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DOCTRINE OF PLEASURE IN SERVICES vis-à-vis FUNDAMENTAL RIGHTS AND PRINCIPLES OF NATURAL JUSTICE

Nandini S Patil

ABSTRACT

The Doctrine of Pleasure is a Common Law Principle. The origin of doctrine of pleasure lies in the Common Law of England. The term was used as regards the tenure of a civil or a public servant appointed by the Crown. The rule states that any civil servants appointed under the Crown have the right to hold their offices at the pleasure of the crown and until the Crown deems it necessary to. Which means that the services of these civil servants can be terminated any time at wishes of the Crown. The doctrine of pleasure in India is embodied under Article 310 and is arguably one of the most debatable area of the Constitution. Articles 309 to 323 of the Constitution make elaborate provisions for the Central and Sate services. Article 311, being an express provision of the Constitution, is an exception to the pleasure doctrine contained in Article 310(1) of the Constitution. Clauses(1) and (2) of Article 311 restrict the operation of the pleasure doctrine so far as civil servants are concerned by conferring upon civil servants the constitutional safeguards provided in Article 311. The role of a Civil servant is essential and imperative to the governance of the country in the contemporary administrative age. Ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants. The bureaucracy helps the political executive in the governance of the country. To save the civil servants, certain restrictions are framed in the constitution. However, the doctrine has been subject to constant judicial review for various reasons. The aim of the paper is to critically analyse whether the Doctrine of Pleasure is violative of fundamental rights and is an antithesis to the Principles of Natural Justice while also focusing on the evolution of the Doctrine in England and India through case laws.

Key words: Doctrine of Pleasure, Common Law, Fundamental Rights, Principles of Natural Justice

I. INTRODUCTION

In Britain, traditionally, a servant of the Crown holds office during the pleasure of the Crown[1]. This is the Common Law Doctrine. The justification for the rule is that the Crown should not be bound to continue in public service any person whose conduct is not satisfactory.[2] This Doctrine is absolute in Britain and can only be restricted by an Act of the Parliament.[3]

The 'Pleasure Doctrine' is a principle of the common law, the origins of which may be traced back to the development of the Concept in the British. It is a historical rule of common law that a public servant under the British Crown had no fixed tenure, but held his/her position at the absolute discretion of the Crown. The Court in ***Firrty v. Odlum***,[4] held that a Civil Servant could not claim arrears of salaries due or any damage arising out of the wrongful dismissal against the Crown.

The Law relating to tenure of Civil Servants is stated in Halsbury's Laws of England as follows:

> *"except where it is otherwise provided by Statute all public officers and servants of the Crown hold their appointment at the pleasure of the Crown and are generally subject to dismissal at any time without cause assigned, nor will an action for wrongful dismissed be entertained even though a special contract be proved"*

The scope of this doctrine was again considered in the case of ***Shenton v. Smith***[5] wherein the Privy Council held:

> *"The difficulty of dismissing servants whose continuance in office is detrimental to the State would if it were necessary to prove some offense to the satisfaction of a jury, be such as to seriously impede the working of the public service.*"

In this case, the Privy Council Observed that the Doctrine of Pleasure is a 'necessity'. Further, Lord Hobhouse observed that the Doctrine of Pleasure is devised to ensure that civil servants need to be reciprocal towards the government and there should be organic unity between civil servants and the Crown.[6]

The Doctrine has its origins in the Latin phrase '*durante bene placito'* which translates to 'during good pleasure' or, *'durante bene placito regis'* 'during good pleasure of the king'. The same was

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[1] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1480
[2] Shenton v. Smith, (1895) AC 229; Gould v. Stuart, (1896) AC 575; Reilly v. The King, (1934) AC 176; Terreil v. Secy. of State, (1953) 2 QB 482; Chelliah Kodeeswaran v. Attorney-General of Ceylon, (1970) AC 1111
[3] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1480
[4] (1790) 3 TR 68
[5] 1895 AC 229 (PC)
[6] Shenton v. Smith, 1895 AC 229 (PC)

affirmed for the first time by the Court of Appeals of the United Kingdom in ***Dunn. v. R***[7]***.*** In this case, the Court held:

> *"… I take it that persons employed as the petitioner was in the service of the Crown except in cases where there is some statutory provision for a higher tenure of office are ordinarily engaged in the understanding that they hold their employment at the pleasure of the Crown. So I think that there must be imported into the contract for the employment of the petitioner, the term which applies to civil servants in general, namely that the Crown may put an end to the employment at its pleasure.*"

The Court in this case was of the opinion the employment is held at the pleasure of the Crown and the Crown may put an end to the same.

Over time this doctrine has evolved as a common-law doctrine. In England a civil servant holds his office during the Pleasure of the Crown and his services may be terminated at any time by the Crown without assigning any reason for the same and this is based on public policy. Even if there exists a special contract regarding the tenure of an office between the Crown and the civil servant, the Crown is not bound by it on the ground that the Crown could not fetter its future executive actions by entering into a contract in matters concerning the welfare of the Country.[8]

In India, Article 310 envisages the doctrine of pleasure, the evolution of the doctrine of pleasure in India will be analysed in the next chapter.

II- EVOLUTION OF THE DOCTRINE IN INDIA

Part XIV of the Constitution of India deals with services under the Union and the State. Article 310 of the Indian Constitution expressly provides that all persons who are members of the Defence Services or the Civil Services of the Union or All-India Services hold office during the pleasure of the President.[9]

The Adoption of the concept of the Doctrine of Pleasure in India can be Traced to the Charter Act of 1833. Before this the Act of 1793 in sections 35 and 36 provided for the removal or recall of any person holding any office, employment or commission in a civil or military capacity in the company, at the will and pleasure of His Majesty, heirs or successors and the Court of Directors respectively. The Statute of William the IV introduced the doctrine in India as follows:

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[7] (1896) 1 QB 116

[8] Om Prakash Motiwal, 'Doctrine of pleasure and the Services in Indian Constitution' [1963] Indian Journal of Public Administration 64

[9] Art. 310, Constitution of India, 1950

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

2.1. THE GOVERNMENT OF INDIA ACT 1833

All servants of the East India Company held offices during the Pleasure of the Crown and they could be dismissed without any reason being assigned for such dismissal by virtue of Section 74 of the Government of India Act, 1833.[10]

2.2. THE GOVERNMENT OF INDIA ACT, 1858

By virtue of Section 16 of the Government of India Act, 1858 the Doctrine was yet again given statutory recognition.[11] The Act did not provide any remedy to a Civil Servant even if the dismissal was arbitrary. The Act of 1858 vested the power of framing rules with the Secretary of State in Council but this power was however subject to the Crown's power to dismiss any employee at pleasure.

2.3. RESOLUTION OF 1879

The resolution adopted by the Government of India on 27th June 1879 provided that in all cases of dismissal or removal of Civil Servants, the charges should invariably be reduced to writing. It further provided that witnesses shall be examined to the possible extent and this examination shall be in the presence of delinquent officers. It also provided for a right to cross-examine. It can be seen that this resolution aimed at removing any arbitrary exercise of power while dismissing a Civil Servant and upheld rule of law while also abiding by the Principles of Natural

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[10] Section 74, Government of India Act, 1833 "74. It shall be lawful for his Majesty, by any writing under his manual, to remove or dismiss any person holding any office, employment or commission, civil or military, under the said company in India, and to vacate any appointment or commission of any person to any such office or employment" <https://www.legalcrystal.com/act/133614/government-of-india-act-1833-complete-act> accessed 02 November 2020

[11] Section 16, Government of India Act, 1858 "16. Removal Of Officers And Supply Of Vacancies In The Establishment: After the First Formation of the Establishment, it shall be lawful for the Secretary of State in Council to remove any Officer or Servant belonging thereto, and also to make all Appointments and. Promotions to and in such Establishment; provided that the Order of Her Majesty in Council of the Twenty-first Day of May One thousand eight hundred and fifty-five, or such other Regulations as may be from Time to Time established by Her Majesty for Examinations, Certificates, Probation, or other Tests of Fitness, in relation to Appointments to junior Situations in the Civil Service, shall apply to such Appointments on the said Establishment." <https://lawsisto.com/Read-Central-Act/996/GOVERNMENT-OF-INDIA-ACT-1858#> accessed 2 November 2020

Justice. However, this resolution remained only on paper and it was not implemented in its true spirit.[12]

2.4. GOVERNMENT OF INDIA ACT, 1919

The Doctrine of Pleasure continued its operation in the same form as it existed in the Government of India Act, 1858 until certain safeguards were introduced by the Government of India Act, 1919. Section 96 of the Government of India Act, 1919 circumscribed the Doctrine of Pleasure by introducing certain safeguards. The Act in Section 96B[13] made it clear that a Civil Servant could not be dismissed by an authority subordinate to the appointing authority.[14] The Act of 1919 also provided an opportunity to the Civil Servants to represent their case to the Governor of the respective province for grievances.[15]

It can be observed that this was the first Act to place a restriction on the unfettered power of the Crown. The Government of India Act further provided for rulemaking power by virtue of section 96(2)[16]. The rules were framed by the Government through the Secretary of State in Council and these rules came to be known as the Classification Rules in December 1920. After several amendments, the rules were published as Civil Service (Classification, Control, and Appeal) Rules, 1930. The Rules further provided for safeguards to the Civil Servants. An order

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[12] OP Motiwal, 'Development of Legal Rights of Civil Servants in India' (1975) 17 Journal of Indian Law Institute 437, 438

[13] Section 96-B(1), Government of India Act, 1919 "96.B(1)Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed." <https://www.legalcrystal.com/act/32232/government-of-india-act-1915-19-repealed-section-96b>accessed 2 November 2020

[14] This is the position even today, Cite the case law

[15] Section 96-B(1), Government of India Act, 1919 "96.B(1)… If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, be may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable." <https://www.legalcrystal.com/act/32232/government-of-india-act-1915-19-repealed-section-96b>accessed 2 November 2020

[16] Section 96-B(2), Government of India Act, 1919 "96.B(2) (2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of services, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making: rules to the Governor-General in Councilor to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services:
Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of Stale in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation, for the loss of any of them as the Secretary of State in Council may consider just and equitable."<https://www.legalcrystal.com/act/32232/government-of-india-act-1915-19-repealed-section-96b>accessed 2 November 2020

of dismissal or removal of a Civil Servant could be passed only after informing the Civil Servant the grounds for rejection in writing and giving him an opportunity of defending himself.

Following the Classification Rules, The Fundamental Rules which came into force in January 1922. With the introduction of these rules several cases came up before the Courts for the Interpretation of the Rules.

SATISH CHANDRA DAS V. SECRETARY OF STATE[17]

> In this case, the dismissal of a Police Official was in question. The Calcutta High Court held that the dismissal was not in accordance with the procedure in rule 14 of the Fundamental Rules and that the officer had a proper cause of Action.

R.T. RANGACHARI V. SECRETARY OF STATE FOR INDIA[18]

> In this case, the petitioner was dismissed from service based on an inquiry but the order for dismissal was issued by a subordinate authority. The Privy Council held that his removal was illegal as this power could not be exercised by a subordinate official.

R VENKATA RAO V. SECRETARY OF STATE[19]

> In this case, the petitioner challenged his order of dismissal to be in contravention of Section 96B. The Privy Council rejected this contention and held that the rules did not in any manner fetter the Pleasure of Crown except in special circumstances that are otherwise provided.

The words "subject to the rules" indicated statutory and solemn assurance that the tenure of office though on pleasure, would not be subject to capricious or arbitrary removal.[20] It can be said that while the Courts were of the opinion that the rules will have to be followed while dismissing a Civil Servant but even the rules would not lay any restriction to the Crowns Pleasure.

2.5. GOVERNMENT OF INDIA ACT, 1935

The Government of India Act, 1935 set up a federal structure. It laid down elaborate provisions respect of the civil servants of the crown in India in section 240. Section 240(1) provided for the

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[17] A.I.R 1927, Cal 311
[18] A.I.R (1973), P.C., 27
[19] A.I.R. (1937), P.C., 31
[20] Om Prakash Motiwal, 'Doctrine of Pleasure and the Services in Indian Constitution' [1963] Indian Journal of Public Administration 66

'Doctrine of Pleasure.[21] Sections 240(2)[22] and 240(3)[23] made elaborate provisions conferring upon the Civil Servants safeguards against the arbitrary exercise of power. These safeguards are as follows: (i) A Civil servant cannot be dismissed by a subordinate authority; (ii) A civil servant cannot be dismissed without providing a reasonable opportunity of showing cause before initiating any such disciplinary actions.[24] It was for the first time that the "reasonable opportunity" was introduced. However, this was restricted through the proviso to section 240(3) (a) and (b)[25] restricted the scope of reasonable opportunity in specified cases. Further, the power to frame rules for the Government Servants was provided under Section 241(2) and 241(5)[26] empowered the Governor-General and the governor to deal with the case of any person serving his Majesty in a Civil capacity in such a manner as may appear to him to be just and equitable.

From a combined reading of section 96-B of the Government of India Act, 1919, and Section 240 of the Government of India Act, 1935 it can be seen that there is no material difference between the two. Section 240 introduced that a Civil Servant was to be given a 'reasonable opportunity" and this is the only substantial difference between the two.

The Interpretation of Section 240 of the 1935 Act came up before the Privy Council in the case of ***The High Commissioner of India and another v. I.M. Lall,*** [27]. In this case, the respondent on appeal contended that the two grounds on which his dismissal was based were

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[21] Section 240(1), Government of India Act 1935 "240(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure." <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[22] Section 240(2), Government of India Act 1935 "240(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed." <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[23] Section 240(3), Government of India Act 1935 "240(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[24] See, Sections 240(2) and 240(3) of the Government of India Act 1935 <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[25] Section 240(3) (a) and (b) of the Government of India Act 1935 "(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or
(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause." <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[26] See, Section 241 of the Government of India Act 1935 <https://www.constitutionofindia.net/historical_constitutions/government_of_india_act_1935_2nd%20August%201935> accessed 2 November 2020

[27] A.I.R. (1948), P.C. 121

not shown to him and that this is a violation of Section 240(3) of the Government of India Act, 1935. The Privy Council clarified that sub-section 3 was mandatory and that the remedy available against any dismissal in contravention of this section would be declared such orders as void. However, in the Indian context the doctrine was not adopted in its entirety and the same can be concluded from the Hon'ble Supreme Court's observations in the Case of ***Purshottam Lal Dhingra v. Union of India***[28]***:***

> "*Under the English Common Law all servants of the Crown held office during the Pleasure of the Crown and were liable to be dismissed at any time and without any reason being assigned for such dismissal but the Indian Law has not adopted this rule in its entirety*"

The Doctrine of Pleasure in The Indian Constitution will be analysed in the next chapter.

III. DOCTRINE OF PLEASURE IN THE CONSTITUTION OF INDIA

The Constitution of India adopted more or less the same pattern laid down in the Government of India Act, 1935. This was pointed out by the Hon'ble Supreme Court in the case of ***Purshottam Lal Dhingra v. Union of India***[29]where the courts observed as follows:

> *"As under Section 96-B(1) of the 1915 Act and Section 240(1) of the 1935 Act, the persons specified therein held office during the pleasure of the Crown so under Article 310(1) they hold their office during the pleasure of the President or of the Governor, as the case may be. The opening words of Article 310(1), namely except as expressly provided by this Constitution, reproduce the opening words of Section 240(1) of the 1935 Act, substituting the words 'Constitution' for the word 'Act'…"*

3.1. CONSTITUTIONAL ASSEMBLY DEBATES

Article 282(A) of the Draft Constitution moved by Dr. B.R. Ambedkar, there were only 2 minor amendments that were moved during the debate on Draft Article 282(A). One was by Brajeshwar Prasad who sought for the substitution of pleasure doctrine by security up to 68 years of age, and the other sought a modification, calling for exercise of pleasure only by the President.[30] However, both these amendments were rejected and Section 240(1) was reproduced in Article 310 of the Constitution of India. The Doctrine of Pleasure has often been regarded as a right conferred on the Government over its servants.

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[28] AIR 1958 SC 36

[29] (1958) S.C.R. 828

[30] Constituent Assembly of India Debates (Proceedings) – Volume IX, 23August 1949, available at <https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-08-23> accessed 8 November 2020

3.2. ARTICLE 310

Article 310 lays down that the defence personnel[31] and civil servants[32] of the Union, and the members of All-India Service, hold office during the 'pleasure of the President'. Similarly, a Civil Servant of a State holds office during the 'pleasure of the Governor'.[33]

In India this is the generally rule that operates 'except as expressly provided by the Constitution". This implies that Doctrine of Pleasure in India is not absolute and is subject to Constitutional limitations. This indicates that if there is a provision in the Constitution giving a Civil Servant a tenure of office, then that office would be excluded from the Doctrine of Pleasure as provided in Article 310.[34] By virtue of this, the following offices are expressly excluded by the Constitution from Rule of Pleasure:

(i) The Supreme Court Judges[35];

(ii) Auditor-General[36];

(iii) High Court Judges[37];

(iv) A member of the Public Service Commission[38]and

(v) The Chief Election Commissioner[39].

The Supreme Court in the case of ***Union of India v. Tulsiram Patel***[40] has clarified that the pleasure doctrine is based on public policy, public interest and public good insofar as inefficient, dishonest or corrupt persons, or those who have become a security risk should not continue service. It can be observed that in both Britain and India the Doctrine of Pleasure is based on Public Policy. However, in India the Pleasure Doctrine under Article 310 is conditioned by Constitutional restrictions under Article 311[41] and is not absolute or unfettered unlike United

The position in India differs from that of the United Kingdom, because in United Kingdom, the Parliament may supersede the doctrine of pleasure in any case, but the same cannot be done in India as in India the Doctrine of Pleasure is sanctioned by the Constitution.

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[31] The term 'defence personnel' means a member of a defence service or a person holding any post connected with defence.

[32] The term 'civil servant' includes members of a Civil service of the Centre or a state, or of an all-India

[33] Art. 310 Constitution of India, 1950

[34] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1480

[35] Art. 124, Constitution of India 1950

[36] Art. 148, Constitution of India 1950

[37] Art. 217, Art. 218, Constitution of India 1950

[38] Art. 317, Constitution of India 1950

[39] Art. 324, Constitution of India 1950

[40] AIR 1985 SC 1416

[41] State of Uttar Pradesh v. Chandra Mohan Nigam, AIR 1977, SC 2411

3.3. RESTRICTIONS ON DOCTRINE OF PLEASURE

The Doctrine of Pleasure embodied in Article 310, though not subject to legislative power is not, however, unlimited. One important limitation is laid down in Article 311(1) which provides that no Civil servant is to be dismissed or removed by an authority subordinate to the authority by which he was appointed and the second limitation of rule of reasonable opportunity is laid down in Article 311(2). These restrictions are Constitutional Safeguards provided to the Civil Servant.

3.3.1. NO REMOVAL BY SUBORDINATE AUTHORITY

The First restriction on the Doctrine of Pleasure as Laid down in Article 311 doesn't mean that the officer has to be removed by the authority he was appointed but it only implies that removal shall not be by an officer subordinate to the appointing authority and such a dismissal or removal would be invalid.[42] By virtue of this Article the Government can confer powers on an officer other than the appointing authority to dismiss a Government Servant provided the officer ordering such dismissal is not subordinate in rank to the appointing authority.[43]

However, this requirement does not place a restriction on the Doctrine of Pleasure to be exercised by the President or the Governor, for he may always dismiss a Civil Servant whether appointed by him or someone else who is subordinate to him. This continues as a restriction on subordinate appointing authorities, wherein the power of dismissal is to be exercised by the authorities of the same rank as the appointing authorities.[44] It is essential to understand that 311(1) is a safeguard to the Civil Servants and does not fetter the Doctrine of Pleasure.

The purpose underlying Article 311(1) is to ensure that a certain amount of security is provided to Civil Servants. This Article bars removal or dismissal by subordinate authorities in whose judgments the Civil-Servants may not have much faith.[45]

3.3.2. REASONABLE OPPORTUNITY TO DEFEND

Clause (2) of Article 311 shall not be 'dismissed', 'removed' or 'reduced' in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect those charges. There is a vast jurisprudence as to what these terms 'dismissed', 'removed' or 'reduced' connote but that is not within the scope of the paper. Prior to the Constitution (42nd Amendment) Act, 1976, a second opportunity was also required to be given if it was proposed to impose on him the punishment of dismissal, removal

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[42] Krishna Kumar v. Divisional Assistant, E.E. Central Railways, AIR 1979 SC 1912
[43] Mahesh v. State of Uttar Pradesh, AIR 1955 SC 70; State of Uttar Pradesh v. Ram Naresh Lal, AIR 1970 SC 1263
[44] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1485
[45] Purshottam Lal Dhingra v. Union of India, AIR 1958 SC 36

or reduction in rank. It was illegal to impose this punishment without giving a second reasonable opportunity.[46]

It is essential that in a case governed by Article 311, a reasonable opportunity has to be given to the Civil Servant to defend himself at the stage of enquiry against the charges imposed on him. This safeguard is in accordance with the Principles of Natural Justice which provide that no man should be punished without hearing him i.e. *Audi Alterem Partem*. The question as to what does the expression "reasonable opportunity" take within itself has arisen before the Apex Court several times and the generally accepted view is that there can be no general rules laid down to establish what a reasonable opportunity would connote.[47] The only general statement which has been made is as follows:

> "Before an officer is punished by way of dismissal, removal or reduction,
>
> i. An enquiry should have been held in accordance with the Principles of Natural Justice; and
> ii. The enquiry should have been conducted fairly and properly"[48]

It can be observed that this safeguard has been interpreted in the light of Principles of Natural Justice by the Courts. It can be said that the Doctrine of Pleasure does not operate as an antithesis to the Principles of Natural Justice but complies with the same. It is also pertinent to note that the restrictions in Section 240 of the 1935 Act were reflected in Article 311. While the power under Article 310 is clearly limited or circumscribed by the Provisions of Article 311 The Pleasure of the President is however not limited but has to be exercised in accordance with the requirements laid down in Article 311.[49]

IV. FUNDAMENTAL RIGHTS, PRINCIPLES OF NATURAL JUSTICE AND THE DOCTRINE OF PLEASURE

The questions as to whether Article 310(1) of the Constitution is controlled by the Fundamental Rights have been one of the most important questions that has arisen for consideration before the Courts time and again. Although several High Courts were not unanimous on this point but the difference seems to be settled. It is a settled position that the Doctrine of Pleasure embodied

[46] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1501; Mahendra Pal Singh, 'V.N. Shukla's Constitution of India (12th Edn, Eastern Book Company 2013) 943
[47] Mahendra Pal Singh, 'V.N. Shukla's Constitution of India (12th Edn, Eastern Book Company 2013) 943
[48] U.P. Govt. v. Sabir Hussain, (1975) 4 SCC 703
[49] Moti Ram Deka v. General Manager, North East Frontier Railway, AIR 1964 SC 600

in Article 310 cannot be exercised in a discriminatory manner and is controlled by Fundamental Rights especially Articles 14, 16 and 19.[50]

4.1. RIGHT TO EQUALITY

The Constitution of India guarantees the right to Equality through Article 14 to 18. The Court in ***Indira Sawhney v. Union of India***[51] has held that "Equality is one of the magnificent corner-stones of Indian Democracy." A constitution bench has declared that equality is a basic feature of the Constitution and the content of Article 14 has been expanded to non-arbitrariness, compliance with rules of Natural Justice eschewing irrationality, etc.[52] It is an established position of Law that a person's right to equality cannot be violated. Article 14 can be invoked when a person's services are terminated in a discriminatory manner. Article 15(1) would come into picture when a person's services are terminated on grounds of religious bigotry.[53] Article 16(1) imposes equable treatment and bars arbitrary discrimination under Article 310.[54]

4.1.1. ARTICLE 14

The Doctrine of Pleasure being subject to other provisions of the Constitution cannot be exercised in contravention of the Right to Equality enshrined under Article 14 of the Constitution. If any termination Is affected in a discriminatory manner, it violates the Constitutional Mandate, and therefore, cannot withstand legal scrutiny.[55] Where there are similar sets of disciplinary rules adoption of the more drastic ones amounts to a discriminatory action. The Court in the case of ***State of Orissa v. Dhirendranth***[56] has held that if different sets of enquiry procedures are adopted in such cases, without any rationale, an order selecting a prejudicial procedure would result in violation of the equality clause. Further, in the case of ***Kumari Shrilekha Vidyarthi v. State of Uttar Pradesh***[57] the Court held that, an arbitrary action of the State being a negation of the Rule of Law, cannot survive the test of Reasonableness.

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[50] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1484
[51] AIR 1993 SCC 477
[52] M. Nagraj v. Union of India, AIR 2007 SC 71; M.G. Badapannavar v. State of Karnataka, AIR 2001 SC 260
[53] Moinuddin v. State of Uttar Pradesh, AIR (1960) Allahabad 484
[54] General Manager, Southern Railways v. Rangchari (1961) 2 S.C.J. 424
[55] Union of India v. P.K. More, AIR 1962 SC 630
[56] AIR 1961 SC 1715
[57] AIR 1991, SC 73

4.1.2. ARTICLE 16

Article 16(1) enshrines equality of opportunity in matters relating to appointment or employment under the State. In the light of Article 16(1) the Court has held that exercise of tenure of pleasure in contravention of the Constitutional Mandate amounts to arbitrary discrimination in respect of employees and irrelevant or extraneous considerations amount to hostile discrimination.[58]

4.2. RIGHT TO FREEDOM: ARTICLE 19

Article 19 of the Constitution provides for fundamental freedoms which are not absolute in nature but subject to certain restrictions. The Court in the case of ***Kameshwar Prasad v. State of Bihar***[59] has held that exercise of the doctrine of pleasure in contravention to Article 19 amounts to an unreasonable restriction. The Court in ***State of Punjab v. Jogindra Singh***[60] has emphasised that a person entering upon his service does not surrender or waive his fundamental rights and the exercise of Doctrine of Pleasure has to be subject to Fundamental Rights.

4.3. PRINCIPLES OF NATURAL JUSTICE

As discussed in the previous chapter Article 311(2) lays down that a Civil Servant cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in regard of those charges. Article 311(2) gives Constitutional mandate to the Principles of Natural Justice.[61]

The Court in the case of ***Shukbans Singh v. State of Punjab*** [62] has held that the concept of 'reasonable opportunity to show cause' is synonymous with the natural justice. And the Supreme Court went on to say that Article 311(2) gives a Constitutional mandate to Principles of Natural Justice. The proviso to Article 311 also provides for cases where the opportunity to be heard can be excluded.[63]

Natural Justice however cannot have a fixed connotation and depends on the facts and circumstances of each case. The Court has held that the essential point is that the person concerned should have a reasonable opportunity of presenting himself before the administrative authority and that the authority should act fairly, impartially and reasonably.[64]

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[58] Janakiraman v. State of Madhya Pradesh, AIR 1959 AP 185
[59] AIR 1962 SC 1172
[60] AIR 1963 SC 913
[61] M P Jain, Indian Constitutional Law (7th edn, Lexis Nexis 2016) 1494
[62] AIR 1968 SC 1089
[63] See, Proviso to Art. 311(2) Constitution of India 1950
[64] Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant, AIR 2001 SC 24

The Supreme Court has interpreted the Doctrine of Pleasure in such a way so as to not override the Fundamental Rights and the Principles of Natural Justice. Though the position prevails that the Doctrine of Pleasure can be exercised but, if the same is done in contravention of the Fundamental Rights and Principles of Natural Justice it would be considered void. Violation of Principles of Natural Justice and infringement of Fundamental Rights enables the Courts to set aside the disciplinary proceedings on ground of bias and procedural defects.

CONCLUSION

In the Indian Context the Doctrine of Pleasure was not adopted in its entirety from the United Kingdom Common Law it is limited by certain provisions of the Constitution. In the United Kingdom this is an absolute power and is not circumscribed by any restrictions. However, it can be limited by the Parliament due to Parliamentary Sovereignty in the English Law. The Constitution of India more or less adopted the same pattern laid down in the Government of India Act 1935 which lays down certain safeguards to prevent arbitrary exercise of power against them. The bureaucracy plays a prominent role in helping the political executive in the governance of the country and to ensure that bureaucracy doesn't become autocracy the doctrine of pleasure in India has certain limitations. The same is ensured through Article 311 of the Constitution which lays down certain limitations and the Courts have circumscribed the exercise of Doctrine of Pleasure and have time and again emphasised that Doctrine of Pleasure cannot be exercised in contravention to the Fundamental Rights enshrined in Part III of the Constitution and the Principles of Natural Justice.

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