'Doctrine of pleasure' has its origin from English Law. The doctrine entered India with the establishment of the rule of East India Company in India. Later on, direct British rule took the place of East India Company. After 1947, the doctrine, after constitutional debates, was accepted and embodied in Article 310 of the Constitution of India. Hence, the doctrine continued to acquire its new base in its journey from England to India.

Origin of the doctrine took place from prerogative enjoyed by the King in England i.e. 'The King can do no wrong'. In other words, a servant holds office during the pleasure ('durante-bene placito' - a Latin phrase) of the Crown. Hence, the tenure of office of its servant, except where it is otherwise provided by statute, can be terminated at any time without assigning any cause (ad-arbitrium). Even, if a special contract exists between the Crown and its servant, the Crown is not bound thereby. The relation of Crown with its servant is unilateral. The relation of Master and servant remains between the Crown and its servant. Thus, he can be terminated at pleasure. No notice is necessary before such termination and also the servant has no right of action for damages for wrongful termination in Queen's Court. Such terminated servant is not entitled to claim any relief. The doctrine of pleasure remained applicable on

1 Shelton v. Smith, (1985) AC 229, 234; Dunn v. Queen, (1896) 1 Q.B.116
In India, the 'Doctrine of Pleasure' has been incorporated in Article 310 and constitutional limitations have been embodied in Articles 311 and Fundamental Rights. The 'Doctrine of Pleasure' is applicable on civil side of administration and defence side of administration. But constitutional limitations or protections or safeguards are provided only for civil servants only. Civil servants have very important place in the governance of the country because they give expertise advice to policy framers (i.e. political executives) and also implement such policy. Ministers may come or go but civil servants are permanent executive.

Constitutional limitations are provided with view that integrity, fearlessness, independence, honesty and favourlessness can be maintained among these civil servants. Simultaneously, incompetent, corrupt and dishonest servants are liable to be dismissed, removed or reduced in rank under exercise of doctrine of pleasure. Yet the State — servant relationship is legal but influence of political executive is very high in this materialistic era. Many Jurists, Parliamentarians, Judges, and Authors have beautifully focused on above mentioned various aspects in successive paras.

Because, India has adopted the organisation of civil services from English Law. Therefore, it is necessary here to mention the quotation of Sir Warren Fisher, Permanent Head of the British Treasury and British civil service, while giving evidence before the Tomlin Commission. He pointed out
that Ministers are policy makers but framing of such policy and its execution depends upon civil servants. He also stressed about the necessity of integrity, fearlessness and independence of civil servants. He stated:

"Determination of policy is the function of Ministers, .... At the same time it is the traditional duty of civil servants, while decisions are being formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may accord or not with the Minister's initial view."

Vishnoo Bhagwan also pointed out that yet the political wing (i.e. Ministers) frame the policy but it is impossible to implement without civil servants. More elucidely stated that these civil servants are the permanent executive because the political wing may enter or leave the office. Civil servants serve as a link between old and new masters for the sake of continuity of policy and consistency of administration. He stated as:

"There is no denying the fact that the ultimate responsibility for running the administration of a country rests with the 'political wing' - the ministers who are accountable to the legislatures. But a handful of ministers unaware of administrative exigencies can hardly cope with the plentitude of duties devolved upon the modern democratic government aiming at the welfare of the masses. The civil services help them in carrying out their manifold duties. The ministers formulate the policy. The Civil Services carry it out. The former enter and leave the offices according to the will of the electorates but the later hold offices permanently and translate into action different policies formulated by different masters. Hence they serve as a link between successive ministers which is very essential for effecting continuity of policy and consistency of administration."

Paras Diwan opined that policy is laid down by the Minister, his subordinates must reflect that policy, if they fail to do so, they may be punished. 

Importance of civil servants in Parliamentary form of Government can well be judged (where political executive remain helpless without civil servant) in the words of Joseph Chamberlain as:

"I have a shrewd suspicion that you could do without us. But I have an absolute conviction that we could not do without you."

Joint Select Committee in its report advocated the need of competent and independent civil servants for practically successful government. Also pointed out the high value of their advice based on long experience. But stressed about the implementation of the policy in intended manner as thought by the executive and legislature. The Committee in its report mentioned as:

"The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions, during good behaviour, but required to carry out the policy upon which the Government and Legislature eventually decides."

Sardar Vallabhbhai Patel, Union Home Minister and great administrator has appreciated the civil servants. He has also advocated the necessity of safeguards available to

holders of civil service. He was of the opinion that frank expression of opinion by civil servants is necessary. In his opinion, it is better to displease the minister by frank expression rather than to please the minister by unfair advice. He was also supporter of the protection of services of civil servants who were in the chairs at the time of independence in India. He stated:

"Here you read that history. (The history of safeguards for the Indian Civil Service). Or you do not care for recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand on your pledged word; and, also, as a man of experience, I tell you do not quarrel with the instruments with which you want to work. Today my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them 'if you do not give your honest opinion for fear that it will displease your minister, please then you had better to go. I will bring another Secretary. I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal as sincere my self".

P. Subbaroyan, a member of the Constituent Assembly has felt the very important role of civil servants in machinery of administration. He was also supporter of the protections in favour of civil servants from political or personal influence. Civil servants not only implement the policy which is framed by the Ministers (i.e. Political executives) but also continue it even such policy makers may

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6. C.A.D. Vol. 10, P. 50
not be in chair or power. He emphatically asserted:

'With the independence of our country, the responsibilities of the services have become onerous. They may make or mar the efficiency of the machinery of administration, a machinery so vital for the peace and progress of the country. A Country without an efficient Civil Service cannot make progress inspite of the earnestness of the people at the helm of affairs in the country. Whatever democratic institutions exist, experience has shown that it is essential to protect the public services as far as possible from political or personal influence.'

P. Subbaroyan was also of the view:

'Without an efficient civil service, it will be impossible for the government to carry on and the continuity of policy to be kept. The importance of Government administration has been in fact that there is continuity and unless there is chaos... In the contentment of the civil services lies the safety of the country.'

In H. V. Kamath's opinion the civil servants not only assist their masters while framing the policy rather these civil servants influence the policy decision also due to their longstanding experience in that field. He observed:

'The higher echelons of the civil services today not only advice and assist the ministers in the formation of policy, they indirectly influence decision.'

C. P. Bhandari has focused, the importance of holders of All India Services, particularly, I.A.S. officers. According to his view I.A.S. officers play vital role in Centre-State relations. He stated as:

''The I.A.S. will project the right demands of the State before the Centre and convince the State that the Centre will not tolerate more than the specified limit..... thus all sorts of bottlenecks between Centre and the State are likely to be resolved to a certain extent through the instrumentality of the I.A.S.,''

Dr. Ambedkar pointed out the necessity and importance of provision of ''All India Services'' in the proposed Constitution, on the floor of the Constituent Assembly in the following words:

''The Dual polity which is inherent in a federal system is followed in all Federations by a dual service. In the Indian Federation, a dual polity will have a dual service, but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to these strategic posts. The constitution provides that without depriving the States of their right to form their own Civil Services, there shall be an All-India Services recruited on All-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed of these strategic posts throughout the Union.''

Mr. Justice J.C. Shah, who recorded the excesses of Emergency\textsuperscript{12} in India. He had access to and availed himself of the right to examine, confidential records and documents of the Centre and State Governments; and he had heard the examination of witnesses who were responsible for administration. According to his opinion, the civil servants should have ethical thoughts while discharging their duties rather


\textsuperscript{12} Emergency was declared in 1976 during prime Ministership of Smt. Indira Gandhi.
than political thoughts. Civil servants must be politically neutral and must tender impartial advice. Mr. Justice J.C. Shah stated:

"... to the duties of his office, their due performance with an accent on their ethical content. Commitment by the public servants, therefore, means only and entirely, commitment to the policy and programmes of the Government in so far as the policy and programmes are in conformity with the fundamentals of the Constitution. Unless the services work for and establish a reputation of political neutrality, the citizens will have no confidence in the impartiality and fairness of the Services." 13

Mr. Justice Shah further emphasised upon better relations between Minister and civil servants and felt the more important role in context with common man. He pointed out:

"... Unless the Government is prepared to apply the corrective principles in the Minister-Civil Servant relationship effectively and with a determination to produce the desired results at different levels and within the components of the Government, the agonising impact of this unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country." 14

In a very important case *Union of India v. Tulsi Ram Patel*, the Supreme Court realised the importance of civil servants as they are the real persons in implementing the policies which were framed by Ministers. It was also emphasised that efficiency and integrity of services is necessary.

"Ministers frame policies and legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved..... From the nature of thing,

the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes....

Furthermore, more importance was realised of subordinate post holders in comparison with top echelons of these services. Security of their tenure was also emphasised to be necessary.

It was observed:

"The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services even on those in the most subordinate posts.... But for a government servant to discharge his duties faithfully and conscientiously he must have a feeling of security of tenure. Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311."'

The Supreme Court also commented about the blameworthy servants in the above case that incompetent, inefficient, corrupt and untrustworthy civil servants have no right of tenure. Individual livelihood is less important than public interest. Lastly, it was established clearcut that the basis of the doctrine of pleasure in Indian Constitution is public interest, public policy, public good and not any special prerogative. It has been held:

"... It is however, as much in the public interest and for public good that government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service.... When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with the concerned government cannot be heard to complain that he is deprived of his livelihood.... but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is
in the public interest and for public good, the former yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the Constitutional set up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.''

Ramsay Muir also opined about the present hold of Bureaucracy in the administration in the democratic form of Government in India:

"Bureaucracy has become during the last century and especially during the last generation, a far more potent and vital element in our system of Government than the text books realize.''

Civil servants owe a duty to submit his advice before his political chief (political executive) without fear or favour. Finer opined about his duty as:

"a duty to press his views on his political chief: not to domineer, but to advise with force, and not too easily to desist."

The Civil servants owe first and foremost duty to serve the common man. For solving the problems of common man, civil servants are the real executive who directly deal with general public. Hence, the civil servants are expected to be honest, sincere, impartial so that real image of importance to civil servants can be attributed. Keeping in view this expected image, certain protections were incorporated in the constitution itself e.g. Fundamental Rights, Article 311 and enactment of the Administrative Tribunal Act, 1985, so that they can discharge their expected duties without fear or favour.

Security of tenure is necessary for maintaining the civil service or post independent, honest, fearless and favourless. That is the reason that Article 311 and fundamental rights were embodied in the Constitution of India. The security aspect was emphasised by the Supreme Court in Rattan Lal v. Haryana where Haryana Government followed the practical of appointing the teachers on an adhoc basis at the beginning of the academic year and terminating their services at the end of the year before beginning of summer vacation. The Supreme Court observed:

"These adhoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. The Government appears to be exploiting this situation. This is not a sound personnel policy."

The intention behind the protections awarded to the civil servants is not solely due to fear from political executive but also from superior officers. It means superior branch of civil servants may torture the subordinate civil servants independently or with connivance of political executive. (i.e. Ministers). General public may also endanger the service career of civil servants by unnecessary imputations due to non-fulfilment of illegal expectations.

According to M.P. Jain, security of tenure and fairplay are necessary elements for better standard of services as

18. (1985) 4 S.C.C. 43
19. See S.K. Agarwala, 'Public Servants' offence of corruption and Sentencing by the Supreme Court of India' 26 IJPA 937-86 (1980).
envisaged by the Constitution itself. He stated as:

"Ministers frame policies and Legislatures enact Laws, but the task of 'efficiency and effectively implementing these policies and laws falls on the civil servants. The Constitution, therefore, seeks to inculcate in the civil servant a sense of security and fairplay so that he may work and function efficiently and give his best to the country. Nevertheless, the overriding power of the government to dismiss or demote a servant has been kept intact, even though safeguards have been provided subject to which only such a power can be exercised. The service jurisprudence in India is rather complex, intertwined as it is with legislation, rules, direction practices, judicial decisions and with principles of Administrative Law, Constitutional law, Fundamental Rights and Natural Justice".20

As regards relationship between Government and its servants, the Apex Court observed in Roshan Lal Tandon v. Union of India21 as legal relationship exists being acquired a 'status' after recruitment and not merely a contractual relationship. It has been held:

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and obligation imposed by public law and not by mere agreement of the parties.... The duties and status are fixed by the law and in the enforcement of these duties, the society has interest."

As regards influence of political executives over civil servants, the position is this that the political executive (i.e. the ministers) have many discretionary legislative powers under Article 309 which are almost outside the judicial review. For instance, they may create temporary or permanent posts; can create or abolish posts; create or abolish cadres; reorganise cadres; change conditions of eligibility for recruitment and service; relax promotions for scheduled castes, tribes and backward class; fix the age of superannuation with variations for different posts; make rules regulating disciplinary proceedings. They also enjoy executive power which is also out of judicial scrutiny e.g. transfer in non-governmental institution; authorise prosecution of civil servants or withdrawal of the same; transfer at distant place as many times as they wish. The political executive enjoy the above mentioned powers under the cover of public interest. But public interest also demands invigilation of its actual exercise. Sometime political executive endanger tenure even for their selfish ends, that is why protections or limitations are needed, for civil servants.

Civil Service Law explosion took place while embodying the various provisions for services in the Constitution about security of tenure under Article 310, protections under Article 311 and fundamental rights. Upper level of civil servants

22. See U.Baxi, 'The Horse and the Rider: Court, Constitution and Civil Servants' XXIII Mainstream 69 (Annual Issue) (198

popularly known as policy bureaucracy has acquired more weight in the present administration.

Civil servants, as expected, to be politically neutral; but at present the trend is changing and hence they are having committed (committed bureaucracy) loyalty towards their 'el supremo' (i.e., political executive).

The topic of present work bears very much importance because the political pollution is on rampant stage in this era. The germs of corruption and approach (i.e., unlawful recommendation) have spread in entire society, hence resultantly social norms have declined up to great extent, due to materialistic approach of the modern society. The conflicts arise day by day due to clash between legal duties of civil servants and illegal pressure upon civil servants. Whosoever is unhappy with a civil servant, try to endanger the tenure of civil servants. Also, concepts and aspects of the topic are developing in new dimensions due to new enactments and new interpretations of various concepts and aspects of the topic by judiciary. The present topic is also taking attraction because there is so much litigation by public servants in India, perhaps this situation is no where else in the world. Yet the Administrative Tribunal Act, 1985 was passed to minimise the figure of litigation. Whether


real justice is imparted or not but the Courts are busy in their duty. According to Cf. Justice Goswami, the Supreme Court is 'The last resort for the oppressed and the bewildered.' At Supreme Court, one witnesses the lack of precedent consciousness even in a fuller measure. There is divergence of views on many aspects of doctrine of pleasure among various High Courts, even among benches of one High Court and Supreme Court.

The basic question undertaken in this work is that broadly, on one side, there is Doctrine of Pleasure, according to which tenure (i.e. holding and termination of post) remain at will of the President or Governor as the case may be. In other words, it is the discretion of the President of Governor to keep the servant on roll of service or not. On the other hand, there are constitutional limitations on exercise of such pleasure. The present study is to assess the net scope of the application of the doctrine after facing constitutional limitations in its application with the help of various decisions of Supreme Court and High Courts. Hence the present work is focused on the question that whether the 'Pleasure' exists in absolute form or has been abrogated absolutely by Constitutional limitations or has been curtailed

upto some extent. In other words, where is the exact boundaries of these two. Each and every aspect of the above basic question and related questions are discussed in depth in this work. For coming to the real and right answer of the above basic question, following questions need to be analysed and inquired.

Because Constitutional safeguards or protections or limitations against doctrine of pleasure are available for holders of civil service or civil post only, then it is necessary to know that what is the true meaning, nature and scope of civil service and civil post. What is the difference between civil service and civil post. How far these phrases differ from defence service or post. Also what is the difference among civil servants, public servant and public officer. Who is the competent authority to dismiss or remove a person, when such deliquent has been transferred or deputed to another Government department or to public corporation under Article 311 (1) of the Constitution.

Whether protection provided in clause (2) of Article 311 of reasonable opportunity of hearing, suffice the matter. During inquiry, the inquiry officer is the sole person to decide the procedural issues. He may be ignorant about the proper procedure of enquiry because no training is imparted to the persons who are appointed as enquiry officer. There is no check or vigil over the conduction of inquiry, if the enquiry officer is biased or incompetent. In these circumstances.
whether inquiry conducted by biased or incompetent inquiry officer, will prejudice the right of reasonable opportunity of hearing. Whether such inquiry report will adversely affect the final order or in other words fate of the delinquent. Whether delinquent is told about the whole procedure of enquiry for proper and vigilant answers to be given by the delinquent so that his ignorance may not put him in danger. Whether delinquent is aware about his right of cross-examination. Whether he knows this art. Whether he can dare to put question to his senior officer who is tendered as witness. Whether he knows his right of assistance by a helper or an advocate during inquiry specially when he is an illiterate or holder of lowest rank. Whether there is difference between confession and pardon application which is treated many times synonyms by the inquiry officer and disciplinary authority. The emerging problem of alleged confession in inquiries raises the issue that whether recording of confession by inquiry officer be restricted or whether there is need of some special procedure for recording the confession. Whether a copy of inquiry report be furnished to the delinquent.

Whether representation can be made by the delinquent after submission of the inquiry report and before passing the final order. Whether such representation is barred by treating it as representation on the penalty proposed.

One question is under sharp focus that whether a delinquent, after conviction on a criminal charge will be debarred from the Constitutional safeguards of reasonable
opportunity of hearing while inflicting punishment of dismissal, removal or reduction in rank, especially when such conviction is in lieu of a very little criminal accusation under Article 311(2)(a).

Whether a foul play can be played with a delinquent with the remarks that it is not reasonably practicable to hold such inquiry and penalty of dismissal, removal or reduction is inflicted as per provisions of sub clause (b) of Article 311 (2).

Whether prejudice can be caused to the fate of the delinquent by punishing him without reasonable opportunity of hearing just with the remarks that in the interest of security of state, it is not expedient to hold such inquiry as provided in sub-clause (c) of Article 311(2).

Whether Constitutional safeguards provided for civil servants, are also available for temporary employee or on probation or on officiating basis or holder of tenure post.

Whether the pleasure is to be exercised personally by President or Governor as the case may be on the advice of the council of Ministers or by an authority specified in the statutes enacted under Article 309 or the rules made thereunder.

Why the application of the doctrine has been excluded on certain authorities e.g. Judges of the Supreme Court, High Courts, Comptroller and Auditor General of India, Chief Election Commissioner of India and Chairman of Public Service Commission etc. Whether still there is any relation of the
doctrine with these authorities, inspite of providing special procedure of their service conditions in the Constitution itself.

Whether Fundamental Rights are also put limitation over doctrine of pleasure. Whether Article 309 also puts limitation on the doctrine. Whether recently constituted Administrative Tribunals under the Administrative Tribunal Act, 1985 are more convenient in getting justice by civil servants against illegal actions of the Government under the cover of doctrine of pleasure.

What is the true meaning, nature and scope of the doctrine as embodied in the Constitution and after judicial interpretation. Whether the doctrine carries same base of prerogative in Indian Constitution as it had in English Law or it has changed the base of 'public interest'. Whether the 'pleasure' relates to 'tenure' only or with other conditions of service.

At present, according to the Constitution of India, there are three sets of services in India, viz., 'Central Services', 'State Services' and the 'All India Services'. The Central Services are concerned with the administration of Union subjects, such as Foreign Affairs, Defence, Income Tax, Customs, Posts and Telegraphs. The officers of the Central Services are appointed by the authority of the Union Government and work under it.

The State Services are concerned with Land Revenue, Agriculture, Forests, Education, Health, etc. subjects.
Various States appoint officers in State Services through their own Public Service Commissions.

The Constitution of India also provides for the 'All India Services' which are common to the Union as well as States. These officers do not hold employment exclusively in either i.e. Union or State. These officers can be placed at the disposal of either. In this category, I.A.S. and I.P.S., I.F.S., services etc. do come. The Constitution itself provides that if the Rajya Sabha passes a resolution by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest to do so, the Parliament may by law provide for the creation of one or more All India Services common to the Union and States and regulate the recruitment and conditions of service of persons appointed to any such services. Civil services under Union and States are also termed as public services (see entry 70 of list I and entry 41 of list II of the VII Schedule respectively). The elected or nominated representative in the Union, State or Local authorities are vested with the actual power of governance of the Country because they are to formulate policies and programmes for the achievement of the aims and objects of the Constitution. But the actual implementation or execution of the policies depends upon the members of Central, State and Local bodies Services.

"It is the service personnel who are appointed to discharge specific duties and responsibilities in connection with the activities relating to the different departments of State who come into contact with the people directly. The common
man looks forward to these public servants through whom he seeks the assistance to solve his day to day problems."29

By embodying Article 16 in the Constitution of India including other safeguards provided in the Constitution for members of various services do indicate the expectations in discharge of their duties, and responsibilities with freedom favourlessly, sincerity, fearlessly, impartially, honesty, dignity, to achieve the aims and objects of the Constitution.

Civil service can command the confidence of the people if civil service is non-political. The duty must be discharged fearlessly without having care which political party is in power for the time being. India has not adopted "spoils system" as prevails in United States according to which appointments are made as a reward for political service to a party. Yet the Federal Government of the United States has eliminated the spoils system upto great extent in the Civil Service in the present era. Article 308 to 323 of the Constitution of India provides elaborate provisions for the Union and State services. According to Article 309, Parliament or State Legislature may, subject to the provisions of the Constitution, regulate the recruitment and conditions of service of persons appointed to the public services and posts in connection with the affairs of the Union or the State.

The President or the Governor or any person authorised by him, may make rules in this respect. But these rules are subject to any legislation already enacted for the purpose. In other words this rule making power is interim power exercised by the Executive till Parliament or State Legislatures enact any law in this respect. This rule making power is characterised as 'Legislative' and not 'executive power' as it is power which the legislature is competent to exercise but has not in fact exercised.

If a rule or a law is in existence then the Executive must abide by it, but if it is silent on any particular point, then the government can fill in the gaps and supplement the rule or the law by issuing instructions not inconsistent therewith. About retrospective effect of the rule, the Supreme Court has opined that "the retrospective operation of a rule will be struck down if there exists no reasonable nexus between the concerned rule and its retrospectivity." 32 According to Article 235 and 309, it is clear that rules regarding subordinate judiciary are to be framed by the Governor and not by the High Court though the application of the rules to individual cases must be left to the High Court.

It is important to note that there are some special provisions exist in the Constitution for some categories of public servants. For officers of the Supreme Court, rules regarding conditions of service can be made by the Chief Justice subject to a Law of Parliament. For employees in the Audit and Accounts Department, conditions of service may be prescribed by rules made by the President after consultation with the Comptroller and Auditor General, subject to a law made by Parliament. Rules regarding conditions of service for officers and servants of a High Court can be made, subject to a law of the State Legislature, by the Chief Justice. For Servants of State Legislatures and Parliament, the relevant provisions in the Constitution are 187 and 98.

Hence the rule making power or legislative power as embodied in Article 309 is subject to constitutional provisions. Therefore Article 309 is subject to Article 310 which prescribes the doctrine of pleasure and Article 311 which prescribes limitations and also Fundamental Rights especially Articles 14, 16.

The doctrine of pleasure was incorporated in the Constitution of India in Article 310. Government servants in civil side as well defence side of administration hold their post or service at the pleasure of President or Governor according to the post or service relating to the Centre or State respectively. As regards, defence personnels, protections

34. Art. 146 (2).
35. Art. 148 (5).
36. Art. 229 (2).
are provided concerning tenure in their defence laws, rules and under 'Fundamental Rights' of the Constitution. But under Article 33, their fundamental rights can be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

As regards, civil servants, Constitutional protection is guaranteed in relation to their tenure under Article 311, 309 and under Part III of the Constitution i.e. Fundamental Rights. Conversely, if then civil servants have become dishonest, insincere, corrupt, danger to the security of the nation and unnecessary burden on the exchequer, they can be dismissed or removed or compulsorily retired in exercise of the power under Article 310 and sub-clauses (a), (b), (c) to second proviso to Article 311 (2) and also under Article 309, providing statutes or statutory rules relating to compulsory retirement.

It appears that the Doctrine of Pleasure took birth in absolute form reason being the prevalence of monarchy in England which required absolute power in the kingdom, so that servants might not dare to violate the pleasure or will or desire in respect of their tenure. Such a pleasure was exercised under the cover of a prerogative i.e. "King can do no wrong". Hence the purpose of absolute pleasure was to keep on roll those servants only who are desired by the King and terminate those who are unwanted by the King. In other words, such tenure remained at the pleasure of the King. Hence the doctrine acquired its basis as prerogative. But during the rule of East India Company in India, Directors exercised the doctrine on the basis of public interest or public policy because it was the King only who could exercise prerogative
and not the Court of Directors of the Company. But when direct British Rule was established in India in 1857, the governance of India shifted in the hands of the King in England, therefore again the pleasure gained its old basis of prerogative.

After freedom of India, the Constitution was enacted and due to formulation of democratic form of Government and establishment of Rule of Law, the pleasure was sustained on the basis of public interest or public policy because the prerogative has no place in democratic form of Government. Hence under the Constitution 'Pleasure' is to be exercised by President and Governor under Article 310. Equally, due regard and care for the civil servants has been maintained in the Constitution in respect of their security of tenure by providing constitutional protections (i.e. limitations) under Article 311 and Fundamental Rights.

Yet still absolute doctrine exists under 2nd proviso consisting of sub provisos(a) (b) (c) to Article 311 (i.e. exceptions to the reasonable opportunity of hearing) according to which civil servants can be dismissed, removed or reduced in rank without giving reasonable opportunity of hearing to them if they come under the three specific circumstances mentioned in sub provisos (a) (b) and (c).

It is submitted that all the above mentioned questions, concepts and aspects have been critically analysed one by one under the umbrella of various chapters with the help of Constitutional and other Statutory provisions, moreover, judicial delineation on all the questions, concepts and aspects has been pointed out at proper places with up to date decisions of Supreme Court and various High Courts. Some suggestions have also been submitted at few places.