TENURE AT PLEASURE
CHAPTER III

TENURE AT PLEASURE

Article 310(I) of the Constitution provides for the tenure of offices of persons serving the Union or a State government. It deals with the tenure of office of members of the defence services and of the civil services, subject to certain safeguards extended to members of the civil services under Article 311 of the Constitution. It may, therefore, be said that the 'Doctrine of Pleasure' is not absolute, but qualified by the constitutional restrictions.¹

The concept of the 'Doctrine of Pleasure', which can be traced to the Latin maxim duranto bene placito, is peculiar to civil servants. It implies that the tenure of office of a civil servant can be terminated at any time without assigning any reason: unless otherwise provided by statute. The doctrine has been aptly described in Halbury’s Laws of England² thus:

Except where it is expressly provided by statute all public officials and servants of the Crown hold their appointment at the pleasure of the Crown, and in general, are subject to dismissal at any time without cause assigned, nor will an action for wrongful dismissal be entertained ever though a special contract be proved.
In England, the exercise of pleasure by the Crown can be restricted by Parliament, because of the concept of Parliamentary Sovereignty. The courts can only interpret the meaning of Acts passed by Parliament, and cannot set it aside or declare it to be void. In *Chelliah Kodeeswaran Vs Attorney General of Ceylon*\(^3\), Lord Diplock of the Privy council observed that 'any appointment as a crown servant, however subordinate, is terminable at will unless it is expressly otherwise provided by legislation.'

The concept of pleasure has undergone a change. Collective agreements between the Crown and representative of its staff provide that causes of action may be brought for breaches of any conditions of service, covered by such agreements. Even action for unfair dismissal may be brought by a civil servant, but remedy is confined to recovery of damages for wrongful dismissal, since a civil servant cannot insist on continuing in employment.

**Doctrine of Pleasure in India**

The adoption of the concept of the 'Doctrine of Pleasure' in India can be traced to the Charter Act of 1833. Prior to it, sections 35 and 36 of the Act of 1793 (33 Geo
III, C 52) 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 in these words:

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.

All servants of the East India Company - civil and military - were to hold office during the pleasure of the Crown. They were subject to dismissal, without any reason being assigned for such dismissal, under section 74 of the government of India Act, 1833. In other words, the services of the company's servants were subject to the pleasure of the Crown, if appointed by the Crown, and in other cases, subject to the pleasure of the Court of Directors. Civil servants had, therefore, no remedy against such dismissal.

The position was restated by the Queen's proclamation in November, 1858. It thus retained the power to dismiss any government servant at its absolute pleasure, by giving
statutory recognition to the 'Doctrine of Pleasure', under section 16 of the Government of India Act, 1858. The Act did not provide any remedy to civil servant even against any arbitrary dismissal. Under the aforesaid Act, the Secretary of State for India came to exercise the power of pleasure, which hitherto was exercised by the Court of Directors. Though the Secretary of State-in-Council came to be entrusted with the power of framing rules in respect of the civil servants, they were subject to the overall power of the Crown to dismiss any employee at pleasure.

The Government of India adopted a resolution on 27th July, 1879 providing that in all cases of dismissal or removal of civil servants, the charges should invariably be reduced in writing. It also provided for the examination of witnesses, as far as possible, in the presence of delinquent officials. Besides, it also provided for a right of cross-examination. This was, however not to apply in respect of those persons suffering from punishment awarded by a court of law. But this resolution continued to remain a mere assurance, as it was not acted upon. The resolution did not confer any right upon a civil servant in respect of his wrongful dismissal, since the Government could act independently of any enquiry, without assigning any reason by
taking recourse to the 'Doctrine of Pleasure'⁹.

The exiting service regulations, were mere directions to the Government of the colonies by the Crown for their guidance, and did not confer any right upon the civil servants. This came to be reflected in the decision of the Privy Council in *Shenton v. Smith* ¹⁰. In held that the civil servants hold their office subject to the pleasure of the Crown and therefore, remedy need not be in the form of any law suit, but by way of an appeal of an official or political kind.

**Government of India Act, 1919**

The 'Doctrine of Pleasure', as reiterated in the Queen's proclamation of 1858, continued to be in operation until the advent of the Government of India Act, 1919.

The Act, while amending the Government of India Act, 1915 had for the first time, made reference to the tenure of members of the civil service. Section 96 of the Government of India Act, 1919 circumscribed the aforesaid doctrine, by stating in clear terms that subject to certain safeguards the civil servants in India were to hold office during his Majesty's pleasure. Section 96B of the Act, laid down that a
civil servant could not be dismissed by an authority subordinate to the appointing authority. Besides providing for reinstatement in respect of those civil servants who were dismissed in contravention of the service rules, such government servants were also provided an opportunity to represent their cases to the Governor of the Province, for redressal of their grievances as a last resort.

For the first time, a fetter was placed upon the pleasure of the Crown by providing that the pleasure doctrine would be subject to the Act and the rules made thereunder. Section 96B, for the first time gave statutory recognition and force to the English common law rule which provided that the servants of the Crown held their offices during the pleasure of the Crown. At the same time, it introduced an important qualification upon the exercise of the pleasure, namely, that a servant may not be dismissed by an authority subordinate to the appointing authority.

In exercise of the powers conferred by clause (2) of section 96B of the Government of India Act, 1919 the government through the Secretary of State-in-Council framed the Civil Services (Governors Province) Classification Rules in December, 1920. Amended from time to time, these rules came
to be published as Civil Service (Classification, Control and Appeal) Rules, 1930 on the 27th May, 1930. While Rule 40 made provision for dismissal or removal, detailed procedures for initiating disciplinary action were laid down under Rule 55. An order of dismissal or removal could be passed against a member of the civil service, only after being informed in writing of the grounds of proposed action, and after affording an adequate opportunity of defending himself. Another set of rules, termed as the Fundamental Rules came into force from January 1922.

The Fundamental Rules came in for interpretation before the High Courts and the Privy council in a number of cases. In Satish Chandra Das Vs. Secretary of State, the dismissal of a police official was at issue. The Calcutta High Court held that since the police officer was dismissed without following the procedure laid down in rule 14 of the Fundamental Rules, he had a proper cause of action. But the same High Court a few years later gave a contrary opinion in B.C. Batabyal Vs. Trustees of the India Museum by holding that though the right of dismissal at pleasure existed, it was limited by special rules or regulations.

In Rangachari Vs. Secretary of State for India, the
petitioner was dismissed from service on the basis of an enquiry after initially permitting him to retire on pension. The petitioner flayed both the order of withdrawal of pension as well as his order of dismissal, contending that the same was issued by a subordinate authority. The Privy Council, basing on the 'Doctrine of Pleasure' held the claim for pension to be barred by the provision of the Pension Act, 1871. But it held his removal to be illegal, as this power could not be delegated to a subordinate official. The Privy Council observed:

The stipulation or proviso as to dismissal is by itself of statutory force and stands on a footing quite other than any matter of rule which are of infinite variety and can be changed from time to time.... a deprivation of a pension based upon dismissal purporting to be made by an official who is prohibited by statute from making it, rests upon an illegal and improper foundation.

In Venkata Rao Vs. Secretary of State, the petitioner challenged his order of dismissal to be in contravention of section 96 B and the Rules framed there under. Rejecting the contention, the Privy Council held that rules framed under the Act did not fetter the pleasure of the Crown. Except in special circumstances, which are otherwise provided, servants of the crown hold their office during the pleasure of the Crown. As such they cannot claim any legal remedy.
The Privy Council held that their only remedy was by way of a departmental action.

Section 96 B further provided that a civil servant cannot be dismissed by an authority subordinate to that by which he was appointed. The power of dismissal or removal has to be exercised by the appointing authority. It implies that subordination is to be understood in rank and not with regard to the powers and functions. Therefore, an authority inferior in rank and status to the appointing authority, cannot dismiss a civil servant appointed by his superior.

GOVERNMENT OF INDIA ACT, 1935

The Government of India Act, 1935 while providing for a federal set up also proposed Dyarchy at the centre. Elaborate provisions in respect of the civil servants of the crown in India were laid down in part II of chapter X of the Government of India Act, 1935. While section 240 (1) of the Act made provision for the ‘Doctrine of Pleasure’ sub sections 2 and 3 conferred upon the civil servants certain statutory safeguards in respect of dismissal or reduction in rank. These safeguards were given by way of restraining dismissal of a civil servant by a subordinate authority, and providing for a reasonable opportunity of showing cause
before initiating any such disciplinary action upon a government servant. The above safeguards were not meant to be applied to persons convicted on a criminal charge, or in cases where it was not competent for the authority to give any reasonable opportunity of showing cause. Sub-section 4 provided for payment of compensation to persons appointed on contractual basis in case of violation of such contract. It provided that in the event of abolition of such a post, or the incumbent being required to vacate the post, but not on account of any misconduct on his part, he was to be paid monetary compensation.

It is thus evident that the Government of India Act, 1935 provided for more efficacious safeguards as compared to what the Government of India Act, 1919 provided for. It is remarkable that the concept of reasonable opportunity of showing cause was introduced for the first time under the Act of 1935, though the proviso to section 240 (3) (a) and (b) restrict the scope of a reasonable opportunity in specified cases.

The Act reinforced the security of tenure by providing that no civil servant could be dismissed or reduced in rank without providing him a reasonable opportunity. The pleasure
doctrine was thus circumscribed by the government of India Act, 1935. To protect civil servants against political influence, the Act introduced additional safeguards against ministerial action, in the form of special responsibilities of the Governor and the Governor General, 17. The additional provision as provided under sub-section 3 of section 240 of the Government of India Act 1935 in the form of procedural safeguards, laid down a fetter on the absolute pleasure of the Crown 18.

The enactment had been interpreted by the courts in a number of cases. Some of the decisions continued to hold sway for a long time, even after the country gained independence, and deserve special mention.

In Punjab Vs. Tara Chand 19, the extent and scope of the pleasure doctrine came in for interpretation before the Federal Court. The court held that the prerogative provided under sub-section (1) of section 240 of the Government of India Act, 1935 could only be exercised, subject to the limitations, imposed by the sub-section. That consequent upon the contravention of any of the limitations, the affected civil servant had the right to maintain an action against the Crown for appropriate relief. It further held,
that there was no warrant for the proposition that the relief must be limited to a declaration and should not go beyond it.

Earlier, in *Suraj Narain Vs. North West Frontier Province*, the issue of dismissal from service by a subordinate authority came up for consideration. In this case, the plaintiff, a sub-inspector of police, appointed by the Inspector General of Police was dismissed by the Deputy Inspector General of Police. The departmental appeal before the Inspector general of Police as well as the provincial government having failed, the plaintiff instituted a suit for declaration that the order of dismissal was null and void. He further claimed arrears of salary as well as damages for wrongful dismissal. The Federal Court held, that since the Deputy Inspector General was subordinate to the appointing authority, he was not competent to issue the order of dismissal.

The above decision of the Federal Court however, had been overruled by the Privy Council in the case of *High Commissioner for India Vs. I.M. Lall*.

The respondent, an ICS officer was removed from Office in pursuance of a departmental enquiry held under Rule 55 of
the Civil Services (Classification, Control and Appeal) Rules, 1930. He contended before the Privy Council, that two of the grounds on which his dismissal was based were not shown to him, and the same amounted to a violation of section 240 (3) of the Government of India Act, 1935. The Privy Council held that sub-section (3) of section 240 was mandatory, and qualified the right of the Crown recognised in sub-section (1). By over ruling the decision of the Federal Court in Punjab v. Tarachand24, and North west Frontier Province v. Suraj Narain25, the Privy Council held that in a case of dismissal in contravention of sub-section 13 of section 240, the only remedy could be a simple declaration to the effect that such an order of dismissal is void as imperative. Though the plaintiff remained a member of the service on the date of institution of the suit, he could not recover any arrears of pay or damages. This was because pay was considered as a matter of bounty by the Crown, and the Crown could not be made liable for commission of tort.

Constitutional Position

The 'Doctrine of Pleasure' was embodied under Article 310 of the Constitution of India. Nothing substantial had been discussed in the Constituent Assembly, and the debates
throw little light on the reasons behind the retention of the reference to the 'Doctrine of Pleasure'. In fact, Article 282 (A) of the draft Constitution moved by Dr. B.R. Ambedkar, was hurriedly put through without allowing sufficient time for full deliberations. Only two minor amendments were moved during the debate on Draft Article 282 (A). One by Brijeswar Prasad sought substitution of the pleasure doctrine by security of tenure up to 68 years of age, and the other sought a modification, calling for exercise of pleasure only by the President. Both these amendments were however rejected. It is, therefore evident that section 240(1) of the Government of India Act, 1935 had been reproduced in Article 310 of the Constitution.

The 'Doctrine of Pleasure' may therefore be regarded as a right conferred on the Government over its servants, subject to the express restrictions laid down in Article 311 of the Constitution. But the pleasure doctrine as provided under the Constitution is different from that provided in England, where the pleasure of the Crown is considered to be absolute.

Under the Constitution, limitations of an uniform nature have been incorporated in the doctrine by way of safeguards
against arbitrary dismissal or removal from service, thereby curtailing the vigor of its application. The words 'except as expressly provided by the Constitution' inserted in Article 310(1) clearly show that the pleasure of the President is controlled by and subject to certain constitutional principles, as provided in Articles 311 of the Constitution. As held by the Supreme Court in State of Uttar Pradesh Vs. Chandra Mohan Nigam, the pleasure doctrine under Article 310 is conditioned by constitutional restrictions under Article 311.

In the landmark judgement of the Supreme Court in Union of India Vs TulsiRam Patel, the contention of civil servants that the 'Doctrine of Pleasure' which should be strictly construed against the Government and liberally against the government servants was negatived. While rejecting the contention, the apex court has held that the doctrine as incorporated in Article 310 is neither a relic of feudal age, nor an inheritance of special prerogative of the British Crown, but based on public policy and public good. Unlike in England, it is not subject to any law of parliament, but restricted by the constitutional provisions. Earlier, in State of Orissa Vs. Vidya Bhusan, the Supreme Court held that as an office is terminable at pleasure of the
State, there is no limitations as to the grounds upon which the service of a government servant may be terminated.

In *Chandra Bhan Verma Vs Union of India*, the Bombay High Court took the view that statutory power being subject to constitutional provisions, cannot control the pleasure of the President or Governor under Article 310 of the Constitution, to terminate the services of a government servant. Taking a similar view the Rajasthan High Court held that rules could however be framed, laying down the manner in which the pleasure could be exercised. Such service rules could not withdraw the power of the President, since such rules would be inconsistent with Article 310 of the Constitution.

On the extent of the pleasure doctrine, a full bench of the Mysore High Court held in *Malleshappa Vs State of Mysore* that the expression during pleasure in Article 310 of the Constitution relates to tenure of office of a civil servant. It held that the rules which relate to conditions of service and confer rights on the civil servants are enforceable, not being mere administrative orders.

In State *Uttar Pradesh Vs Baburam Upadhaya*, the Supreme Court has held that Parliament or a state legislature
cannot make a law abrogating or modifying the power conferred on the President or Governor under Article 310 of the Constitution. The pleasure of the President or Governor cannot be fettered by ordinary legislation, rule or regulation made under Article 309, as the said Article is subject to the Constitution, including Article 310(1).

Article 310 of the Constitution invests the State with the supreme and effective control over the tenure of public servants, subject to the safeguards contained in Article 311. In fact, the apex Court has observed in Motiram Deka vs General Manager, N.F.Railway, that the 'Doctrine of Pleasure' has to be exercised in accordance with the requirements of Article 311 of the Constitution. Once the true scope of Article 311 is determined, the scope and effect of Article 310(1) must be exercised within the requirements of Article 311 of the Constitution.

The assumption as constructed in P.L.Dhingra vs Union of India, that in the absence of any service rule or contract providing for termination, a permanent servant has a right to continue in service till attaining superannuation, overlooks the tenure of pleasure. It is further apparent, that Article 310 and 311 of the Constitution apply to all
Government servants, whether permanent, temporary, officiating or on probation.

The 'Doctrine of Pleasure' was introduced in the Constitution in the interest of discipline and efficiency. Society has an interest in the due discharge of duties by the civil servants and therefore, the 'Doctrine of Pleasure' has been provided for in the Constitution. Incidentally, the Bombay High Court had observed in *S. Framji Vs Union of India* that in England the doctrine was based on public policy and therefore, the same should have been incorporated in the Constitution. This aspect has been accepted by the Constitution Bench in *Union of India Vs Tulsi Ram Patel* through the following observation:

It is however, as much in public interest and for public good that the government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and Rules made under Articles 309 and by Articles 311 be not abused by them to the detriment of public interest and public good. When a situation as envisaged in one of those clauses of the second proviso to clause (2) of Article 311 arises and the relative clause in properly applied and the disciplinary enquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood
provided by the public exchequer and the taking away of such livelihood is in public interest and for public good the former must yield to the latter.

Article 310 (1) has to be read together with Articles 309 and 311 of the Constitution. Constitutionally, if any dismissal or removal cannot be assailed as being in violation of Article 311 of the Constitution, the same cannot be challenged on the ground of contravention of service rules.45

With regard to the 'Doctrine of Pleasure' the Delhi High Court has held in Dr. Anil Kumar Kohli Vs Union of India and ors.46 that the pleasure of the President under Article 310 of the Constitution cannot be equated with exercise of pleasure under any statute. Therefore, exercise of such statutory powers need not be supported by reasons.47 But the tenure of pleasure has to be confined to the tenure of services of a civil servant, and in case of his wrongful dismissal, he is entitled to recover his arrears of salary.48

**Delegation of Pleasure**

Since the pleasure doctrine came to be exercised in the name of the President or Governor, the nature of the doctrine came to be examined by the apex court in number of cases. In State of Uttar Pradesh Vs Baburam Upadhya,49 it was
contended that Article 310 of the Constitution was part of the executive power of the State. Rejecting the contention, the Supreme Court held that the power of pleasure of the Government was not a part of the executive power, and hence, could not be delegated. The Supreme Court arrived at the said conclusion on the basis of the following propositions:

(i) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein;

(ii) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution;

(iii) The tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution;

(iv) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311;

(v) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 311 thereof;
(vi) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of 'reasonable opportunity', as embodied in Article 311 of the Constitution, but the said law would be subject to judicial review.

(vii) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred there under would likewise be efficacious within the said limits.

The Constitution bench by its majority Judgement, concluded in the form of the above propositions, that the power to dismiss a public servant was outside the scope of Article 154 of the Constitution. This decision came in for criticism, for holding that the pleasure doctrine was not delegable.50

The matter again came up for consideration before a larger bench in Motiram Deka Vs. General Manager, N. F. Railway. 51 The Supreme Court observed that the proposition No. 2 in State of Uttar Pradesh Vs. Baburam Upadhaya52 had to be read along with proposition No 3, 4, 5 and 6. It held that a law can be framed, prescribing a procedure by which and the authority by whom the said pleasure can be exercised. The pleasure of the President or the Governor to dismiss, therefore, cannot only be delegated, but is also subject to Article 311 of the Constitution.
In a significant judgement, a seven judge Constitution bench of the Supreme Court in *Samsher Singh Vs. State of Punjab* took the view that the pleasure of the President or the Governor is delegable. The Court observed:

We hold that the President or the Governor acts on the aid and advice of his Council of Ministers with the Prime Minister as the head in the case of the Union and the Chief Minister as the head in the case of State in all matters which vests in the Executive whether these functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally.

The above view was reiterated by the Supreme Court in *Union of India Vs. Tulsiram*. Justice Madan, who delivered the majority judgement, observed as follows:

Though under Article 310 (1) the tenure of a government servant is at the pleasure of the President or Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the Council of Ministers or by the authority specified in Act made under Article 309 or in rules made under such Acts or under the proviso to Article 309; and in the case of clause (c) of the second proviso to Article 311 (2), the enquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers.

It is now clear that the exercise of pleasure under
Article 310 (1) of the Constitution to terminate the services of a civil servant is covered by Article 154. The exercise of pleasure by the President or the Governor may be delegated to officials, in accordance with the laws and rules made under Article 309 of the Constitution.

Further, the Karnataka High Court has held in S. Govindappa Vs. Chief Secretary, Government of Karnataka, that the exercise of power under the 'Doctrine of Pleasure' is subject to judicial review. The Court held that there would be scope for judicial review, if it is alleged and proved, that in a given case the power was exercised malafide.

The tenure of pleasure as provided under Article 310 of the Constitution, may be exercised against both civil servants and defence service personnel. Restrictions imposed upon the doctrine under Article 311 (2) of the Constitution are applicable to members of the civil service only, the pleasure of the President relating to defence services being absolute. This is evident from Section 18 of the Army Act, 1950 which provides that persons subject to the Act, holds office during the pleasure of the President. Hence, a defence service personnel can have no right of action against
the Government for his wrongful dismissal. But subsequently, the Supreme Court has observed that even defence service personnel could avail judicial review in case of malafide exercise of power. This is indeed a very welcome step, as it would check improper and arbitrary exercise of power.

**Doctrine of Pleasure And Fundamental Rights**

**Right to Equality**

The tenure of pleasure being subject to other Constitutional provisions, cannot be exercised in contravention of the Fundamental Rights. Right to equality provided under Article 14 of the Constitution is one of the basic Fundamental Rights. Therefore, if any termination is effected in a discriminatory manner, it violates the constitutional mandate, and therefore, cannot withstand legal scrutiny. Similarly, where there are different sets of disciplinary rules, adoption of the more drastic ones amounts to a discriminatory action. Such proceedings are liable to be struck down, if it adversely discriminates a civil servant. Therefore, enquiries directed against public servants similarly situated cannot adopt substantially different procedures. 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. In other words, arbitrary action of the State being a negation of the Rule of Law, cannot survive the test of reasonableness.

Similarly, Article 16 (1) of the Constitution provides for equality of opportunity in matters relating to appointment or employment under the State. Exercise of tenure of pleasure in contravention of the Constitutional mandate amounts to arbitrary discrimination in respect of such employees. As such, irrelevant or extraneous considerations amount to hostile discrimination.

Right to Freedom

Article 19 of the Constitution provides for fundamental freedoms, subject to certain restrictions. These freedoms, *inter alia*, include the freedom of expression and assembly. Exercise of the tenure of pleasure in contravention of the above freedoms amounts to an unreasonable restriction.

A person entering upon his service does not surrender or waive his fundamental rights. He is, however, subject to certain restrictions in the interest of service discipline. Since a person does not waive or surrender his fundamental
rights upon entering his service, the 'Doctrine of Pleasure' has to be subject to fundamental rights.67

General Observations

People are attracted to the civil services, a life long career, because of its attendant security of tenure. In order to attract men of high calibre and competence, there has to be adequate security of tenure. Only then one may work fearlessly and conscientiously, without having anything to worry about his service conditions. The government has to assure a proper security of tenure to the civil servants, with adequate incentives as a recognition for the efficient discharge of their duties.

Constitutional safeguards have been provided for by extending security of tenure under Article 311, but with certain exceptions. The exceptions, along with the tenure of pleasure under Article 310 (1) of the Constitution has at times been a cause of concern for the civil servants. At times, it hangs as a 'Domacles Sword' over their heads, serving a constant reminder that their service is also subject to the tenure of pleasure of the President or Governor, as the case may be. Though the service rules provide for certain procedural safeguards, they do not stand
on a better footing than the express constitutional provisions. In the event of contravention of the constitutional provisions, they would be rendered *ultra vires* the Constitution. In view of the mass of litigation challenging the arbitrary application of the service rules, the existing security of tenure of government servants has been put to jeopardy. This position prevails, in spite of the fact that the tenure of pleasure is not paramount, but it is subject to the fundamental rights, enshrined in Part III of the Constitution.

Further, the apex court has ruled that the tenure of pleasure is subject to public interest and public good. But in view of the right of life of a civil servant and his family, such drastic action without any service benefits, at times for innocent victimisation, appears very harsh and unreasonable in a welfare society.

It is an accepted fact that efficiency of service should not be compromised, and corrupt officers should not be awarded by way of inaction. But at the same time, restraint in the application of the pleasure tenure will go a long way in the fearless functioning of the civil service.

There is no denying the fact that the law relating to
tenure at pleasure has come a long way, since its introduction in India during the days of the East India Company. Yet, it is essential to provide for certain safeguards in the application of the 'Doctrine of Pleasure'. It should be made incumbent on the government to consult the public service commission, before initiating action under Article 310 (1) of the Constitution. It will go a long way in instilling a sense of confidence to those civil servants, who are not extended the constitutional safeguards under Article 311 (2).

As observed by Dr. Narayanan Nair: 68

[T]he doctrine has necessarily to undergo a reorientation in the context of constitutional and political realities. Even in England, where the undiluted doctrine is available in theory, the civil servants enjoy reasonable security of tenure, thanks to the growth of healthy conventions as in some other branch of English Public Law.
NOTES


3. L R 1970 AC 1111, 1118 Privy Council


6. ibid


11. Civil Services (Classification, Control and Appeal) Rules, 1930.

12. AIR 1927, Cal 311

13. AIR 1930, Cal 404

14. AIR 1937, PC 27

15. AIR 1937, PC 31

17. Supra n. 7 p. 273


19. AIR 1947, F C 23

20. ibid, State of Bihar Vs Abdul Mazid, AIR 1954, SC 245 (247); 1954 SCR 786 (799).

21. AIR 1942, F. C. 3

22. ibid

23. AIR 1948, PC. 121

24. supra n. 19

25. AIR 1949, FC 112

26. Constituent Assembly Debates Vol IX PP 1092-1093


28. supra n. 9 pp 112-113


31. supra n. 1.

32. Union of India Vs. Tulsi Ram Patel, AIR 1985, SC 1416 para 32.

33. ibid para 39

34. AIR 1963, SC 779 (786)
35. AIR 1956, Bombay 401
36. Union of India Vs. Askaran, AIR 1958, Raj 256
37. Jagdish Dabiji Vs. Advocate General, Bombay, AIR 1958, Bombay 283 (289)
38. 1961 Mysore L J 1 FB.
39. AIR 1961, SC 751 (761)
40. Sampuran Singh Vs. State of Punjab, AIR 1982, SC 1407
41. AIR 1964, SC 600 (a)
42. AIR 1958, SC 36
43. AIR 1966, Bombay 14.
44. supra n. 32 paras 44 and 50.


46. AIR 1994, Del 279 (284)
48. supra n. 20
49. supra n. 39 (1961) 2 SCR 679 (701)


51. supra n. 41.
52. supra n. 49
53. AIR 1974, SC 2192
54. supra n. 32 para 59
55. Satyavir Vs. Union of India, 1986 SLR 255 SC
56. 1992 (2) Kant LJ 296.
57. ibid
58. J. M. Ajwani Vs. Union of India, SLR 1967, SC 471
60. Indian Express 18.11.1994 Summary Sack of Army men can be challenged: Supreme Court p. 1.
61. Union of India Vs. P. K. More, AIR 1962, SC 630 (633)
65. Kameshwar Prasad Vs. State of Bihar, AIR 1962, SC 1166 (1172)
67. supra n. 34
68. supra n. 45 p 122.