
- *B. P. Singhal v. Union of India*: On the question of the recall of governors, the Court held that the President cannot 'remove a holder of such trust at his mere discretion' – that is, at his pleasure. On the contrary, it conveyed that any act of recall had to be underpinned by 'materials of some sort', suggesting that the Doctrine of Pleasure is subject to judicial review and that interference with 'high constitutional offices', such as that of a governor, is permissible.

## VI. PROTECTION AGAINST ARBITRARY DISMISSAL

The Indian legal system – and rulings of the courts – provide the public servant with a very strong protection against arbitrary dismissal. The rules regulating the conduct of civil servants under the Civil Services Rules for the Union and the States both set out the relevant provisions with regard to the process of disciplinary action and they further require a procedural fairness in line with the principles of natural justice so as to prevent misuse of executive power.

*Right to Due Process*

The right to due process is an essential ingredient of protection against arbitrary removal from service provided by virtue of the Indian Constitution. A case is thus made for the principle of protection against arbitrary removal originating not just from Article 311, but also from the general corpus of fundamental rights guaranteed under Articles 14 (Right to Equality) and 21 (Protection of life and personal liberty) of the Constitution. It is through the judiciary that the removal process will most effectively be rendered just, fair and reasonable in order to realize the constitutional edifice.

*Role of Central and State Public Service Commissions*

In particular, it is the duty of Council of Ministers, backed by the Central Public Service Commission (UPSC) and the State Public Service Commissions, to oversee recruitment, appointment and disciplinary actions. As independent constitutional bodies, these Commissions regulate entry into the civil services and its exit on the basis of merit, and thereby fortify procedural justice with the values of fairness and impartiality. Their ability to act as a 'quasi-

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judicial' body provides further protections of procedural fairness by acting as a mechanism of judicial review of disciplinary actions, which makes the exercise of the Doctrine of Pleasure faithful to the basic constitutional values of justice and fairness.

### (A) Comparative Analysis

The Doctrine of Pleasure as applied in the US, the UK and India constitutes an important comparative lens in which to view the extent to which legal and constitutional frameworks seek to curtail the power of the executive to dismiss public servants, and the extent to which legal and constitutional protections are in place to safeguard the rights of public servants. The book constitutes a study of the similarities and differences in the Doctrine of Pleasure in the US, the UK and India, drawing on the common law and the constitutional law of each jurisdiction. It examines the underpinnings of the Doctrine of Pleasure, the breadth of legal protections against arbitrary dismissal, the consequences of the doctrine on employment in the public service and the part which the courts play in delineating the scope of the doctrine and its application.

### (B) Similarities and Differences in Legal Frameworks

Basis of the Doctrine in Each Jurisdiction

- United States: From the constitutional rights of the executive, we may infer the Doctrine of Pleasure, and that doctrine is tempered by federal and state law so as to protect public servants from summary dispensation at the pleasure of an executive.
- United Kingdom: Deriving from the powers of royal prerogative of the Crown, the doctrine became codified through statutory reforms and civil service codes to accommodate contemporary standards of due process.
- India: Formally enshrined in its Constitution through Articles 310 and 311, it puts executive power directly at odds with civil service protections from arbitrary dismissal.

### (C) Extent of Legal Protections Against Arbitrary Dismissal

All three jurisdictions have established exhaustive legal regimes to ensure that the Doctrine of Pleasure is not abused.

- United States: Statutory protections include the Civil Service Reform Act, whistleblower protections, and certain constitutional due process rights for public servants.
- United Kingdom: Statutory changes, employment laws and the Civil Service Code provide for procedures through which public servants can be terminated that are reliant

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on process (transparency and fairness) rather than outcomes.

- India: constitutional safeguards (Article 311) against arbitrary dismissal of public servants, enhanced procedurally by judicial interpretation.

**(D) Impact on Public Service Employment**

*Job Security*

- United States and India: Large portions of these important employment relationships are protected from unconscionable conditions and demands in both of these countries, although the US highlights the distinction between at-will employment in the private sector and public service more sharply than India does.
- United Kingdom: In the world of the modern civil service, the webs of protections protecting job-holders from arbitrary dismissal are elaborate, and some aspects of such dismissal are subject to judicial review.

*Efficiency and Accountability*

The balance between job security and the Pleasure Principle strikes to create incentives to keep public service productive and accountable. The models are different, but the idea is that there needs to be some way of removing incompetent public servants, but with the proviso that such removal is not subject to misuse.

**(E) Role of Judiciary in Shaping the Doctrine**

Each judiciary has, in turn, played a key role in making sense of the Doctrine of Pleasure and ensuring that it does not trespass on the rights of public servants.

*Notable Judgments and Their Implications*

*Myers v. United States*, and *Humphrey's Executor v. United States*, stand as examples of decisions that have circumscribed the scope for the exercise of executive removal powers, in the interests of separation of powers and countervailing accountability to regulators that are independent of political control.

*The Council of Civil Service Unions v. Minister for the Civil Service* (the GCHQ case), establishing the need to balance security interests against the rights of civil servants, recognized the role of judicial review in executive actions affecting public employment.

The cases of *Union of India v. Tulsiram Patel* and *B. P. Singhal v. Union of India* have provided significant clarity around protections of Article 311, mitigating some of the worst arbitrariness and imperviousness of the POS in public service dismissals.

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### (F) Case Studies

This section contains selected, illustrative vignettes from the US, the UK and India depicting the application of and reactions to the Doctrine of Pleasure in the context of public service employment. This final set of vignettes shows how the Doctrine of Pleasure is received and interpreted, and the balance struck between the executive prerogative to hire and fire and the protections afforded to government employees in each of these three regimes.

#### a. United States: At-will vs. Protected Public Employees

That case concerned the First Amendment rights of public employees: whether the deputy district attorney who had raised concerns about the accuracy of a warrant could protection from reprisals based on that fact. The Supreme Court ruled that an employee who speaks pursuant to his official duties is no longer speaking as a citizen for First Amendment purposes, and the Constitution does not immunize his communications from employer discipline.

This case vividly illustrates how the US system of at-will employment walks a fine line between robust principles of at-will employment and the protections of public employment, and how that line can be drawn in unclear ways that impacts on the protections of public employees, especially free speech within the scope of official employment roles. The US system of drawing the line between at-will and protected public employees is thus complex and contentious.

#### b. India: High-profile Dismissals and Judicial Interventions

*T.S.R. Subramanian & Ors v. Union of India & Ors*

This landmark judgment by the Supreme Court insisted that no employee in the service of the state, in fact no civil servant, should be sacked on a whim or under political pressure (as this leads to a lack of autonomy at the bureaucratic level) but must have a measure of job security. With the implicit premise that bureaucratic accountability is a subtle form of accountability best promoted by ensuring that bureaucrats are kept far away from political pressures, this judgment laid down a framework of rules – from ensuring a tenure of a length to be stated to the setting up of a Civil Services Board that could manage the transfers and postings, as well as the disciplining of civil servants.

This is a ground-breaking application of judicial review to protect a public servant under the Doctrine of Pleasure and shows the courts, at least on the bench which heard this case, as a check on the Doctrine of Pleasure which grants public servants a degree of independence from executive interference, and allows for the formation of a neutral public service against arbitrary termination.

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## VII. IMPACT ANALYSIS

From the Doctrine of Pleasure emerges a picture of how authority over a growing and multi-purpose public sector became both a function of policy and a target of policy, and also how the legacy of that period remains with us today. This final section seeks to show how the doctrine has played a part in providing the answers to the questions of how public service is organised in different areas, how the tension between efficiency and stability is usually finessed, what checks and balances serve to retain accountability and control, and finally how, on the ground, political power operates to provide security of employment and the morale of public servants.

### (A) On Governance and Public Administration

It is upon this living tension, however enhanced by the Doctrine of Pleasure, that there arises a new dilemma that will confront every public service: that of the competition between efficiency and stability of administration. To illustrate: the doctrine of pleasure is commendable in the way it can expedite the removal of such defective senior civil servants or public officers as cannot serve the public interest or meet the objectives or purposes of the administration; whether because the cause is defective or even perverted and perverting, or because his stewardship is manifestly below efficiency and unfit for retention, or because his services are simply no longer needed. This is certainly a desirable capacity that will be sought of any modern public service institution that needs to be swift and adaptable to the changing circumstances of the times.

On the other hand, the threat of sudden dismissals can cut across any order and steadiness. High turnover undermines continuity, as personnel changes affect the normal operations of government, derailing long-term policies or projects. It also means more inefficient governance and a loss of institutional know-how. This tension requires a delicate balance, applying the doctrine so that it suits both the immediate imperatives of the so-called ‘business of the government’ and the longer-term interests of public administration.

However, the doctrine also helps to establish machinery for holding public servants accountable and for controlling their behaviour. A programme in government generally carries way too much leeway in its policies and conduct to live up to the widespread confidence bestowed upon it by the people The freedom of the executive to fire public employees at any moment underlines the principle of ministerial responsibility by ensuring that public servants are held responsible and accountable for their performance and conduct. Without such control over subordinates, it is impossible to maintain the requisite levels of public confidence in government to carry out its functions.

But in each of the three jurisdictions, legal and constitutional barriers against abuse of the

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Doctrine of Pleasure have also been put in place to counteract politically motivated or arbitrary forms of executive dismissal. Such structures of judicial review and statutory protection function to curb the power of the executive, preventing its use in a manner that is arbitrary or that violates the rights of public servants.

### (B) On Employees

Moreover, the existence of a possibility of public servants' employment being terminated without cause (in part due to the fact that the application of the Doctrine of Pleasure by senior officials depends on employees not invoking this Doctrine) could create a fear or vagueness concerning public servants' job security – an atmosphere of insecurity – that might have demoralizing effects for public servants and that would plausibly make individuals unwilling to serve the public interest, especially if existing legal protections against such dismissal are weak and the procedures not transparent.

However, at the same time, it can, if embedded in a system with sufficient protections for the staff, contribute to a meritocracy and a professional culture in the workplace. Knowledge that performance and integrity will be valued, and that dismissals that are unwarranted will be vigorously contested, will reassure the public servant about the workplace environment, and will give him or her the motivation and commitment to perform their work with ability and integrity.

Access to such avenues of judicial redress, or the right to appeal against the potentially corrosive effects of the Doctrine of Pleasure on the public service, exists in all three jurisdictions, where public servants can appeal against what they perceive to be an unfair or unlawful dismissal before administrative authorities such as the US Merit Systems Protection Board, and also before the courts in judicial review and under the Indian Constitution, which established the fundamental rights that all Indian citizens enjoy.

Such judicial safeguards against arbitrary dismissals enable public servants to appeal against such unconstitutional or unreasonable dismissals, and so produce a picture of play-fair within the public service, as well as working, although in practice mostly paper, as a second line of defense against the sovereign executive's Doctrine of Pleasure, functioning as a supplement to the separation of powers, another device for maintaining that public service.

### (C) Challenges and Criticisms

Despite being the kernel of the public service constitutions of the United States, the United Kingdom and India, the Doctrine of Pleasure has not been devoid of trouble and controversy. It has been argued (both in law courts and before legislatures in the United States) that the

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Doctrine of Pleasure – or the power to appoint and dismiss men and women at pleasure – has been exercised without adequate regard for its legal and ethical constraints. The last decades of the 20th century (and even the beginning of the 21st) had seen multiple calls for reform of the Doctrine of Pleasure in constitutional democracies. A growing chorus of voices in the United States had begun advocating for alternatives to the arbitrary and ad hoc modes of public service employment planning and management. This section examines those criticisms and hurdles in the implementation of the Doctrine of Pleasure, and the extent of the debate on potential reform.

### (D) Critiques of the Doctrine

The chief objection is that the doctrine can be an invitation – indeed, an incentive – to executive-branch abuse by fostering arbitrary, capricious or unfair dismissals of public servants. Many criticize the doctrine glosses– its bare applications – on the ground that, in its freest form, it allows a chief or premier to unilaterally terminate a permanent public servant's position, with little to no limits (this might be question-begging: the criticism is that the limits are nonexistent). Most people would agree that public service must afford some degree of tenure so that public servants don't 'worry about tomorrow' and so that firings – because public servants are often deeply invested in the success of their units and work productivity – aren't counterproductive. The application of the doctrine can appear antithetical to the tenets of democratic accountability and transparency If the excuse for a dismissal is political rather than performance- or conduct-related, then the doctrine can appear as a vehicle to evade accountability and transparency.

A further important critique concerns the effect of the doctrine on the morale and autonomy of the public service. The prospect of dismissal at the appointing authority's pleasure may inhibit public servants from providing unfettered, frank and fearless advice to that same authority, thus compromising the quality of government and public administration.

### (E) Legal and Ethical Challenges in Implementation

Applying the Doctrine of Pleasure raises numerous legal and ethical issues arising from accommodating executive discretion with the rights of civil servants. On the legal side, the doctrine must be applied in a way that respects constitutional and statutory protections advanced to public employees, such as the principles of due process and equality before the law. If employers are to abide by the doctrine through terminations, there must be a fully justified and transparent framework for dismissals that includes an adequate process for review and redress, so as to avoid or remedy unjust terminations.

At a basic ethical level, the doctrine raises questions of fairness, of integrity and in the public interest. To ensure the oversight of balancing legitimate purposes and processes, the interests

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of employees affected must be safeguarded, in particular to ensure that dismissals are not mere political vendettas or subject to discrimination (which is likely). Here the challenge to create a genuine ethical public service culture is as much to ensure that public service managers make decisions regarding dismissals with integrity – i.e. respecting the ethos of public service and the public trust.

### (F) Calls for Reform and Alternative Approaches

The challenges and criticisms of the Doctrine of Pleasure have prompted proposals for reform, including the strengthening of guarantees of protection against arbitrary dismissal, promoting the transparency and procedural accountability of dismissal processes, and providing public servants with the right to appeal before independent and impartial bodies.

Another would be the development of a more meritocratic public service system in which employment and dismissal decisions take place under rules linked to measurable performance criteria and subject to objective evaluation – thereby reducing the discretion available under the Doctrine of Pleasure in favor of a system more focused on quality, honesty and service delivery.

Others have suggested focusing once again on the importance of independent oversight regimes, such as public service commissions or ombudsman offices, as an extra layer of scrutiny and rights-protection measures that could serve as a check on executive power so that dismissals are justified, fair and lawful.

## VIII. Future prospects and reform

In this way, the Doctrine of Pleasure served as a body of philosophical and practical acumen about public service employment that persisted in the US, the UK and India, and shaped the course the different jurisdictions followed (and continue to follow) in response to demands for change in the political and social landscape without losing the imprint of a former era of public service. In all three jurisdictions, albeit in differing terms from that of the great Indian judge, attempts were made to keep the leviathan of the state in check from the then-novel tide of employee rights that swept the world of work. The outcome was a series of reforms providing the impression of endless ‘regulatory drift’ more than a series of precursors of ineluctable progress. Out of this, a number of threads of evolution have grown.

### (A) Emerging Trends and Recent Reforms in Each Jurisdiction

To these tendencies there have been added, in the recent reforms in the US (which by and large have been concerned with improving due process and openness in the dismissal of public employees) an increased fortification of whistleblower protection legislation (increasingly

demanding substantive protections for those who blow the whistle against public wrongdoing), and an even more cautious, if still sporadic, claim for more explicit laying down of criteria for just cause.

Since then, successive UK governments have built on that model, and increasingly stressed the professional ideals of meritocracy, fairness and accountability in public employment. In the past 30 years, successive reforms have moved towards the demopolitisation of the civil service – to reduce the opportunity for politics to trump professional standards in matters of civil service employment, including hiring and firing. The Civil Service Code and the role of the Civil Service Commission as a uniquely 'partnership' arrangement, jointly guaranteeing standards of propriety and probity and impartiality, have all contributed to the professionalization of the UK's public service, and have much to offer others.

The push for reform has been about promoting the civil service's rights to be shielded from political caprice, and to provide good, efficient public service in India This is also reflected in recent judicial pronouncements where the courts have emphasized the civil servants' need to be protected from whimsical political decisions, to have fixed tenure and transparent mechanisms for transfers and dismissal, as well as making public service more accountable and citizen-centric through performance-oriented appraisals and using technology for service deliveries.

### (B) Comparative Insights on Best Practices

A comparative analysis reveals common themes and best practices across the three jurisdictions:

- Merit-Based Employment: Integrating merit-based hiring and dismissal reinforces both the performance and the equity of public service employment.
- Transparency and Accountability: Open, transparent procedures for firing, subject to effective oversight, lead to fair decisions and are subject to evaluation.
- Whistleblower protections: Strong whistleblower protections ensure that employees can report misconduct without risk of retaliation.
- Judicial and Administrative Review: Providing the dismissed with a right of judicial or administrative review of the dismissal decision in order to protect against arbitrary action.

### (C) Suggestions for Balancing State Interests with Employee Rights

This would better align the interests of the state and of public service employees, specifically:

1. Develop an office to intersperse public servants as domain experts into legislative

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committees, giving these individuals oversight over the policies that relate to their functional areas, and the authority to issue directives to the ministries they are from.

2. Scale back the use of diplomas to qualify civil service candidates as per Shalin's suggestion to place a greater emphasis on the collective body of practical knowledge accessible to a specific community.
3. Making national service compulsory for all citizens, at either an early or late stage of their life.

- Advance legal protections: Nations should continue to modernize their legal frameworks to provide predictable and complete protection from arbitrary dismissal and ensure that high-level public servants can do their jobs without fear of summary and/or capricious termination.
- Increase independent oversight: The decisions to dismiss should be subject to clear independent oversight (for example, by public service commissions, which already enjoy substantial powers in the UK), offering a further safeguard against abuse of the Doctrine of Pleasure.
- Fair and Impartial: Clear rules and criteria for terminating public and private sector employment should be laid out to ensure fair and impartial application; examples range from the Singaporean Public Service Tribunal to the French model of the Economic and Social Council disqualifying members of parliament from official public employment.
- Develop a culture of integrity: Have effective systems in place to foster a culture of integrity among public servants. This is best achieved when the public service operates within a framework of clear constitutional rules and the professional ethics of public service guide public servants' behaviour.

## IX. CONCLUSION

The Doctrine of Pleasure is an important legal principle – a common spring of law – that influences the dynamic between the executive and law enforcers in the US, the UK and India. The Doctrine of Pleasure is applied differently across these jurisdictions but its core purpose is, loosely, to make sure that executive agencies that effect public policy have the discretion to administer those policies smoothly without the risk of arbitrary termination of officeholders.

Whereas in the US, the doctrine is inferred from the inherent powers of the executive branch, refined through decision landmark judicial decisions such as *Myers v. United States*, *Humphrey's Executor v. United States* and subsequent cases, which reflect this ongoing tension

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between executive discretion warranted in the interest of stable and fair public administration, and the need to protect public employees through vetting and merit provisions in federal and state laws reflecting due process, including the Civil Service Reform Act, 1978, the Whistleblower Protection Act, 1989, and the False Claims Act, 1863 and its 2009 amendments.

If the living traditions of the Doctrine of Pleasure began in royal prerogative powers, driven by personal whim and caprice, today how that is applied in practice shows the hallmarks of the civil service. The authority to make appointments and remove public servants from office has been codified in statute law both for the civil service at large (the Civil Service (Management Functions) Act of 1999), and for the most senior roles (the Constitutional Reform and Governance Act 2010). Public servants are now protected from arbitrary decisions, and there are clearly defined structures for merit-based appointments and dismissals. It is no longer possible for a prime minister to install friends and family, such as Damian Green, as a minister without portfolio, simply because they have stayed in the same hotel as them – as did occur as recently as 2013. The Civil Service Code sets out the standards expected of civil servants, providing a means by which unreasonable directions can be contested. Modern ideas of transparency and procedural fairness now underpin the Doctrine of Pleasure. Nothing guarantees that ministerial power will never be abused. Nevertheless, the course of the Doctrine of Pleasure shows how arrangements to ensure that public services are politically accountable can, over time, evolve to become heavily constrained, tendential and rule-bound.

In India, the doctrine is written into the Constitution, but Article 311 of the Constitution moderates this by including important protections, such as the requirement to conduct an enquiry before dismissal. India's judiciary has taken an active case-by-case approach to restricting executive power by judicially interpreting these provisions. Especially important in this regard are two decisions of the Supreme Court – *Union of India v. Tulsiram Patel* and *B P Singhal v. Union of India* – that reiterate the role of the judiciary in balancing executive power with the need for a secure, impartial civil service.

But each such entrenchment is susceptible to manipulation and, in each of the three jurisdictions, there is anxiety about the risk that the power of dismissal will be misused to make arbitrary and political judgments that will undermine public confidence in the system of appointments and, thereby, in the effectiveness of public administration. Even more so, the doctrine has significant implications for certainty and morale with regard to job tenure that are likely to have consequences for the effectiveness of government acting as a whole.

Arbitrariness can be constrained when Doctrine reforms offer greater legal protections for

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citizens; more independent oversight; and cultivate a culture of honesty and accountability into the civil service. For example, by requiring more transparency in dismissal and by allowing it to be challenged, we can tame the dangers of pure executive discretion.

In sum, while the Doctrine of Pleasure may be the foundation of modern constitutional and administrative law, its future will rest in the further development of the doctrine and its adaptation to address the increasing complexity in the machinery of modern administration and the problems of both governance and rights. In the latest phase of the evolution of the law, the extent and the achievement of the ancient rule of law that enables or disables the conduct of public business by government according to best administrative practices and clear ideas of justice will depend on the extent to which judges in their engagements with the judicial question on 'good administration' carefully adjudicate the limits of state power and the reasonable exercise of discretion by reference to the fundamental values of equity and good conscience, and subject it to the rule of law. Future case law developments and jurisprudential reflections in such jurisdictions will go a long way in defining the scope and contents of this ancient 'rule that strikes the golden mean' between the power of the state and individual liberties in the scheme of modern representative democracy.

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