The ‘Pleasure Doctrine’

Historical Context

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 United Kingdom. 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. Such rule had its origin in the Latin phrase “*durante bene placito*” (“during good pleasure”), or “*durante bene placito regis*” (“during good pleasure of the King”). It was thus affirmed by the Court of Appeal in *Dunn v R* [(1896) 1 QB 116]:

> “… 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 is applicable to civil servants in general, namely **that the Crown may put an end to the employment at its pleasure.**
>
> …It seems to me that **it is the public interest, which has led to the term**, which I have mentioned being imported into contracts for employment in service of the Crown. The cases cited shew that, **such employment should be capable of being determined at the pleasure of the Crown**, **except in certain exceptional cases** where it has been **deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants**.”
>
> (Emphasis Supplied)

The scope of the doctrine was further expanded upon in *Shenton v Smith* [1895 AC 229 (PC)], where the Privy Council went as far as observing that the pleasure doctrine was a ‘necessity’ because:

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

It is thus not surprising that the doctrine was imported into the legal system of pre-partition Indian subcontinent, by virtue of the Government of India Act, 1935. Recognition of such may be found in pronouncements of the Apex Courts of both India and Pakistan, to that effect.

Imtiaz Ahmad Kaifi v Province of Punjab: Issues and Judgment

Most recently, the matter has been brought up before the Honourable Chief Justice of the Lahore High Court in the matter of *Imtiaz Ahmad Kaifi v Province of Punjab* (Writ Petition No. 11372 of 2013), wherein thirteen Assistant Advocates General and seven Additional Advocates General were removed from the Office of the Advocate General, Punjab vide two orders dated 02.05.2013 passed by the Law and Parliamentary Affairs Department, Government of Punjab.

The petitioner challenged the order by contending that the sudden removal of the above mentioned Law Officers cast an undue aspersion and stigma on their professional conduct. They further asserted that the impugned orders were arbitrary in nature for they were selective and did not affect the position of their peers who were also similarly placed Law Officers and who had been appointed with them. The petitioners contended, *inter alia,* that the impugned orders had been passed by a Caretaker Government, formed under Article 223-A of the Constitution of Pakistan, 1973, and as such were made in excess of the executive authority and power available with the caretaker Government of Punjab under its limited mandate as interpreted, allegedly, in light of the Honourable Supreme Court's decision in *Kh. Ahmad Tariq Rahim v Federation of Pakistan and others* (PLD 1992 SC 646). Finally, it is important to note that it was argued that "removal from office" is a major penalty imposed under section 4(b)(v) of, 2006 for misconduct committed by a government servant. Therefore, the terminology of the impugned notifications casts a serious aspersion on the service and conduct of the petitioners.

The Honourable Chief Justice, upon careful deliberation, held the matter to be justiciable and, on the narrow ground of discrimination and also for the use of penal terminology for dispensing with the service of the petitioners, declared the impugned orders dated 02.05.2013 pronouncing the petitioners removal from service as illegal, without lawful authority and of no legal effect.

Justiciability: A contextual appreciation

The Honourable Chief Justice, in holding as his Lordship did in paragraph 13 of the immediate case, reasoned on the basis of his appreciation of *Muhammad Yasin v Federation of Pakistan* [PLD 2012 SC 132], at paragraph 7 that:

> "The views expressed by the Hon'ble Supreme Court emphasizes the rule of law as a fundamental *grundnorm* of our polity that makes employment at pleasure justiciable."

His Lordship continued to hold that this principle was also echoed by the Indian Supreme Court in *B.P. Singhal v. Union of India and Another* [(2010) 6 SCC 331 at 352], wherein it was observed as under:

> "The doctrine of pleasure, however, is not a license to act with unfettered discretion to act arbitrarily, whimsically, or capriciously. It does not dispense with the need for a cause for withdrawal of the pleasure."
>
> (Paragraph 34, [(2010) 6 SCC 331])

A perusal of the Order dated 09-05-2013 in the immediate matter would show that the above quoted paragraph was referred to his Lordship by the petitioners (as noted in paragraph 4 of the Order) in the form of a 'discourse'; a discourse, which was considered 'thought-provoking' by his Lordship in paragraph 6 of the Order, and led his Lordship to hold, at paragraph 7 of the immediate judgment, that employment at pleasure was justiciable.

With respect to the reasoning developed by his Honourable Lordship in paragraph 7, in relation to his appreciation of the Indian Supreme Courts judgment in *B.P. Singhal v. Union of India and Another* [(2010) 6 SCC 331 at 352], if one may humbly submit as much, the same might, arguably, have been developed on the basis of a paragraph referred to and consequently relied on, respectfully speaking, out of the context of the quoted case.

For example, in reaching the juncture that it did in the afore-reproduced paragraph of the judgment, it was observed by the Indian Supreme Court at page 351, paragraph 31:

> "The Constitution of India thus provides for three different types of tenure: (i) **those who hold office during the pleasure of the President (or the Governor)**; (ii) those who hold

> office during the pleasure of the President (or the Governor), subject to restrictions: (iii) those who hold office for specified terms with immunity against removal, except by impeachment, who are not subject to the doctrine of pleasure."
>
> (Emphasis Supplied)

The reasoning was further developed in the subsequent paragraph 32, where their Lordships noted that the Constituent Assembly Debates clearly showed that after elaborate discussions, varying levels of protection against removal were adopted in relation to different kinds of offices. The Supreme Court, within the same paragraph, then enumerated the office of the Attorney General as one that fell within the first category (emphasis supplied). It would thus not be difficult to reasonably argue that it is within this pretext that the observations in the afore-quoted paragraph 34 were made, upon which his Honourable Lordship relied in *Imtiaz Ahmad Kaifi v Province of Punjab,* in order to develop his reasoning. The tenability of conclusions drawn as a result of reliance on such reasoning, and thus the question of justiciability of the matter, may however be better appreciated in the context of considerations held important by the Honourable Court in development of its view.

The Lawyer-Client Relationship

His Honourable Lordship further developed his reasoning based on the clarification in paragraph 70 of the *B.P. Singhal case,* in paragraph 7 of the immediate judgment, with respect to the presence of an element of a lawyer-client relationship in the appointment of an Attorney General, and the relevance of loss of confidence as a criterion for withdrawal of pleasure. The same peculiar nature of the relationship was what undeniably led his Honourable Lordship to conclude that because of such, the requirements for disclosure of reasons for removal from service may arguably be dispensed with. Surely, such reliance may reasonably be argued to entail acceptance of the appreciation of the relationship between counsel and client from the Indian perspective, however different it may be from the perspective of the superior Courts of Pakistan, if at all.

To truly appreciate the nature of such relationship from the Indian perspective, the observations made by the Indian Supreme Court at paragraph 67 of the *B.P. Singhal case*, when discussing the

scope of the pleasure of an authority without any restriction, as envisioned in the first category of tenure, might further elaborate on the context of their appointment:

> "The provision for removal at the pleasure of an authority without any restriction, as noted above, applies to Ministers as also the Attorney General apart from Governors. Persons of caliber, experience, and distinction are chosen to fill these posts. **Such persons are chosen not to enable them to earn their livelihood but to serve society**. It is **wrong to assume** that **such persons** having been chosen on account of their stature, maturity and experience **will be demoralized or be in constant fear of removal, unless there is security of tenure**. **They know when they accept these offices that they will be holding the office during the pleasure of the President**."

(Emphasis Supplied)

While an appreciation of the above-quoted paragraph might lead one to reasonably contend that the same might, arguably, have considerable bearing on the determination of whether the sudden removal from office of the Petitioners in the immediate matter cast an undue aspersion and stigma on their professional standing and conduct, it is interesting to note that, with the utmost respect, his Lordship has not been referred to the above-quoted paragraph for the same would have had, arguably, a distinct impact on the development of his Lordship's reasoning. The absence of the context which the above reproduced paragraph provides may lead one to reasonably argue that the same was applied in a limited scope, the effect of such a narrow import being the less than holistic appreciation of the nature of the relationship between counsel and client and hence, with the utmost respect, an import of a possibly incomplete apprehension of the consequences that such entails, from the petitioners submissions.

It was in fact in the Indian Supreme Court judgment of *State Of U.P. v U.P. State Law Officers Association* [(1994) 2 SCC 204] that the scope of the appointment of lawyers by the Government and the public bodies to conduct work on their behalf, and their subsequent removal from such appointment was elaborated upon at paragraph 13:

> "The **appointment of lawyers by the Government and the public bodies to conduct work on their behalf**, and their **subsequent removal from such appointment** have to

be examined from three different angles, viz., the nature of the legal profession, the interests of the public and the modes of the appointment and removal."

(Emphasis Supplied)

"Professional Engagement" or "Employee"

Nature of the Legal Profession

Thus, the Indian Supreme Court went on to elaborate on the nature of the legal profession, by placing it in its historical context, at paragraph 14:

> "Legal profession is essentially a **service-oriented profession**. **The ancestor of today's lawyer was no more than a spokesman who rendered his services to the needy members of the society by articulating their case before' the authorities that be.** The **services** were **rendered without regard** to the **remuneration received or to be received**. With the growth of litigation, lawyering became a full-time occupation and most of the lawyers came to depend upon it as the sole source of livelihood. **The nature of the service rendered by the lawyers was private till the Government and the public bodies started engaging them to conduct cases on their behalf. The Government and the public bodies engaged the services of the lawyers purely on a contractual basis either for a specified case or for a specified or an unspecified period**. Although the contract in some cases prohibited the lawyers from accepting private briefs, the nature of the contract did not alter from one of professional engagement to that of employment. **The lawyer of the Government or a public body was not its employee but was a professional practitioner engaged to do the specified work..."**

(Emphasis Supplied)

A bare perusal of the above-quoted paragraph might lead one to reasonably conclude thus that the relationship between the Government and its lawyers is more in the nature of a "professional engagement" rather than "employment", casting doubt, with respect, over the drawing of an

analogy between “removal from service” in the context of a civil employee and “removed from office” in the context of a Law Officer, who clearly, when put in a historical context, rendered services without regard to the remuneration received or to be received [(1994) 2 SCC 204 at paragraph 14]; Such persons are chosen not to enable them to earn their livelihood but to serve society. They know when they accept these offices that they will be holding the office during… pleasure… [(2010) 6 SCC 331 at paragraph 67].

If one were to view the drawing of an analogy with Punjab Employees' Efficiency, Discipline and Accountability Act, 2006, in the immediate matter, keeping under consideration the observations noted above, it might be pertinent to note that under section 1 of the said Act:

> 1. **Short title, extent, commencement and application**.---(1) This Act may be called the Punjab Employees' Efficiency, Discipline and Accountability Act 2006.
>
> (2) It extends to the whole of the Punjab.
>
> (3) It shall come into force at once.
>
> (4) It shall apply to-
>
> **(i) employees in government service;**
>
> (Emphasis Supplied)

Arguably, in light of the conclusions drawn with regards to the presence of an element of a lawyer-client relationship present in the nature of engagement of Law Officers, the view that such are to be treated as employees, *stricto senso,* or even analogous to employees, might be difficult to defend on the basis of material relied upon in reaching that conclusion. If the nature of engagement of lawyers by public bodies was of the nature recognized in the Indian jurisprudence, then the term ‘removed from office’ might not have the same negative or penal connotations attached in the context of a Law Officer that it might in the context of employment in government service.

It was hence observed by the Indian Supreme Court in *State Of U.P. v U.P. State Law Officers Association* [(1994) 2 SCC 204] at paragraph 15:

> **“The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him also,**

> **for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer.** The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law, which his client wants him to do, however irrelevant it may be... He has to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. **This relationship between the lawyer and the private client is equally valid between him and the public bodies."**
>
> (Emphasis Supplied)

Thus, the nature of the relationship between the lawyer and the private client was held to be equally valid in the context of the Law Officers and the Government client.

With respect, if one may be humbly allowed to submit as much, to conclude that loss of confidence was a relevant criterion for the withdrawal of pleasure before appreciating the reasons for so, (as admittedly, the *State Law Officers Association case* had not been cited in the immediate case), might have arguably led one to innocently overlook the development of the law on the true nature of the relationship between a lawyer and his client, and consequently, on its bearing on the issue involved.

In so far as the Indian perspective is concerned, the fact that the relationship between the lawyer and his client is one of trust and confidence entails that the client engages a lawyer for personal reasons and is at liberty to leave him also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer.

Modes of Appointment and Dismissal

On the nature of appointment and dismissal aspect of a Law Officers engagement, the Honourable Supreme Court of India in *State Of U.P. v U.P. State Law Officers Association* [(1994) 2 SCC 204] concluded at paragraph 19:

> "**The appointments may**, therefore, **be made on considerations other than merit** and **there exists no provision to prevent such appointments**. The method of appointment is

indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. In the absence of guidelines, **the appointments may be made purely on personal or political considerations, and be arbitrary**. This being so **those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary**. **Those who come by the back door have to go by the same door**...**Such appointments are made, accepted and understood by both sides** to be **purely professional engagements till they last**…"

(Emphasis Supplied)

The Interests of the Public

With respect to the public interest element, or lack thereof, their Lordships continued in the same paragraph:

> "The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily, vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."

Proper context of the B.P. Singhal case

It was thus, in this context properly construed, recognized by their Lordships in *the B.P. Singhal case* [(2010) 6 SCC 331], at paragraph 70, that though Governors, Ministers and the Attorney General, all hold office during the pleasure of the President, there is an intrinsic difference between the offices: the Attorney General, though holding a public office, still enjoys an element of a lawyer-client relationship with the Union Government. It was also observed in the same

paragraph, while discussing the relevance of loss of confidence as a criterion or ground for withdrawal of pleasure:

> "**Loss of confidence will therefore be a very relevant criterion for withdrawal of pleasure, in the case of a Minister or the Attorney General**, but not a relevant ground in the case of a Governor."

(Emphasis Supplied)

It is only upon adopting such a holistic approach towards the construction of Indian case-law on the subject-matter that the conclusions drawn may be taken, with utmost respect, in their proper context. It was also within this context, properly construed, that the Indian Supreme Court even went as far as stating that in such matters a degree of judicial deference should be accorded while observing at paragraph 80 that:

> "**The reasons for withdrawal are wider in the case of Ministers and Attorney General, when compared to Governors. As a result, the judicial review of withdrawal of pleasure, is limited in the case of a Governor whereas virtually nil in the case of a Minister or an Attorney General.**"

(Emphasis Supplied)

The Special Case of a Caretaker Government

While, in light of the discussion above, it might be difficult to resist the temptation to suggest that since the appointment (and consequently dismissal) of the Additional and Assistant Attorney General is a purely political or personal matter, the same might exceed the charter of a Caretaker Government in light of the observations made by the Honourable Supreme Court in *Kh. Ahmad Tariq Rahim v Federation of Pakistan and others* (PLD 1992 SC 646), it may be pertinent to note that the Supreme Court provided for precisely such a situation in paragraph 6 of the same judgment:

> "Where the Care-taker Cabinet is not to be composed totally from the old Ministers but a **new or mixed set has to be appointed**, from out of the elected members, **it is of the**

utmost importance that they are totally neutral persons possessing the highest integrity so that the elections can be held in an atmosphere of impartiality and the same are not influenced in any way in favour of any political party. **The appointment of members of the Care-taker Cabinet is strictly in the discretion of the President or the Governor under Article 48(5) or Article 105(3), which is not within the scope of judicial review, but the appointment of members known for their open hostility to the last party in power, or those likely to subvert the election, would border on breach of impartiality and severely injure the democratic process**… Both the President and Governor are heavily burdened with onerous duties and their chambers are no bed of roses. **They perform their duties not for the glory of the office, but for the honour and dignity of the State**."

(Emphasis Supplied)

Since it has been humbly submitted that the case of Assistant and Additional Advocate Generals is more analogous to that of Ministers and the Attorney and/or Advocate General, as appreciated in light of the reasoning adopted above, it may thus be reasonably argued that the appointment of such is not within the scope of judicial review on the basis of the above-quoted paragraph. The Supreme Court provides for a single exception to this general rule i.e. in the case of appointment of individuals known for their open hostility to the last party in power, or those likely to subvert the election, since the same would border on breach of impartiality and severely injure the democratic process. The above paragraph also holds true, as has been envisioned (and duly emphasized) in such, for a situation where the composition of the Cabinet (or any analogous office, the members of which are appointed at the pleasure of the government) consists of a mix of new and old appointed members.

Under such an appreciation of the authorities cited in the immediate case, keeping in view the proper contexts, both historical and social, in which they stand, one may reasonably argue that the justiciability of the matter before the Court in the immediate matter might have been, with respect, a more complex issue than may have been reasonably perceived. If so, then in light of the above-quoted case-law, the development of Indian jurisprudence on the subject has been to the effect that since in the absence of relevant guidelines, the appointments to the post of Additional and Assistant Advocate Generals may be made purely on personal or political

considerations, those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Since such appointments are the product of the operation of the spoils system, the application of principles of natural justice, such as equality before law, might arguably be excluded, since the same principles were not invoked during the appointment process.

Such is the view that has been taken by the Indian superior courts, as supported by a division bench of the Honourable High Court of Karnataka in *Khusro Quraishi vs. State of Karnataka* [AIR 2012 (3) Kar 136], wherein it was held at paragraph 13:

> "Thus, in our view the provisions…neither offend any article of Constitution of nor the same is against public policy or democratic schemes enshrined in the Constitution. There is no question of any violation of principles of natural justice in not affording any opportunity to the nominated members including the chairman before their removal nor their removal under the pleasure doctrine contained in… the Act puts any stigma on their performance or character. At this stage we cannot overlook that such appointments are purely on political considerations."

And the Indian Supreme Court itself in *Om Narain Agarwal and others etc. v Nagar Palika Shahjahanpur and others etc*. [AIR 1993 SC 1440], where it was held at page 51:

> "In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in… the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations."

Since the concept of intelligible differentia is arguably based on the notion of objectivity, it may thus be reasonably argued that since the appointment of such engagements is based on personal or political considerations, hence 'subjective' considerations, to force the application of an objective test for dismissal while maintaining the subjective test for such appointments might lead to confusion in the law, defeating the very purpose of the doctrine of pleasure, and the intent of the legislature as expressed in the Law Department Manual, 1938.

Aftermath: The Administrative Conundrum

The judgment in *Imtiaz Ahmad Kaifi v Province of Punjab* (Writ Petition No. 11372 of 2013) was concluded, with respect to the situation of the new law officers and the future treatment of the petitioners in the following note (at paragraph 14):

> "The consequence of the foregoing analysis and finding is not to denounce the appointment of new law officers by the caretaker provincial government. This is for the reason that such officers may be enjoying better confidence of the provincial government. The respondents are at liberty to take action against the petitioners in a just and fair manner without discrimination, and unless reasons are given, without casting aspersion on their service or conduct".

Firstly, in light of the discussion above in relation to the nature of the office of a Law Officer, as from the Indian perspective, the question whether, by virtue of such nature, aspersion may ever be cast on their service or conduct gains greater bearing. Since the same judgment, with respect, did not provide any further directions with regards to dealing with the eventuality of the dismissed Law Officers, upon reliance of the High Court's decision, demanding reinstatement, it is perhaps not surprising that judgment leaves the office of the Advocate General of Punjab susceptible to various administrative problems.

It would, perhaps, at this juncture, be profitable to refer to the Honourable Indian Supreme Court's judgment in the case of *State of U.P. and Others v Rakesh Kumar Keshari* [(2011) 5 SCC 341], wherein it was held at paragraph 16:

> "Needless to state that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the State to utilize the services of an advocate irrespective of its choice. It is for the State to select its own counsel."

The effect of his Lordships judgment in the immediate case has thus been the creation of new posts to accommodate the previously dismissed Law Officers along with the newly appointed Law Officers, to give appropriate effect to the order passed.

The Court's Power and Desirability to Create Posts

It is worth mentioning here that the Indian superior courts have on numerous occasions held that the creation or abolition of posts is a matter in which the highest degree of judicial deference is necessitated by virtue of the same falling within the exclusive competency of the Executive.

It was thus asserted by the Indian Supreme Court in *Maharashtra State Road Transport Corporation and Another v Casteribe Rajya Parivahan Karmchari Sanghatana* [(2009) 8 SCC 556] at paragraph 37:

> "There cannot be any quarrel with the proposition that courts cannot direct creation of posts."

Their Lordships, after a perusal of relevant case law on the subject matter, thus concluded at paragraph 41:

> "Thus, there is no doubt that creation of posts is not within the domain of judicial functions which obviously pertains to the executive. It is also true that the status of permanency cannot be granted by the Court where no such posts exist and that executive functions and powers with regard to the creation of posts cannot be arrogated by the Courts."

The Indian Supreme Court in reaching this particular conclusion relied on its own judgment in the case of *Aravali Golf Club v Chander Hass* [(2008) 1 SCC 683], where it was held at page 688 paragraph 15:

> "**The Court cannot direct the creation of posts**. Creation and sanction of posts is a **prerogative of the executive or legislative authorities** and the **Court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in**

any organization. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it **involves economic factors**. **Hence the Courts cannot take upon themselves the power of creation of a post.**"

(Emphasis Supplied)

Further, in *State of Haryana and Others v Navneet Varma* [(2008) 2 SCC 65], a Division Bench of the Supreme Court referred to *M. Ramanatha Pillai vs. State of Kerala* [(1973) 2 SCC 650], *Kedar Nath Bahi vs. State of Punjab* [(1974) 3 SCC 21], *State of Haryana vs. Des Raj Sangar* [(1976) 2 SCC 844], *Dr. N.C. Singhal vs. Union of India* [(1980) 3 SCC 29] and *Avas Vikas Sanghathan vs. Engineers Association* [(2006) 4 SCC 132] and culled out the following principles at paragraph 17:

"We summarise the power of the Government in abolishing a post and role of the court for interference:

a) the power to create or abolish a post rests with the Government;

b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted…"

Thus, one may reasonably conclude from a perusal of the above-quoted judgments that, at least in India, courts cannot direct creation or abolition of posts, as the same is not within the domain of judicial functions. Such powers fall exclusively within the ambit of the prerogative of the Executive. As the creation or abolition of such posts are a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration, the Courts, by virtue of the fact that they do not have access to all the material on which such decisions are based, lack expertise, and, as a consequence, would arguably not be the most appropriate authority to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual.

Pakistani Jurisprudence: A Contextual Perusal

In Pakistan, in most cases of government employment, the application of the doctrine of pleasure in its original unrestricted form has, admittedly, been severely curtailed since the development of law has not been as expansive in both the elaboration of the client-counsel relationship and the distinction in between such professional engagements and the case of a government employee. Nevertheless, the Constitution of Pakistan, 1973, in itself, continues to explicitly provide for offices that various individuals hold solely under the pleasure of the President (or the Government). To these offices, one may reasonably argue, that the doctrine of pleasure still applies absolutely without any restrictions. It was thus in *Muhammad Yasin v Federation of Pakistan* [PLD 2012 SC 132], that the Supreme Court of Pakistan, while placing the development of the pleasure doctrine in its historical context, as with respect to Pakistan's own jurisprudence, held at paragraph 28:

> "…On account of our colonial legacy and its attendant pattern of governance, this examination takes us back to the pre-independence dispensation and to the British constitutional scheme. That was a time when almost **all important State functionaries, including not just the Prime Minister and the Cabinet, but also judges and civil servants, were appointed and removed by the British monarch in his absolute unfettered discretion.** It is for this reason they were said to **"hold office during the**

King's pleasure". While this vestige of an absolute monarchy **receded in Britain on account of emerging democratic conventions**, **in the colonies it survived**. Even after several years of independence, this practice continued, as was manifested by the imperious dissolution of the Constituent Assembly in 1954, by the representative of the British Crown."

(Emphasis Supplied)

Thus, at paragraph 29, the Supreme Court went on to acknowledge the existence of the doctrine in its original form as propounded by the English courts under age old common law rules in a limited sphere of governmental offices:

"Much has changed since then. Pakistan now has a democratic Constitution, which provides for the government of laws and not of men. It is for this reason that **in our Constitution** there **remain few positions where the incumbents "hold office during the pleasure" of someone else based on broad discretion**. **In its undiluted form this convention exists** only **in Article 100(2), Article 101(3) and Article 140(3), which relate to the appointments of a Governor, the Attorney General and the Advocates General respectively.** Similarly, such discretionary powers do not exist in those statutes, which relate to autonomous regulatory bodies like OGRA."

(Emphasis Supplied)

While keeping under consideration the context in which this rule of law was pronounced, it is pertinent to note that the Supreme Court's judgment was specifically in the context of the 'Constitutional' offices, yet, even so, the Court was particular in observing that such 'convention' existed in its 'undiluted form' even in that context.

In expanding the position of the doctrine, it is pertinent to note that it had been earlier held by a Division Bench of the Peshawar High Court in *Said Qayum v Secretary Education, Peshawar* [1998 PLC (C.S) 1218] at paragraph 3**:**

"Section 14(1) prescribes that the Controlling Authority shall determine the terms and conditions of appointment of the Chairman. The notification whereby the petitioner was appointed provided that the terms and conditions of the petitioner's appointment would be

settled in consultation with the Finance Department. It seems that no special terms and conditions were later on settled. Therefore, we have to rely upon the provisions of section 14 read in conjunction with the notification of appointment. **The tenure of the petitioner as Chairman was not fixed**. Subsection (ii) of section 14, reproduced above, provides that the Chairman shall **hold the post during the pleasure of the Controlling Authority**. This **clearly confers upon the Controlling Authority the unfettered power to remove or transfer a Chairman without assigning any reason**...**Thus, the petitioner had no vested right to remain Chairman for a period of four years.**"

(Emphasis Supplied)

Thus, in the context of a Controlling Authority, it had been held that such had an unrestricted power to remove or transfer a Chairman without assigning any reason hence, effectively, without any restrictions. The Controlling Authority could choose to do so prior to the expiration of the Chairman's maximum 4-year tenure by virtue of the fact that the Chairman held his post during "the pleasure of the Controlling Authority". This is analogous to the case of Assistant Advocates General, because the same, too, hold their position under the "pleasure of the Government", and thus, one may reasonably argue that this should be read in juxtaposition with the observations of the Apex Court in paragraph 28 in *Yasin's case* with reference to the Advocate General. Hence, it may be reasonably argued that the Government too can, if it so wishes, terminate an Assistant Advocate General's engagement, without assigning any reasons.

The Lahore High Court itself has made it amply clear in *Shafqat Mahmood Lodhi v The Accountant General West Pakistan, Lahore* [PLD 1968 Lah 786] that the very essence of holding office at pleasure, in the context of a civil servant, entails that the service of such a civil servant is terminable without a cause. It was observed at paragraph 7:

The above principle shall apply with greater force to the case of a civil servant who under the Constitution holds office "at pleasure" [by virtue of] Article 176. **It is an inseparable incident of holding office at pleasure, that service is terminable at any time without any cause being assigned**. However, **vide Article 177 of the Constitution the pleasure of the State is abridged in the sense that the civil servant** shall, before his dismissal, removal or reduction in rank, **be afforded "reasonable opportunity" of showing cause**

> **against any of the above punishments. To this extent the pleasure is abridged, but it remains unqualified in other respects**. **It is implicit in holding office at pleasure, that the desirability of further retention in service of a civil servant can be assessed at any time. To hold otherwise, would impinge upon the pleasure of the State, which, as observed above, is abridged only to affording reasonable opportunity to a delinquent civil servant, an opportunity of showing cause against the proposed action**. The rules regulating inquiry proceedings before the inquiry officer against civil servant merely lay down an objective standard of what shall be reasonable opportunity and are not intended to override the pleasure of the State.
>
> (Emphasis Supplied)

The pleasure of the State, it was thus held, is qualified, in the context of a civil servant, only to the extent that the civil servant who is about to be terminated from service should be given an opportunity of showing cause against the proposal for his dismissal. The decision also asserts that to qualify the pleasure of the State further would amount to impinging it. Hence, this decision clarifies that since the Assistant Advocates General work at the government's pleasure, they are liable to be dismissed at any point in time of their service without the possibility of the government's decision to do so being questioned. The decision of the government in this sense is final and not open to challenge because it is not required to assign a cause for the dismissal.

In the above-reproduced case, their Lordships have reiterated the point that since the petitioner was appointed to a post where he served subject to the pleasure of the government he was barred by law from claiming the completion of his service's 'tenure'. The government could at any point in time choose to terminate the service of such an employee without having its decision being challenged in a court of law, since this intrinsic in the very nature of such a post. Similarly, the Assistant Advocates General who are also serving under the pleasure of the government like the petitioner in this ruling, are barred by law from challenging their dismissal in a court of law.

The perspective of The Karachi High Court, as laid down in the case of *Liaquat Ali Khan v Secretary to the Government of Pakistan, Ministry of Foreign Affairs and Commonwealth Relations* [PLD 1958 Kar 117], might be reasonably argued to be in line with the general jurisprudence of the superior Courts of Pakistan on the subject-matter. In the immediate case,

their Lordships held that civil servants/contractual servants cannot be dismissed at pleasure for under such contracts they have to be dismissed at cause. Thus:

> **"The contention that the State has the power to terminate [civil servants] employment at pleasure at anytime for any reason stated or unstated,** and that the **right of the State cannot in any way be abridged or controlled or clogged by any rule made by the Government or a Department of the State** with regard to the age of retirement**, is not correct and has been negatived in those decisions**.
>
> (Emphasis Supplied)

His Lordship, Wahiduddin, J thus dismissed the notion that the right of the State to terminate civil servants prior to their age of retirement, at their pleasure, cannot in any way be abridged or controlled or clogged by any rule made by the Government or a Department of the State. Admittedly, however, one must humbly submit that His Lordship's observation were made with regard to civil servants alone and while the same pleasure may be restricted, as was in the present case of civil servants (a position not dissimilar to that in India), such restrictions would arguably have to be explicit in nature. His Lordship relied on the Privy Council decision in *Clifford B. Reilly v. Emperor* [AIR 1934 PC 60] by referring to page 61 of such where it was held:

> "The petition of right is founded on averments that there was a contract between the suppliant and the Crown and that the contract had been broken. Both Courts in Canada have decided that by reason of the statutory abolition of the office Mr. Reilly was not entitled to any remedy, but apparently on different grounds. **Maclean, J., concluded that the relation between the holder of a public office and the Crown was not contractual**. There never had been a contract and the foundation of the petition failed. Order J.'s judgment in the Supreme Court seems to admit that **the relation might be at any rate partly contractual; but he holds that any such contract must be subject to the necessary term that the Crown could dismiss at pleasure. If so, there could have been no breach.**
>
> Their Lordships are not prepared to accede to this view of the contract, if contract there be. **If the terms of the appointment definitely prescribe a term and expressly provide**

> **for a power to determine "for cause" it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded."**
>
> (Emphasis Supplied)

The reasoning in that particular judgment was, as was admitted by the Privy Council itself, imported from the judgment of *Board in Gould v. Stuart* [1826 AC 575]:

> "This was not the case of a public office, but in this connection the distinction between an office and other service is immaterial. The contrary view to that here expressed would defeat the security given to numerous servants of the Crown in judicial and quasi-judicial and other offices throughout the Empire, where one of the terms of their appointment has been expressed to be dismissal for cause."

His Lordship, Wahiduddin, J thus continued to hold, in the context of a Government servant *stricto senso*:

> "**The protections given to the Government servant under Articles 181 and 182 of the Constitution** are **substantial** and **not imaginary** and t**he termination of the employment of any Government servant in disregard of the condition of the service will always be looked with disfavour by Court of law** and the writ jurisdiction of this Court can be invoked for the redress of such grievances."
>
> (Emphasis Supplied)

Conclusion

The tenure of Law Officers as provided for in the Punjab Law Department Manual, 1938 in rule 1.18(4) is governed by the pleasure of the Government. Admittedly, the same is without any express restriction. In fact, the same sub-rule further states that the Law Officers are liable to be removed from office at any time without notice. Hence, one may reasonably submit that the same is governed by the unfettered and unrestricted variety of the "pleasure doctrine".