CHAPTER TWO

HISTORICAL DEVELOPMENT OF THE DOCTRINE OF PLEASURE FROM ENGLISH LAW TO INDIAN CONSTITUTION

I. DOCTRINE OF PLEASURE IN ENGLISH LAW

1. Origin and Nature of the Doctrine of Pleasure

"The King can do no wrong" - a prerogative amongst others enjoyed by the King. The doctrine of durante bene placito (during good pleasure) originated from the above prerogative. Therefore termination of a civil servant by Crown-ad-arbitrum (without assigning any reason), does not give right to that servant for any action in Queen's court for damages for wrongful termination. Hence he could be terminated at pleasure. The relation of Crown with its servants is unilateral. Hence the principle of Master and servant applied in the services. The question of removal of Crown's employee without showing cause came for consideration in the earliest reported case R.V.Startford-on-Avon Corporation. In this case, the corporation dismissed a town clerk. He prayed for issuance of a writ of mandamus, to restore him to his post. The Court held that his removal was good in law, as the Crown could remove its employees at pleasure, without showing any cause.

In the beginning, a Crown servant even had no right to claim salary under another prerogative enjoyed by the King. In Flarty v. Odium, it was held that the pay of a Crown servant is not to be considered a reward for services, but as a payment to enable him to perform his duties.

Salaries are granted only for the dignity of the State and for the decent support of those persons who are engaged in the service of it.

This doctrine has operated on King's servants from the beginning and even after 1863 it continued to prevail. The doctrine means that public servants or civil servants hold office during the pleasure of the King. In other words their services can be terminated at any time without assigning any reason and without giving any compensation for such termination. A Crown servant appointed for a tenure could also be dismissed prematurely and he could not claim any compensation because all services under the Crown were for public benefit. There was no distinction between Military service and civil service under the doctrine.

Yet one exception was existing from the early times that the doctrine of pleasure could be excluded by statute as the Crown was a party to every statute. Gradually, it was also recognised that the civil servant could recover arrears of pay due to him before the termination of services. Furthermore, a person appointed to an office on the term that he shall hold office during good behaviour, he would be entitled to bring an action against the Crown, if he was removed without cause, however if the term was of attaining of specified age, the Crown had the prerogative to terminate the services at any time and without assigning any cause.

2. Services Under Contract

Even in the services under contract between Crown and a civil servant, it is subject to the Doctrine of Pleasure.
An employment for a fixed term does not exclude this implied term of pleasure. A contract of service may be for a fixed period of time, or it may be for work without fixing any period of time. In either case it may contain a provision enabling the contract to be terminated by notice. If the agreed notice is given, the contract is terminated and no question of damages for its breach can arise; but if the contract is terminated without giving the agreed notice the contract is wrongfully terminated and the aggrieved party can claim damages for its breach. If the contract does not provide for its termination by notice, and is not for a fixed period, then, in the absence of custom, the law implies an obligation to give a reasonable notice, the reasonableness of the notice being a question of fact. Here also if the contract is terminated without giving a reasonable notice, the aggrieved party can claim damages for wrongful termination of the contract. If the contract is for a fixed period without any power to terminate it by notice, the termination of the contract before the expiry of the fixed period is a wrongful termination and the aggrieved party can claim damages for its breach. However, whether the term of the contract is fixed or it is not, the contract can be terminated by the master if the servant is guilty of misconduct, or conduct which is inconsistent with the duties as a servant.

5. Ibid. P. 490.
6. Ibid. P. 520.
7. Ibid. PP. 485-8.
3. Tenure of Service with Crown at Pleasure

In a contract for service under the Crown, (civil as well as military), there is incorporated the condition that the Crown has the power to dismiss at pleasure, except in few cases where it is otherwise provided by law. The tenure of service at pleasure applied to the Colonies and also applied to India as one Indian Case depicts the situation e.g. Denning v. Sec. of State for India where the plaintiff was appointed by the defendant to a post in Bengal for a period of five years from January 1910. In breach of the agreement, the defendant terminated his appointment in January 1913. No imputation of misconduct was made against the plaintiff. It was held that a Crown servant against whom no misconduct was alleged was liable to be dismissed at the pleasure of the Crown without notice even if the form of agreement under which he had been engaged implied that except in case of misconduct the engagement could be terminated only by notice.

Crown is not found to show good cause for dismissal, and if a servant has grievance of unjust dismissal, he can place an appeal of an official or political kind, but cannot seek remedy by a law suit. If any authority representing the Crown were to exclude the power of the Crown to 'dismiss at pleasure', by express stipulation, that would be a violation of public policy and stipulation cannot derogate from the

9. Ibid.
power of the Crown to dismiss at pleasure 4.

4. 'Pleasure', Subject to Statute

Statutory restriction of giving opportunity of hearing before dismissal, curtailed the pleasure of the Crown. In Reilly v. R., the Privy Council held that where a person was appointed a member of a Board under a statute which contained provisions prescribing the mode of removing him from office, the pleasure of the Crown was protanto curtailed. However, as the post was abolished by a Statute which did not provide for any compensation to the member, such abolition made the performance of the contract impossible and the contract was therefore discharged. Prerogative power will not be exercisable where a corresponding power has been confined by Statute on the same. It was further held that if a statute deals with or regulates a matter hitherto regarded as being part of the prerogative is treated as having been abrogated protanto.

5. Meaning of 'Crown Servant' and 'Civil Servant'

A distinction is made between the King as a person and the King as an institution. As stated by Blackstone: 'Henry Edward or George may die, but the King survives them all.' Another popular dictum is 'King is dead; long live the King' which has the same idea. The King as a person can die, but the Crown, being an office or institution cannot. The powers and functions of the Crown are not suspended even for a moment.

13. (1934) A.C. 176.
on account of the King's death\textsuperscript{17}. It is in the name of the Crown that the Central Government operates in England\textsuperscript{18}.

All the 'Crown servants' hold their offices at its pleasure. No authoritative definition has been given of 'Crown servant' and 'civil servant'. Yet all civil servants are Crown servants, whereas all crown servants are not civil servants\textsuperscript{19}. In spite of giving definition to 'civil servant' in certain statutes\textsuperscript{20}, no concrete definition has been adhered. Whereas the term 'Crown Servant' has been interpreted in a series of cases by judiciary. In these cases, the basis for considering an employee as Crown's servant depended upon either, whoever is appointed directly by the Crown\textsuperscript{21} or whoever performing duties of public importance which are attributable to the King himself\textsuperscript{22} or whoever is paid and service is controlled by Crown. But all interpretations are incomplete. It is very difficult to specify the limits within which a civil servant may be deemed to be a crown servant. Therefore, it is not possible to say whether there are indeed any limits\textsuperscript{23}.

The Fulton Committee was appointed on 8th February, 1966 to 'examine the structure, recruitment and management,

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\textsuperscript{17} Mehta, S.M. \textit{Civil Servants and Administration} (1988 Edn.)
\textsuperscript{18} J.B.D.Mitchell, \textit{Constitutional Law}, P. 176 (1968 Edn.)
\textsuperscript{20} Superannuation Acts of 1834, 1858, 1860, 1866, 1876, 1881, 1891, 1892, 1909, 1914 and 1919.
\textsuperscript{22} Mersey Docks and Harbour Board Trustees\textit{ v. Cameron and other} (1865), II H.L.Cas.443 |All E.R.Reprint (1861-73)|, P.78.
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including training of the Home Civil Service, and to make recommendations." This Committee Report of 1966-68, while describing the scope of Inquiry in respect of civil service, states

"The Home Civil Service is not easy to define precisely, but we have found it convenient broadly to follow the last two Royal Commissions of 1929-31 and of 1953-55 on the civil service in adopting—'servants of the Crown', other than holder of political or judicial offices, who are employed in a civil capacity and whose remuneration is paid wholly and directly out of moneys voted by Parliament. This includes both permanent and temporary staff in public departments, but excludes the staff of such bodies as the Research Councils, whose organisation pay and conditions are similar to those of civil service.

In short, it is submitted that 'Crown Servant' is broader concept than 'Civil Servant'. It is an established rule of English law that persons working in the military service of the Crown hold their offices at the pleasure of the Crown still by virtue of the prerogatives of the Crown.\[\text{24}\].

According to various decisions of 17th and 18th centuries, all crown servants (including civil servants) used to hold offices at the pleasure of the Crown on account of the later's prerogative. But according to some later decisions they hold their offices during the pleasure of the Crown not by virtue of any special prerogative of the Crown, because such were the terms of their engagements as a matter of public policy.

In Brojo Gopal v. Commissioner of Police, where a special constable was appointed under section 12 of the Calcutta Suburban Police Act (Bengal Act 2 of 1866) for the period of the temporary emergency. The appointment was honorary and the incumbent had to pay for his own uniform. In this case it was held that the fact that he was not paid for by the Government did not make him any the less the holder of a civil post under the State quoting and relying upon the following passage occurring in Phillip's Book on Constitutional law:

"There is no formal definition of 'Crown servant' though we may say that generally he is appointed by or on behalf of the Crown to perform public duties which are ascribable to the Crown; usually, but not necessarily, he is paid by the Crown out of the Consolidated Fund or out monies voted by Parliament. He may serve without pay and modification must be made for servants of the Crown in Dominions and Colonies."

6. 'Pleasure' in Defence Service

'Military Service' excluded 'civil service in its meaning. In Dunn v. The Queen, the counsel for the Suppliant (Mr. W.H.Stevenson) took the plea that the civil service of the Crown stood on a different footing from military service in exercise of the pleasure. His argument was rejected by the Court of Appeal. It was observed by Kay L.J.:

"It seems to me that there is as much ground for the possession by the Crown of an unrestricted right of dismissal in the case of civil service as there is in the case of military service."

27. (1896) 1 Q.B.116.
28. Ibid., p.120.
In *Mitchell v. R.* 29, the position of the soldiers and sailors has been enumerated by Lord Esher M.R.:

"The law is clear as it can be and it has been laid down over and over again as the rule on the subject that all engagements between those in the military service of the Crown and the Crown are voluntary only on the part of the Crown and give no occasion for an action in respect of any alleged contract." 30

The basis for this decision being that the control of the armed forces is part of the royal prerogative 31. Officers are commissioned by the Crown. Therefore they may be dismissed at the pleasure of the Crown. No action can lie against the Crown to enforce the terms of service, for damages for wrongful dismissal or to recover arrears of pay.

All servants of the Crown whether they are in a civil capacity 32, or military 33 or naval 34, hold office at the pleasure of the Crown. They are liable to be dismissed at any time without any cause 35, subject to otherwise expressly provided by statute. 36 Any contract fettering the right of the Crown to dismiss a public servant at pleasure, if entered into by a superior officer, on behalf of the Crown, would not be binding on the Crown 37.

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29. (1896) 1 Q.B. 121.  
30. Ibid. at p.122.  
34. Mulyenna v. The Admiralty (1926) 3 C. 842.  
35. Chitteyon Prerogatives, P.81.  
7. **Exceptions to the Doctrine of Pleasure**

These are the following limitations which restricted the Crown's pleasure:—

(i) If the contract prescribes a definite term and expressly provides for a power to determine 'for cause' that would exclude an implication that the appointment is at pleasure\(^3^8\).

(ii) If there is statute prescribing terms of service and the mode of dismissal, the statute would control the pleasure of the Crown and govern the rights of the civil servant\(^3^9\). However non-statutory regulations made by the Crown itself under prerogative powers cannot fetter the pleasure and would themselves be void, being contrary to public policy\(^3^9\).

(iii) The right to dismiss at pleasure is not inconsistent with the right of the public servant to recover his salary for the time he has served before dismissal\(^4^1\).

The above mentioned position of law has been changed by The Employment Protection (Consolidation) Act, 1978. According to this statute, if a civil servant is dismissed wrongly i.e. in violation of 'code of practice', he may apply for reinstatement in industrial tribunal or to be awarded compensation.

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II. DOCTRINE OF PLEASURE BEFORE INDEPENDENCE IN INDIA

1. Pleasure during Rule of East India Company

A. Pleasure Introduced by Statute of William IV

The East India Company was of course at that time administering India in trust for the British Crown. Pleasure introduced in India, by the Statute of William IV which was based on public policy. Court of Directors of the East India Company exercised this pleasure following the rule of English Law, by section 75 of 3 and 4 William IV, Chapter 85, it was provided:

"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 that the said Court shall and may at all times have full liberty to remove or dismiss any such officer or servant at their will and pleasure."

Hence, the East India Company which came in India under a Charter from the British Crown for the purpose of trade. The Court of Directors of the Company were empowered with the pleasure.

B. Position Under Charter Act of 1793 and 1833

Later on, the doctrine was inserted in Charter Act of 1793 in section 35 and 36 which are as follows:

35. ".... that it shall and may be lawful to and for the King's Majesty, his heirs and successors, by any writing or instrument under his or their sign manual, countersigned by the President of the Board of Commissioners for the Affairs of India, to remove or recall any person or persons holding any office, employment, or
commission, civil or military, under the said united Company in India for the time being, and to vacate and make void all or every, or any appointment or appointments, commission or commissions, of any person or persons to any such offices or employments; and that all and every powers and authorities of the respective persons so removed, recalled, or whose appointment or commission shall be vacated, shall cease or determine at or from such respective time or times as in the said writings shall be expressed and specified in that behalf.''

36. 'Provided always, and be it further enacted, that nothing in this Act contained shall extend, or be continued to extend, to preclude, or take away the power of the Court of Directors of the said Company from removing or recalling any of the officers or servants of the said Company, but that the said court shall and may at all times have full liberty to remove, recall or dismiss any of such officers or servants, at their will and pleasure, in the like manner as if this act had not been made...'

Hence the Court of Directors was conferred with the powers to remove its servants at its will and pleasure. The position was reiterated in the Charter Act of 1833 under sections 74 and 75 in place of sections 36 and 36 respectively of Charter Act of 1793.

2. Pleasure-during British Rule

A. Position under Government of India Act 1858

The Rule of the Company was ended by the Act of 1858 -

''An Act for the Better Government of India'' and the Queen's proclamation (Royal proclamation) that followed on 1st November, 1858 as under:

''And we do hereby confirm in their several offices, Civil and Military, all persons now employed in the service of the Honourable East India Company, subject to our future  

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42. See. 21st and 22nd of Victoria, Chap.106.
pleasure, and to such laws and regulations as may hereafter be enacted.'"

It is important to note that in spite of the disability of pleasure, the servants of the Company were by no means dissatisfied as "the last Instructions to its servants in the East" - issued by the Court of Directors on the first day of September, 1858, contained:

"The Company has the great privilege of transferring to the service of her Majesty such a body of Civil and Military officers as the world has never seen before. A Government cannot be base, cannot be feeble, cannot be wanting in wisdom, that has reared two such services as civil and military services of the Company. To those services the Company has always been just, has always been generous. In these services lowly merit has never been neglected. The best man have risen to the highest place. They may have come from obscure farm houses or dingy places of business; they may have been roughly nurtured and rudely schooled; they may have landed in the country without six pence or a single letter of recommendation in their trunks, but if they had the right stuff in them, they have made their way to eminence, and have distanced men of the highest connection and most flattering antecedents."

In other words, by the Royal proclamation on 1st November, 1858, all servants and officers of the East India Company who became the servants of the Government of India, held their posts subject to Royal pleasure. Any way the Doctrine of pleasure has two legs to stand upon. First is the King's high 'prerogative' and second is 'public policy'. The first is exercisicable by the King only, the second can be exercised by the appointing authority. Neither can delegate this power to a subordinate authority. It is a power peculiar
to them. Therefore Court of Directors exercised the pleasure as based on public policy. The Court of Directors could not and did not exercise this power as a high prerogative, which belonged to his Majesty only. But the assumption of the Government of India by the British Crown in 1858, pleasure as a Royal prerogative came to have its play.

B. Position under Government of India Act 1919.

The G.I. Act 1915 did not have any reference to the English Doctrine of pleasure. It was the G.I. Act of 1919 which embodied section 96B about the doctrine. S.96B of G.I. Act as follows:

'S. 96B. (1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed. If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable. (2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their requirement, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect to such matters as may
be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services; Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable. (3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof. Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in The East India Annuity Funds Act, 1874. (4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules of Laws made under this section."

The doctrine was embodied in 1919 by enacting section 96B, according to which every person in the service of the Crown in India held office during the pleasure of His Majesty. However, one safeguard was provided in the Act that no public servant could be dismissed by an authority subordinate to that which appointed him. Aggrieved public servant could avail administrative process and not legal action for the redressal thereof.
A well organised civil service had been established, by the ending years of the nineteenth century, during British Rule in India. The executive was having control over these services. Civil service was under the pleasure of the Crown. The executive was enjoying the powers of appointment and the regulation of the conditions of their service classification, methods of recruitment, pay and allowances, and discipline and conduct of the civil service of the Crown through rules made by the executive itself.

According to the Government of India Act 1919, the powers of rule making was vested with the Secretary of State for regulating the classification of the civil service, pay and allowances and discipline and conduct. In spite of the existence of these rules, the Privy Council held that the doctrine of pleasure under section 96B was unfettered and the rules and regulations could not restrict it. It was further provided by S.96 B of G.I. Act 1919 that such rules might, to such extent and in respect of such matters as might be prescribed, delegate the power of making rules to the Governor-General in Council or to a local Government or authorize the Indian legislature or local legislatures to make laws regulating the public services. Hence, it appears that Secretary of State in Council had ultimate control over the services and even the 'Fundamental Rules' which governed all major matters concerning to conditions of service were made by him. The special feature was that the legislatures were to enact the laws under the authority delegated to them by the Secretary of State.
At the end of the first world war, the top echelons of the important services, especially those working under Provincial Governments, consisted of what were known as the 'all India services' which governed a wide variety of departments. At the first place, I.C.S. (Indian Civil Service) and I.P.S. (Indian Police Service) were to constitute the framework of the administrative machinery. At the second place, there were the Indian Forest Service, the Indian Educational Service, the Indian Agricultural Service, the Indian Service of Engineers (consisting an Irrigation Branch, Roads and Buildings Branch), the Indian Veterinary Service, the Indian Forest Engineering Service and the Indian Medical Service (Civil). The Secretary of State was to make initial appointments and to formulate conditions of service for all the above mentioned services. A covenant was also executed by each officer of above services with The Secretary of State containing terms under which such officer was to serve. In addition to the All-India Services there were the central services under the Government of India and the provincial services in the Provinces; and lastly the subordinate services.

During the years following the inauguration of the 1919 Act it was decided that, as a consequence of the decision to effect the progressive transfer of power to Government in India, the number of all India Services under the direct control of the Secretary of State should be progressively

reduced especially in those fields of administration that were transferred to ministerial control. This policy resulted, by the early thirties, in the Indian Civil Service, the Indian Police Service, the Ecclesiastical Service and the civil branch of the Indian Medical Service being retained by the Secretary of the State and rest being converted into provincial services, safeguards being provided to secure the rights and privileges guaranteed to officers recruited earlier to the all-India Services.

S.96B. of Government of India Act, 1919 was interpreted by the Privy Council in R.Venkata Rao v. Secy. of State for India. In this case the appellant was dismissed from the service without following the rule XIV of the Civil Services classification Rules, 1920-24. This rule provides a detailed procedure for holding a departmental inquiry in all cases where the dismissal, removal or reduction in rank of any officer was to be considered. The Privy Council observed: "A most definite and salutary rule was disregarded in most essential respects, and the contention which was in effect that what was done was 'well enough' is a contention mischievous in tendency and ill founded in fact." It was the contention of the appellants that S.96B (1) gave him a right enforceable by action to hold his office in accordance with the rules, and that he could only be dismissed as provided by, and in accordance with, the procedure prescribed by the

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46. See Joint Select Committee on Indian Constitutional Reform, Report, (1934), para 277.
48. Ibid. p. 61.
rules. But the Privy Council rejected the contention for the following reasons:

"(i) Section 96B expressly stated that the tenure was at pleasure. There was, therefore, no need for the implication of the term or for its exclusion. (ii) The rule were manifold in number and most minute in particularly and were all capable of change. To uphold the contention of the appellant that action would lie for any breach of any of these rules would involve a control by the Courts over Government in the most detailed work of managing its services and such control would cause not merely inconvenience but confusion. (iii) 96 B makes careful provision for redress of grievances by administrative process. (iv) The words 'subject to rules' contained a statutory and solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by rule."

Hence the Privy Council was of the opinion that S.96B(1) conferred no right enforceable by action.

In Rangachari v. Secy. of State for India, one of the questions for determination was whether the purported removal of the appellant by an official lower in rank than the officer who had appointed him was valid, and whether the power of removal could be delegated to an official lower in rank than the one who had appointed him. The Privy Council held that the power of removal could not be delegated as it would destroy the proviso to S.96B of Government of India Act 1919.

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49. Ibid. p. 63.
51. Ibid. p. 64.
52. Ibid. p. 64.
53. (1936) 64 L.A. 40.
and that the purported removal was invalid because

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

Hence in the above case, the Privy Council was of the view that the proviso to S.96B was of statutory force.

C. Position under Government of India Act 1935

Section 240 of the G.I. Act dealt with the tenure of office of persons serving in civil capacities in India whereas Section 241 (2) authorises certain authorities to make rules regulating the conditions of service of such persons:

'S.240. (1) Except as expressly provided by this Act every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure. (2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed. (3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him: Provided that this sub-section shall not apply -(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or (b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause. (4)Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post

54. Ibid. p.53.
may, if the Governor-General, or as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part required to vacate that post.''

'S. 241 (2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed -(a) in the case of persons serving in connection with the affairs of the Federation, some person or persons authorised by the Governor-General to make rules for the purpose; (b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor to make rules for the purpose: Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.''

'S. 241 (3) The said rules shall be so framed as to secure - (a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a Civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eigth day of March, nineteen hundred and twenty-six or by some person empowered by the Secretary of State to give directions in that respect; (b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which (i) punishes or formally censures him; or (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or (iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation, as he would had immediately before the commencement
of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;
(c) that every other person serving His Majesty in a civil capacity in India, and any rule made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any right required to be given to him by the provisions of the last preceding sub section.

'S.241.(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.'

Section 240(1) of the Government of India Act, 1935, provides the tenure of service under the Crown to be at pleasure. Whereas Section 240(2) embodies restrictions on the exercise of the pleasure similarly as provided by proviso to S.96B. In Lall's Case, there was a question before The Privy Council that whether S. 240(3) stood on the same footing as S. 240(2). The Privy Council supporting the decision of courts below, hold that it did, and the reasoning in Rangachari's case applied to S. 240(3). Hence, the

purported Lall's dismissal in violation of S.240(3) was void and thus he instituted the suit and remained a member of the Indian Civil Service.

More formalized position was established by Government of India Act 1935 by providing distribution of powers of appointments and regulation of conditions of services of various services. S.241 of G.I. Act, 1935 provided that power to make appointments would be vested, in respect to central services in the Governor-General, and in the case of provincial services in the respective Governors. Similarly the powers of regulating the conditions of service of the members were also conferred by the Act of 1935 upon Governor-General and concerned Provincial Government in their respective services. The Act also provided that enacted Acts of the appropriate Legislatures might regulate the conditions of service of persons in the civil service. But the scope of such Act (legislation) was elaborately specified in the Report of the Joint Select Committee of 1934. In its report, it was mentioned that the purpose of the Acts of the Legislatures would be to give general legal sanction to the Status and rights of the services. The terms 'status' and 'rights', in the opinion of the committee, covered:

"Firstly, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotions; and secondly, protection against such arbitrary alterations in the organization of the services themselves.

56. Ibid. at p.241.
57. Sec. S.241 of G.I. Act of 1935."
as might damage the professional prospects of their members generally."

The Act of 1935 provided numerous safeguards to the civil servants such as procedure to be followed in case of dismissal, removal or reduction in rank and furthermore, special responsibility was assigned to the Governor-General and the Governors for the protection of the legitimate interests of the services. The Act also empowered Governor General and the Governors to deal with the cases of Government servants in just and equitable manner even if it deviates from rules or Acts existing. It was also provided in the Act that future recruitment to the Indian Civil Service, the Indian Police Service and the civil branch of the Indian Medical Service were to be made by the Secretary of State. Many safeguards were provided to the members of these services. Secretary of State would be exclusively empowered to deal with salary, remuneration, and rights in regard to medical attendance of these members.

According to the Act of 1935,

"The number and character of the posts to be held by them were to be decided by the Secretary of State through rules prescribing detailed provisions specifying the individual posts under the Centre and in the States to which the Secretary of State's officers alone were to be appointed. A suitable provision was also laid down for safeguarding their rights in disciplinary matters." 58


Chapter I of Part X of the Government of India Act 1935 dealt with defence Services which consists of sections

Section 233 contained about "Control of His Majesty as to Defence appointments" and section 235 enumerated about the "Control of Secretary of State with respect to "Conditions of Service." Section 235 laid down as under:

"235. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval.""

Section 238 spoke about certain civilian personnel.

"238. The provisions of the three last preceding sections shall apply in relation to persons, who not being members of His Majesty's Forces, hold, or have held, posts in India connected with the equipment or administration of those Forces or otherwise connected with defence, as they apply in relation to the persons who are, or have been, members of those Forces."

Hence civil personnel were not entitled to the protection granted to the civil servants by S.240 of the G.I.Act, 1935, so long the Act remained in force. "'The Army Act of 1911 was already there. It did not contain any mention of pleasure, it envisaged rules and it envisaged dismissal by several authorities. It is, therefore, not correct to say that the English law of pleasure tenure applied to defence services during the period of the 1935 Act.'" 

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III. **DOCTRINE OF PLEASURE FROM COMMENCEMENT TO COMPLETION OF THE CONSTITUTION**

1. **Position of Services before Enactment of the Constitution**

The position was as follows:

1. The rules of service could not fetter the pleasure of the Crown to dismiss a servant.
2. No cause of action accrued to a servant for enforcing in a court of law in case of breach of those rules.
3. Yet the 'pleasure' was subject to S. 96B(1) of the G.I.Act, 1919 and S.240(1), (2) and (3) of G.I. Act, 1935.

Contents of rule 55 of the classification rules 1930 were embodied in s. 240(3) of the G.I. Act, 1935 which directed a special procedure in case of infliction of three major penalties i.e. dismissal, removal or reduction in rank so as to give statutory protection to Government Servants.

2. **Commencement of the Constitution - The First Draft**

The work of drafting of the Constitution began in 1947 and was completed in 1950. By following the provisions of the Government of India Act of 1935, B.N. Rau, the Constitutional Advisor, made complete provision in his first draft concerning recruitment and conditions of service of members of the various public services.

This draft was prepared in October, 1947. The draft shown the working of the government in complete responsibility.

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to the legislature. Provisions concerning services were mentioned in Part X of the Draft Constitution prepared by Constitutional Advisor, Sh.B.N.Rau.

A. Provisions Regarding 'Defence Services' in First Draft Constitution

Clause 215 of Chapter I under Part X of the Draft Constitution prepared by the Constitutional Advisor, Sh.B.N.Rau, contained provisions for recruitment and conditions of defence services. It was provided in the draft articles dealing with the defence services that all appointments connected with defence and the grant of commissions in any naval, military or air force within the territory of the Federation should be regulated by or under an Act of Parliament and, until such provision was made, by rules made by the President. The draft articles further provided that the conditions of service of persons belonging to the services or employed in posts connected with defence within the territories of the Federation would be regulated by or under federal law. 'Federal Law' includes any existing law as in force for the time being.

B. Provisions Regarding 'Civil Services' in First Draft Constitution

Clauses 216 to 218 of Chapter II under Part X of the Draft Constitution dealt with Civil Services. It comprised the

62. Select documents III, I(i), Clauses 215 and 216.
63. See Clause 215 (1) of the First draft Constitution prepared by Sh.B.N.Rau.
64. See Clause 215(2) of the First draft Constitution prepared by Sh.B.N.Rau.
following matters:

(a) 'All India Services',
(b) Services of the Federation (Civil Service of the Union),
(c) Provincial Services, (Civil Service of the States),
(d) Transitional provision about existing service rules.

Chapter III under part X dealt with the 'Public Service Commissions' which comprised clauses 219-223. Hence, there were three clauses in the Chapter II on civil services.

The clause 216 empowered the President by order to create such All India Services as he might consider necessary and the recruitment and conditions of service of persons appointed to the All India Services would be regulated by or under Acts of the Federal Parliament, and till such Acts were passed, by rules made by the President. The provisions of clause 217 dealt with recruitment and conditions of service of the other civil services. (Services of the Federation and Provincial Services). Analogous to the Government of India Act, 1935, it was provided that recruitment would be an executive responsibility and accordingly all appointments were to be made, in the case of federal services and posts, by the President or by such person as he might direct, also their conditions of service were to be regulated by rules

65. See clause 216.
66. See clause 217.
67. See clause 218.
made by the President or by any person authorised by him. In the case of provincial services, the appointments, by the Governor or such person as he might authorise also their conditions of service by rules made by Governor or any person whom he might direct. Provision was also made empowering the appropriate Legislatures to make laws regulating conditions of service. And such laws would have superseding power over the rules made by President or Governor. It was also provided in this clause that the employees who were employed 'temporarily on the term that their employment may be terminated on one month's notice or less', the rules regulating the conditions of services need not to be made.

The provisions of the clause 218 relates to the transitional provisions about existing rules. It was provided that until any provision was made by the appropriate Legislature (Federal Parliament or provincial legislature), the rules which were in force immediately before the commencement of the Constitution and were applicable to services or post under the Federation or a Province shall continue in force so far as they are consistent with the provisions of this Draft.

C. Revision of First Draft - by Drafting Committee

The Drafting Committee, on February 3, 1948, under the chairmanship of Dr. B.R.Ambedkar took in consideration

69. Clause 217(2), Proviso.
the above provisions proposed in the First Draft prepared by the Constitutional Advisor, B.N. Rau. The Drafting Committee also considered notes, reports, memoranda and other materials. The Drafting Committee decided to omit the portion relating to the 'Defence services' and the position relating to 'Civil Services' be simplified.

The Drafting Committee prepared a revised Draft Constitution and submitted to the President of the Constituent Assembly. Part XII of the revised Draft related with 'Services under the Union and the States.' Part XII comprised, Chapter I dealing with 'Services' and Chapter II dealing with the Public Service Commissions. Chapter I contained articles 281, 282 and 283. The Drafting Committee opined about Chapter I 'Services' as under -

'The Committee is of the opinion that detailed provisions with regard to recruitment and conditions of service of persons in Defence Services or serving the Union or a State in a civil capacity should not be included in the Constitution but should be left to be regulated by Acts of the appropriate Legislature.

Accordingly revised Draft Constitution contained the following provisions in Article 281, 282, 283.

"PART XII

SERVICES UNDER THE UNION AND THE STATES

Chapter I - Services

281. In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the

282. (1) Subject to the provisions of clause (2) of this Article, Acts of the appropriate legislature may regulate the recruitment and the conditions of service of persons appointed to public services and to posts in connection with the affairs of the Union or any State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply-
(a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, or
(b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to give that person an opportunity of showing cause.

283. Until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution shall continue in force so far as consistent with the provisions of this Constitution. 11

"These draft articles sought in the first place to establish the basic position that both recruitment and conditions of service should not be within the executive jurisdiction of the Government, but should be made expressly

11. See Select Documents III, 6, articles 281-3 pp.625-6.
subject to legislature control and the rules in force immediately before the commencement of the Constitution were kept alive only for an interim period until the Legislature passed the necessary laws. They also protected civil servants from arbitrary dismissal, removal or reduction. These major penalties could not be imposed except after they were given a reasonable opportunity of showing cause against the action proposed to be taken; this requirement could be waived in two circumstances: where dismissal, removal or reduction in rank was ordered on the ground of conduct which led to conviction on a criminal charge and where it was not practicable to give a Government servant this opportunity. 72

Except the contents mentioned in Articles 281, 282, 283, all the other provisions contained in B.N.Rau's draft were omitted by the Drafting Committee. The intention was that it should be left to the Legislatures to regulate all matters relating to the services as is amply clear from the forwarding letter of Dr.Ambedkar sent to the President of the Constituent Assembly:

'The Committee has refrained from inserting in the Constitution any detailed provisions relating to the services; the Committee considers that they should be regulated by Acts of the appropriate legislature rather than by constitutional provisions, as the Committee feels that future Legislatures in this country, as in other countries, may be trusted to deal fairly with the services.' 73

D. Revised Draft Submitted before Constituent Assembly

The Constituent Assembly after receiving the revised Draft prepared by the Drafting Committee, circulated to

73. Select Documents III, 6, articles 281-3, p. 516.
every member of the Constituent Assembly, the Provincial Legislatures, Provincial Government, The Federal Court and the High Courts inviting criticism and suggestions.

To minimize the work of Constituent Assembly, it constituted a Special Committee to receive criticism and suggestions (comments) on the revised Draft and to examine the revised Draft according to such criticism and suggestions. Ultimately, the Drafting Committee was to consider these comments.

Substantial comments received from the Ministry of Home Affairs and from the judges of the Federal Court and Chief justices of the High Courts:-

(i). Comments of Federal Court and High Courts Judges

A memorandum was sent by the judges of the Federal Court and the Chief Justices of the High Courts containing emphasis on specific provision be made in the Constitution to safeguard the integrity and independence of the members of subordinate judiciary, also stressed that the powers of appointment, posting and promotion of these members should be in the hands of the High Courts rather than in the Governments. Agreeing with these comments, the Drafting Committee, took a decision, to secure this object, a new chapter relating to district judges and the subordinate judicial service should be included in the chapter in the

74. Every member was to send his comments on or before 22nd March, 1948.
Constitution relating to the judiciary.

(11). Comments of Ministry of Home Affairs

The Ministry of Home Affairs had many substantial points to be placed. These points were mentioned in a letter which was sent to the Constituent Assembly on October 75, 1948 along with draft clauses i.e. proposals recommended by the Ministry of Home on services. The first point, Home Ministry pointed out in its proposals was that there should be provision in the Constitution itself for the setting up of the Indian Administrative Service and the Indian Police Service as all - India Services. Deputy Prime Minister Vallabhbhai Patel wrote a letter in support of necessity of such a provision:

"In all India Service, it is obvious, recruitment, discipline and control, etc. have to be tackled on a basis of uniformity and under the direction of the Central Government which is the recruiting agency.... Any pricking of the conscience on the score of provincial autonomy or on the need for substantiating the prestige and powers of Provincial Ministers is therefore out of place. I am also convinced ...... that it would be a grave mistake to leave these matters to be regulated either by central or provincial legislation. Constitutional guarantees and safeguards are the best medium of providing for these services and are likely to prove most lasting." 77

75. Select Documents, IV, 1(1), pp. 186-7. See also chapter Judiciary.
76. Select Documents IV, 1(1), pp. 333-5.
77. Letter dated April 27, 1948, to the Prime Minister, see Select Documents, IV, 1(1) pp. 332-3.
The second point, urged by the Home Ministry was that 'guarantees' should be incorporated in the Constitution for members of the Secretary of State's Services (formerly known as an all-India Service) and for members of the Indian Administrative Service and the Indian Police Service (the two new All India Services constituted as successor services to the Indian Civil Service and the Indian Police).

The Ministry of Home Affairs pointed out that, during the negotiations which preceded the transfer of power, the position of the services after the termination of the control of the Secretary of State was considered; and it was agreed both by the British Government and by the Government of India that the subsisting rights of all members of these services, whether Indian or European, should be guaranteed by the new Governments. In other words, the Home Ministry suggested the insertion of a clause in the Constitution to the effect that the old as well as new members of All India Services should be entitled to the same conditions of service in respects of remuneration, leave and pension and the same rights in respect to disciplinary measures and the tenure of office (or rights as similar thereto as the changed circumstances would permit) as they were entitled to before the commencement of the Constitution.

78. B. Shiva Rau, The Framing of India's Constitution, - a study, 1968.
The safeguards already included about protection against arbitrary dismissal, removal or reduction in rank were also retained in the draft clauses which the Ministry of Home Affairs sent to the Constituent Assembly for consideration.

Third point; about doctrine of pleasure was raised. So far as doctrine of pleasure was concerned, when the first draft of the Constitution of India was prepared by Sir B.N. Rau, there was no incorporation of doctrine of pleasure in it. The same omission remained in the draft when it was considered by the Drafting Committee. But the Ministry of Home Affairs pointed out that as the doctrine of pleasure had existed under the Government of India Act of 1919 and 1935, therefore a similar provision should be incorporated in the new constitution of India.

(iii) Comments of Ministry of Defence

As suggested by Ministry of Home Affairs, the matter was referred to the Ministry of Defence about the opinion whether safeguards - laying down the procedure necessary to be followed in case of dismissals, removals and reduction in rank should also be made applicable to members of Defence services. The Ministry of Defence was of the opinion:

'We consider that the defence services cannot and should not be brought within the scope of Article 282A A,.... unlike the civil services, the Armed Forces have a complete disciplinary code which safeguards their rights and privileges consistent with military discipline and it would, we feel, be inadvisable to make
provision on any of these matters in the Constitution Act itself. While in the case of the civil service it is of the utmost importance to provide for a safeguard for Government servants against wrongful dismissal, etc., in the military forces the paramount need is to ensure military discipline. The draft of Article 282A A proposed by the Hon'ble Dr. Ambedkar, therefore, correctly covers only the civil services. He pointed out:

"We are somewhat doubtful whether it is necessary to include any reference to the defence services even in Article 282A although there is no doubt that, like the civil services, the defence services also will hold office during the pleasure of the President. Presumably this would not stand in the way of any legislation providing for termination of service by a subordinate authority without the formal approval of the President..." 19

The above opinion was apparently accepted by the Drafting Committee.

The Drafting Committee considered the above criticism and suggestions (comments) sent by Federal Court and High Court Judges, Ministry of Home, Ministry of Defence, etc. in its initial meetings held on March 23, 24 and 27, 1948. Ultimately, the Drafting Committee framed two new articles - e.g. 282A and 282A A after considering the comments.

Article 282 contained the 'doctrine of pleasure' having its applicability on civil servants and defence services.

Article 282A A provided certain safeguards against dismissal, removal and reduction in rank for civil servants only and not for defence services.

Later on, the amended articles were placed before the Constituent Assembly for its consideration, because Constituent Assembly was the passing authority.

E. Final Consideration of Amended Articles by Constituent Assembly

After placing of amended Articles by Drafting Committee before Constituent Assembly, the Constituent Assembly discussed the Part XII relating to services on 7th and 8th September, 1949. At this stage, the Assembly proposed the adoption of six Articles in place of Articles 281, 282, 283, 282A and 282A A under Chapter I. Article 281 of the original draft provided its application only to the 'Part I States' corresponding to the Provinces, but not the application will extend to the 'Part III States' i.e. also which corresponding to the Indian States. The article 281 as so amended was adopted without any discussion. Article 282 was replaced by four Articles viz., 282, 282A, 282B and 282C. Article 282 provided that recruitment and conditions of service should be regulated by Acts passed by the appropriate legislature but due to transitional provision, empowered the executive (The President, the Governor and the Ruler of Indian State) to formulate rules till the Acts are passed. Later on an amendment was done for permitting delegation of rule making power by

Article 282A provided that every person who is the member of a defence service or of a civil service of the Union or held any post connected with defence or any civil post would hold office during the pleasure of the President and likewise every civil servant in a state would hold office during the pleasure of the Governor or Ruler.

A proviso was also provided which contained about enabling the payment of compensation to persons, on the termination of their service - construct before the 'agreed period' for reasons not connected with misconduct.  

Hence, the Doctrine of Pleasure as existed in the Government of India Act, 1919 and 1935, was incorporated in the Constitution of India.

The Third Article 282B, provided about civil servants only. That no one could be dismissed by an authority subordinate to that by which he was appointed. It also empowered the President, or Governor or Ruler, to dispense with a 'Show Cause' notice where he was satisfied that in the interest of the security of the State, it was not expedient to do so. Article 282C, empowered the Parliament by law to create an All India Service if decision is taken by two third majority by Council of States

31. Lastly, this Article became Art.309 in the Constitution of India.

32. Ultimately, this Article became Article 310 of the Constitution of India.
that it was expedient in the national interest to do so. The Article contained that the two services already created i.e. The Indian Administrative Service and the Indian Police Service would be treated as All India Services created by Parliament under the Article 282C.

Article 282C, which comprised the provision for the setting up of All India Services, there was criticism on the Article on the ground that the establishment of such services should not be left with Parliament along leaving aside the Council of States. Dr. Ambedkar pointed out that the article was to some extent an invasion of the autonomy given to States to recruit their own services; obviously the only method of providing for authority to the Centre to take away the autonomy of the States was to secure the consent of two thirds of the members of the Council of States which was set up a body primarily to voice the opinion of the States and be the custodian of State interests. The Council ex-hypothesis represented the States and its resolution would be tantamount to an authority given by the States.

Article 283 which contained transitional provisions about the existing rules. It provided that until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were

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84. See C.A. Deb., Vol. IX, p. 1118.
applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution. This Article was accepted fully by the Constituent Assembly.

As regards protections guaranteed to the members of the Secretary of State's service (e.g. Indian Administrative Service and Indian Police Service) in the Constitution of India, Ananthas Ayanam Ayyangar pointed out:

"This guarantee means that they were the rulers under the old regime and that they will continue to be so in this regime. This guarantee asks us to forget that these persons who are still in service - 400 of them - committed excesses thinking that this was not their country."

He also commented that these officers being "pampered". Some of them had not changed their manners and did not feel that they were part and parcel of the country. Vallabhbhai Patel was in favour of proposed protection given to the members of the Secretary of State's Service as these guarantees had been pledged and embodied in the Indian Independence Act, hence he defended the Article. He pointed out:

"When the Indian Independence Act was to be passed in Parliament the draft was sent here.... Every section was scrutinized and

the draft was approved. After that it was passed in Parliament. Now, these guarantees were circulated before that to the Provinces. All Provinces agreed. It was also agreed to incorporate these into the Constituent Assembly's new Constitution, that is one part of the guarantee. Have you read that history. Or, you do not care for the recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand upon your pledged word. . . . .

Vallabhbha Patel further pointed out in appreciation for the 'civil servant' in context along with the members of All India Services (Secretary of State's services), and necessity to give them protection in new proposed constitution. He said:

"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 go. I will bring another Secretary.' I will never be displeased over a frank expression of opinion. Now, what is it that you want to do. You decide. My advice to you is, all Members of Parliament should support the Services, except where any individual member of the service may be misbehaving or erring in his duty or committing a dereliction of his duties. Then bring it to my notice. I will spare nobody, whoever he is. But if these service people (members of Secretary of State's service) are giving you full value of their services and more, then try to learn to appreciate them. Forget the past..... Therefore, for God's sake, let us.

86. C.A.D. Vol. 10, p. 50.
understand where we are. Today if you want to take anything from the service, you touch the heart but do not take a Lathi and say!'

Hence, the Constituent Assembly gave protections to the members of the Secretary of State's service by accepting the proposal.

It is important to note that, at the revision stage, the Articles on the 'services' were re-numbered as Articles 308 to 314.

3. Completion of Constitution

Constitutional status was granted to the civil servants. Part XIV titled as 'SERVICES UNDER THE UNION AND THE STATES' was incorporated which contained Chapter I-'Services' and Chapter-II 'Public Service Commissions'. Chapter I and II comprised Articles 308 to 323, whereas, Chapter I comprised Articles 308 to 314 only.

Article 308 as original enacted, defined the word 'State'. But after seventh Amendment Act, 1956, the amended Article provides, 'In this part, unless the context otherwise requires, the expression 'State' does not include the State of Jammu and Kashmir.'

Article 309 provides recruitment and conditions of service of persons serving the Union or a State Article 310 lays down the provisions about tenure of the office of persons serving the Union or a State. Article 311

88. Article 314 of the Constitution of India embodied this proposal. Later on, Article 314 was repealed by 28th Amendment Act, 1972.
provides Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Article 312 provides about All India Services. Article 312A embodies power of Parliament to vary or revoke conditions of service of officers of certain services. Article 313 contains transitional provisions about existing rules at the time of commencement of the Constitution.

In fact, Government of India Act, 1935 is the basis of Chapter I of Part XIV of the Constitution.

In addition to it, special provisions were embodied for enactment of rules regarding conditions of service for the officers of the Supreme Court, for persons in the Audit and Accounts Department, for officers and servants in the High Court, and for servants of the State Legislatures and Parliament.

Hence, the 'Doctrine of Pleasure' took its place in Article 310 of the Constitution of India.

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89. See Art. 146 (2).
90. See Art. 148 (5).
91. See Art. 229
92. See Art. 187
93. See Art. 98.
IV. DOCTRINE OF PLEASURE IN INDIAN CONSTITUTION
- ASPECTS AND STUDY-------------------------------------------

1. Introduction

The English doctrine of pleasure was introduced first time in India by Statute of William IV\textsuperscript{94} empowering Court of Directors of the East India Company to exercise pleasure over all its officers and servants.\textsuperscript{95}

Later, S.963(1) of Government of India Act, 1919,\textsuperscript{96} embodied such doctrine as -

''Subject to the provisions of this Act and of Rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed.''

Government of India Act, 1935 has also incorporated the doctrine in Section 240(1)\textsuperscript{97} which provided -

''Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.''

Clause (1) of Article 310 corresponds to sub section (1) of Section 240 of G.I. Act, 1936.\textsuperscript{98} Whereas clause (2) of Article 310 corresponds to sub section (4) of Section 240 of the Act. Sub section(3) of S. 240 of the Act was adopted in Article 311(2) of the Constitution.

Constitution of India contains this doctrine in Article 310 which provides as under -

\textsuperscript{94} See Moti Ram v. N.E.F.Rly, AIR 1964 S.C. 600.
\textsuperscript{96} H.M.Seervai, Constitutional Law of India, (3rd Ed.1984)p.2529
\textsuperscript{97} Ibid, P.2530.
Article 310 covers all employees of the Government whose tenure of office remain at pleasure of President or Governor as the case may be -

(i) Members of the Civil Services under the Union.
(ii) Persons holding 'civil posts' under the Union.
(iii) Members of a Defence Service.
(iv) Persons holding any post connected with defence.
(v) Members of State Civil Services.
(vi) Persons holding civil posts under a State.
(vii) Members of All India Services under the Union.

Article 310 includes members of a Defence Service and persons holding any post connected with defence whereas

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Article 311 excludes them. Therefore the 'pleasure' is unfettered by the limitations embodied in Article 311 in case of a member of a defence and persons holding any post connected with defence.

According to Article 312, a member of the Indian Civil Service is a member of an All-India Service. Therefore subject to the special privileges, safeguards provided by Article 314, he holds his service at the pleasure of the President under Article 310(1) and is liable to be dismissed by him. Though removable only by the President, the member of an All India Service is for the time being employed in a State, there is nothing to debar the State Government from exercising its statutory power under the Public Servants (Inquiries) Act, 1850, to make any inquiry against such officer.

2. Doctrine of pleasure in English Law and Indian Constitution

In England, the rule that all servants of the Crown e.g. civil, military and naval hold office during the pleasure of the Crown, has its origin in the conception embodied in the Latin phrase durante bene placito (during pleasure). The tenure of office can be terminated at any time without showing any cause except otherwise expressly provided by statute. This pleasure is applicable even in cases of special

5. Chitty on Prerogatives, 81.
contract with the Crown. Hence, the servants even cannot claim any relief against termination of their services, in other words, there is no right of action for wrongful termination.

The doctrine of pleasure embodied in the Constitution of India has been interpreted by judicial decisions in diversities of its nature. The important question of diversity was that whether the pleasure embodied in the Constitution of India contains the same nature as prevailed in English Law.

There are series of cases, on one side favouring the existence of pleasure in Indian Constitution at par with English Law. High Courts of Madhya Bharat in Munshi Ram v. State and High Court of Hyderabad in Abdul Wahid v. State took the view that the pleasure tenure was still the law of the Land and Article 311 of the Constitution of India simply prescribed a particular mode of dismissal and did not in any way affect or modify the nature of the tenure. Even The Supreme Court in P.L.Dhingra v. Union of India has opined similarly as per Bose J.:

"I am also clear that 'Except as expressly provided by this Constitution every person ..... these words are absolute and leave no room for inference or deduction. The 'pleasure' can only be controlled by some express provisions in the Constitution.'"

8. A.I.R. 1954 M.B. 54
There are series of cases on other side also negating the opinion of first side. The Supreme Court in State of Bihar v. Abdul Majid observed:

"The expression concerns itself with the tenure of office of the civil servant and it is not implicit in it that a civil servant serves the Crown ex gratia or that his salary is in the nature of a bounty."

Later on, The Supreme Court quoted the below given passage from Abdul Majid's case while deciding Moti Ram v. N.R.R. Railway case:

".... the rule of English Law pithily expressed in Latin phrase 'durante bene placito' (during the pleasure) has not been fully adopted.... by Article 310(1)."

It was also established in Moti Ram's case that:

"The English law on the doctrine of tenure at pleasure has now become fallily crystallized.... The English concept is considerably modified to suit the conditions of our country. It is therefore, not correct to say that Art. 311 is not a limitation on the power of the President to terminate the services of a Union civil servant at pleasure. To accept the argument that the relevant expression in Article 311 shall be construed as to give full sway to the doctrine is to ignore the limitations on that doctrine"

To sum up the above mentioned diversities in opinion of various decisions, we found that the basis of divergence of opinion based on some reasons. Prior to 1947, the British India was governed by the Crown and hence the pleasure of

the Crown was embodied in the Constitutional law of the British India, controlled by some statutory restrictions. The Privy Council in Suraj Narain Anand's case also observed similarly that since the Constitution uses identical words, the President and the Governor continue to have the same powers.

Similarly observed by Mr. Chakravarti that under the Common Law of England, the King was possessed of many prerogatives. ... Many of these have been liquidated, but then some exist even today. One of these prerogatives has been the prerogatives of pleasure. The King did not surrender his prerogative of pleasure by the Act of 1935. Because Article 310 was borrowed from the G.I. Act of 1935, therefore the first side of decisions favouring the nature of pleasure in Indian Constitution at par with English law was based on the above reasons.

But other side of decisions discarding analogy of pleasure in Indian Constitution with English law relied on the fact that after 1947, there was no place of prerogative powers of the Crown in Constitution of India. Moreover the powers of the President or Governor were specified in the Constitution under Article 310 and hence no place was given for any prerogative in the doctrine of pleasure. As such,

Article 310 should be interpreted as if it has no links with the Constitution of British India or with the British Crown. Mr. Chakreverti further opined that:

"Prerogative is an anomaly in a written constitution, nay, even a contradiction of terms. The first object of a written Constitution is to avoid uncertainty of rights and protection from tyranny. Prerogatives are uncertain and are instruments of tyranny. The prerogative of pleasure is an extreme factor in any social order."

India has not adopted the rule of English law in its entirety. Hence, in India, there is no absolute doctrine of 'pleasure durante bene placito' as accepted in England. In English Law the salary was considered to be a bounty. But Supreme Court held in various cases that to take salary is a right and not a bounty. Also pension and gratuity is a right and not bounty. Hence, the doctrine of pleasure as introduced in Indian Constitution is not based on special prerogative as in English law but on public interest as very correctly the Supreme Court observed in Tulsi Ram Patel's case as follows:

"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."

3. **Nature and scope of the doctrine in Constitution of India**

It is well settled, that the doctrine of pleasure has been inserted in the Constitution of India having basis of public policy and not on the basis of any prerogative. The doctrine has been retained on the ground of public policy. It would be an exercise in futility if one tries to trace it to any prerogative power of the past or present Government as also observed by S. Chakraverti:

"If it has been retained, it has been retained on the ground of public policy and not as a prerogative, for prerogatives are not created, conferred or bestowed, they simply exist and exist in the King."

The Supreme Court has also observed the ground or basis of the doctrine as public policy in *State of U.P. v. Babu Ram Upadhya* and *Moti Ram Deka v. General Manager N.E.F. Rly.* It is also very necessary to mention here the leading case *Union of India v. Tulsi Ram Patel* in which several government servants were either dismissed or removed from service without

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holding enquiry. These servants were never informed of the charges and were not given any opportunity of being heard. The contention on behalf of government servants raised was that the doctrine is a relic of the feudal age—a part of the special prerogative of the Crown—which was imposed upon India by an imperial power and thus is an anachronism in this democratic, socialist age and must, therefore, be confined within the narrowest limits. On the other hand, the contention on behalf of Government side was that the doctrine was a matter of public policy and it was in public interest and for public good.

The Supreme Court, rejecting the arguments of Government servants, observed that it was not possible to accept the arguments advanced on behalf of the government servants for the authoritative judicial dicta were to the contrary. In this case, The Supreme Court also made reference of Shenton v. Smith in which it was held that the 'pleasure' was founded upon the principle that the difficulty which would otherwise be experienced in dismissing those whose continuance in office was detrimental to the State would be such as seriously to impede the working of the public service.

A reference was also made to Dunn v. Queen in which case the Court of Appeal in England held that it was an implied term of every contract of service that servants

24. L.R. 1895 A C 229 (P.C.)
of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown. Gould v. Stuart was also referred wherein the Judicial Committee of the Privy Council held that where by regulations a civil servant is established prescribing qualifications for its members and imposing some restriction on the power to dismiss them, such regulations should be deemed to be made for the public good.

It is important to note that though the relationship of Master and servant exists between Government and its employees but the servants do not discharge their services at the mercy of the master. The pleasure enshrined in the Constitution defines specifically the boundaries of rights and duties of Government and their servants towards each other. Still President or Governor enjoys the pleasure over every categories of servants such as civil servants, military servants including servants under a contract, but the Constitution itself has pointed out the manner, in which pleasure is to be exercised and the limits upto which pleasure is to be exercised. In other words, the name of the doctrine remained the same but its shape has been shortened in its journey from English law to Indian Constitution. In Tulsi Ram Patel case, the Supreme Court correctly observed about nature of the doctrine:

These consequences follow not because the pleasure doctrine is 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.'

4. 'Pleasure' relates to 'tenure' only

The expression 'tenure' has been used in Article 310. Generally, tenure is a right, term or mode of holding or occupying and 'tenure of an office' means the manner in which it is held, especially with regard to time. Tenure is term of office, or duration of holding public or private office. According to the Winston Simplified Dictionary, tenure means the period during which anything is held and enjoyed. And another Dictionary defines tenure as, period of office.

From the above definitions, it appears that the 'tenure of office' means the 'term of office' or 'duration of office' or 'period of office' which is held by a Government servant. This tenure or term or duration or period of office ever remains at the pleasure of the President or Governor as the case may be. Yet the age of

superannuation is fixed by the Acts or statutory Rules made under Article 309. In other words, a tenure or term or duration or period of office is fixed by the Acts or statutory Rules from the date of joining and upto the date of superannuation. In normal circumstances, such Government servant will remain in his job upto the date of superannuation. But during this statutory period or tenure, such Government servant may be terminated at the pleasure of the President or Governor as the case may be. This is the reason that in real sense, the tenure remains at pleasure of the President or Governor as the case may be. Hence, the statutory tenure may be reduced by way of termination in exercise of pleasure. But in exercise of pleasure, under Article 310, the tenure of a Government servant cannot be increased, more than the statutory tenure. But while dismissing or removing a Government servant, in exercise of pleasure, the Constitutional compliance (Constitutional limitations) provided under Article 311 is mandatory. But again, sub clauses (a), (b) and (c) to 2nd proviso to Art. 311 contain absolute pleasure i.e. pleasure without limitations.

'Pleasure' relates to the 'tenure' only and not to other conditions of service e.g. salary, promotion seniority, pension, etc.

5. Whether Salary, pension and gratuity are a 'bounty' and whether 'pleasure' relates to these terms.

Whether 'pleasure' relates salary also. Whether a suit can be filed for recovery of arrear of salary. Whether

salary is a bounty or a legal right.

In England, the 'pleasure' was exercised under a prerogative of the Crown. Salary was considered as a 'bounty' under another prerogative enjoyed by the Crown. Not suit could lie against the Crown for recovery of arrear of salary being a bounty. In Mulvenna v. the Admiralty\textsuperscript{32}, it was observed:

"... the rule based on public policy which has been enforced against military servants of the Crown, and which prevents such servants suing the Crown on the assumption that their only claim is on the bounty of the Crown and not for a contractual debt, must equally apply to every public servant. It also follows that this qualification must be read, as an implied condition, into every contract between the Crown and a public servant, with the effect that, in terms of their contract, they have no right to their remuneration which can be enforced in a civil court of justice, and that their only remedy under their contract lies 'in an appeal of an official or political kind.'"

Hence, in this case it was held that salary is a bounty of the Crown and appeal, as regards arrear of salary can be filed before executive but not in Court.

In Terrell v. Colonial Secretary\textsuperscript{33}, there was an obiter of Lord Goddard C.J., who opined that a right to recover salary for services already rendered is not inconsistent with the right of the Crown to dismiss a public servant in exercise of pleasure. In other words, both the

\textsuperscript{32} Mulvenna v. The Admiralty, (1926) S.C. 842 (Scotland).
\textsuperscript{33} (1953) 2 All E.R. 490 (497).
questions (salary and tenure) do not stand on same footings and 'Pleasure' concerns with tenure only and not salary. Hence to recover arrear of salary is an enforceable legal right. It was observed in the above case:

''... there may be contractual rights existing before determination of a contract at will which are not inconsistent with a power to determine. Thus, if a servant is engaged, whether by the Crown or by an individual, at a salary, but on the terms that he may be dismissed at will, if he is dismissed, he may recover his salary for the time that he has served.''

But in recent decisions, the view of the Courts is that civil servant can recover his salary in lieu of rendered services as an enforceable legal right and can file suit in the Courts. No salary is no more a bounty.

In India, the salary is not considered as a bounty.

In State of Bihar v. Abdul Majid the Supreme Court has held:

''the doctrine of holding office at pleasure concerns itself with the tenure of office of the civil servant and it is not implicit in it that a civil servant serves the Crown ex gratia or that his salary is in the nature of bounty. It has again no relation or connection with the question whether an action can be filed to recover arrears of salary against the Crown.''

Hence, the following aspects were emerged from the above case:

(a) Doctrine of pleasure concerns with tenure of office and does not cover the salary.


(b) In England, pleasure and salary as a bounty were exercised under two different prerogatives.

(c) Salary is not a bounty.

(d) Suit can be filed for recovery of arrear of salary.

(e) Because, under S. 60(1) of the C.P.C., the salary of a public servant may be attached by a creditor both before and after it becomes actually payable. Therefore a servant can also enforce his right of arrear of salary.

(f) The Supreme Court is not bound by the decisions of Federal Court or Privy Council in which if any contrary opinion about doctrine of pleasure or theory of bounty has been pronounced.

Now, a Government servant can claim arrear of salary as a enforceable legal right by filling suit for declaration in Court.

It is well settled now that not only salary but the pension and gratuity is also an enforceable legal right and are not a bounty. The theory of bounty has no place in the Indian Constitution. The doctrine of pleasure does not relate to the salary, pension and gratuity. In State of Kerala v. M. Padmanabhan Nair, the Hon'ble Supreme Court held that pension and gratuity are no longer any bounty to be distri-

37. According to Section 6 of T.P.Act, 1882, a public officer cannot transfer his salary, whether before or after it has become payable.
buted by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment made to the government servant.

Now the Government is to release the pension within two months of retirement otherwise the employer has to pay interest at the market rate for the period exceeding two months.

6. Can pleasure be fettered by contract

The pleasure of President or the Governor under Article 310(1) cannot be fettered by provisions of any contract, reason being it would be restriction or clog on the pleasure. Hence, notwithstanding the existence of a contract of employment, Government is free to terminate the services of the employee before the expiry of the contractual period and without payment of compensation. Yet this general principle is, subject to payment of compensation in the limited class of cases which come within clause (2) of Article 310. Thus it is worthwhile to note that even in such cases, Government is free to dismiss such employee, subject to payment of such compensation, in the contingencies mentioned in clause (2).

The Supreme Court observed:

"The State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with the Constitution, and those who chose to accept those terms and enter into contract are bound by them, even as the State is bound.

When the employment is permanent, there are certain statutory guarantees, but in the absence of any such limitations Government is, subject to the qualification mentioned above as free to make contract of service with temporary employees, engaged in works of a temporary nature, as any other employer."

Therefore, while the provision in a contract for temporary employment that the employment would be terminated after one month's notice without assigning any reason is quite valid, however, a provision to the effect that no notice would be required for terminating such employment on the ground of some misconduct or inefficiency would be void for contravention of Article 311(2).

7. Compensation payable in contractual service:

Clause (2) of Article 310 provides for payment of compensation, in cases where the service is held under a

special contract which provides for such compension and such service is terminated before the expiry of the contractual period.

Clause (2) is not applicable on the following:
members of the Defence Services, members of the All India Services, members of a civil service of the Union or of a State. The above clause has a narrow scope of its application. It applies where the post does not belong to any of the regular services mentioned above. It applies where a special contract is made by Government with a person, having special qualifications, for securing the services of such person on a post. Compensation is not payable in case of misconduct, if committed by such person which resulted into termination of his services.

Therefore such compensation is payable only in the following circumstances:

(a) if the post is abolished before the expiration of the contractual period; or
(b) if the person is required to vacate his post before the expiry of the contractual period.

It is necessary to mention here the case from Canada: Reilly v. The King in which the Privy Council had held that when an appointment is made by contract to a post which was created by statute, no compensation is payable if the post is abolished by the repeal of the Statute which created the

44. (1934) A.C. 176 (180).
post because - (a) the appointment to the office was from its inception subject to being terminated by the office being abolished by statute; (b) there was no breach of contract when the service was terminated owing to abolition of the post because the performance of the contract became impossible by reason of the Legislature.

Clause (2) of Article 310 provides a provision different from the rule established in Reilly's case. Clause (2) provides compensation in case of abolition of post due to legislation or otherwise. It was held in Mohan v. Pepsu that it does not mean that if there is a contract with a specially qualified person, the contract must necessarily contain such a term as to compensation or that in the absence of such a term the contract could be invalid or contravention of Article 310(2).

8. Can 'pleasure' be delegated?

In the old cases, the Supreme Court was of the view that the 'pleasure' cannot be delegated, hence it is to be exercised personally. But this question has been settled in the later cases that the 'pleasure' is not necessarily be exercised personally, because Article 310(1) is not outside the scope of Article 154 or 53(1). But whenever this pleasure is exercised by the President or Governor, the aid and advice

of the Council of Ministers is necessary.

Because Article 53(1) and 154(1) i.e. executive power of Union and State cover Article 310(1) therefore it is necessary here to enumerate the provisions of Article 154-which is synonyms to Article 53(1). Hence Article 154 enumerates as under-

Executive power of the State-

1. The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

2. Nothing in this article shall-
   (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
   (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

According to Article 151 the exercise of the pleasure may be delegated to subordinate officers under the laws or Rules made under Article 309. Such laws or Rules may provide the procedure by which and the authority by whom the exercise of pleasure is to be performed. The Supreme Court, in the above cases, was of the view that the pleasure of President or Governor to terminate the services of a Government servant, can be exercised by such officers to whom the President or Governor delegates the power in accordance with the relevant Laws or Rules made under Article 309. But such delegation
has restriction that the officer empowered under delegation, to dismiss a government servant must not be 'subordinate' to the authority who appointed such Government Servant, reason being Article 310(1) is subject to Article 311 (1)\(^{48}\). 

Hence, yet Article 309 is subject to Article 310 but under Article 309, rules can be framed about 'procedure' by which and the 'authority' by which the pleasure may be exercised, in cases of delegated pleasure. But Article 309 cannot abrogate the pleasure itself which is embodied in Article 310.

9. **Scope of Legislation in the 'Doctrine of Pleasure'**

The Supreme Court in *State of U.P. v. Babu Ram*\(^{49}\) has opined that, since the power of the State to dismiss a public servant at its pleasure is provided in Article 310(1), "except as expressly provided by this Constitution," it follows that this power cannot be fettered (unlike in England) by any Statute\(^{50}\) or rules made thereunder. In short, the legislature, in exercise of its powers conferred by Article 309, may make a law regulating the scope of Article 310 i.e. mode of exercise of the pleasure but cannot curtail or taken away the doctrine provided under Article 310 including its limitations provided under Article 311. The Acts or Rules

\(^{48}\) Ibid.


\(^{50}\) *Union of India v. Tulsiram*, A. 1985 S.C. 1416(para 39).
made under Article 309 contravene the provisions of Article 310, then such Acts or Rules will either be considered as unconstitutional or mere directory but not mandatory and will have no force.

Following aspects are necessary to consider the scope of legislation in the doctrine of pleasure:

A. According to several High Court decisions, it had been held that as the opening words of Article 310(1) make it clear, the power of the President or a Governor to dismiss a Government servant at his pleasure can be fettered only by the 'express provisions of the Constitution', so that this power cannot be fettered by Service Rules framed under Article 309.

Contrary opinion was also expressed by some High Court that the aggrieved Government servant could have a legal remedy for violation of the statutory Rules relating to service, whether that constituted a violation of Article 311 or not.

B. The Supreme Court in *State of U.P. v. Baburam* by the majority has settled the controversy by observing:

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(j). It is true that the pleasure of the President or a Governor as regards the tenure of a Government servant cannot be fettered by anything other than express provisions of the Constitution and that if a Rule seeks to fetter that pleasure, as modified by Article 311, the Rule itself will be void. Hence, if a Rule seeks to make a Government Servant irremovable it will be void.

(ii). Article 310 has to be read with Article 309. Hence the combination of both Articles gives conclusion:

"...while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to the conditions of service without impinging upon the overriding power recognized under Article 310."

Hence the Rule may very well provide for a procedure, which is additional to or explanatory of. But such rule should not contrary to Article 311(2). Where the delinquent officer so desires, the charges against him shall be enquired into by a specified Administrative Tribunal, so that when the delinquent so exercise his opinion, the Government shall not be entitled to refer it for inquiry to any other person.

54. In Framji v. Union of India, A. 1960 Bomb. 14, the opinion took from Parshottam v. Union of India.


(iii). As stated earlier, the rules can prescribe the procedure by which that pleasure would be exercised.

(iv). Most important aspect is that the pleasure under Article 310(1) has been held to be confined to the tenure of the Government servant which means the period for which he shall hold his office and not concerned with a Rule providing conditions of service in which case question of fettering the pleasure does not arise, even if such rule has the effect of law, it can be enforced against the State in the court.

10. Employee's right to resign

Following are the different situations:

(i) According to the Constitution itself, specified modes of resignation are provided for the following employee or holder of office, e.g., The President [Article 56(1) Prov. (a)]; Vice-President [Art. 67, Prov. (a)]; Deputy Chairman of the Council of States [Art. 90(b)]; Speaker or Deputy Speaker of the House of People [Art. 94(b)]; Member of Parliament [Art. 101(3)(b)]; Judge of the Supreme Court [Art. 124(2), Prov. (a)]; Speaker or Deputy Chairman of a State Legislature [Art. 179(b)]; Chairman or Deputy Chairman of a Legislative Council [Art. 183(b)]; Judge of a High Court [Art. 217(1), Prov. (a)]. It was held in the case of resignation.

by a High Court Judge that the resignation by a High Court Judge is not dependent upon its acceptance by anybody, but takes effect as soon as the writing addressed to the President is delivered to the President.

(ii) Except the above mentioned specific offices, the resignation becomes effective only after it is accepted. In a recent case *Kailasapati Rao v. Committee of Bandlamud Hanumayamma Hindu Degree and Junior College for Women* where resignation of Principal was submitted and later on accepted. The A.P. High Court held that resignation will be deemed to be effective from the date of its acceptance and could not be withdrawn after the date of acceptance.

(iii) Following are circumstances in which the Government can refuse to accept a resignation:

(a) where in a work, employee's participation is necessary for completion and if such employee wants to leave in the middle of such important work.

(b) where a disciplinary inquiry is pending against such employee.

(iv) In the case of temporary service on contract, empowering either to terminate the service by a notice, such employee may exercise that power any time during the

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61. 1994(2)S.L.R. 554 (Andhra Pradesh); See also *Raj Kumar v. Union of India*, A. 1969 S.C. 180 (182).

subsistence of employment, even though a disciplinary inquiry may be pending against him, provided the contract of employment has not been suspended in exercise of any power to that effect expressly conferred by the contract or by the statutory rules of service.

(v) Undue delay in intimating to the employee the action taken on the letter of resignation may justify an inference that the resignation has not been accepted. In such a case, if the employee is allowed to continue in service, it would not be open to the Government, after a considerable period of time, to accept the resignation with retrospective effect.

11. Compulsory retirement under 'pleasure'

Article 310 also applies to compulsory retirement in addition to dismissal and removal because all these orders relate to the tenure. Compulsory retirement includes pre-mature retirement.

In fact compulsory retirement and voluntary retirement are two sides of one coin. Compulsory retirement is exercised as a right by the Government under pleasure whereas voluntary retirement is exercised as a right by the employee himself. Both these rights accrue after attainment of a fixed service period.

The justification of compulsory retirement is public interest, to weed out the dead wood and maintain a high standard of efficiency and initiative in service. As a facet of the doctrine of pleasure it gives an absolute right and not merely a discretion and thereby excludes the application of rules of natural justice. Test is public interest. Hence a colourable exercise of power or an arbitrary or malafide order or an order based on no evidence would be struck down.

Whether the order of compulsory retirement or premature retirement attracts the provisions of Article 311(2) or not. The criteria is, if such an order attaches a stigma (i.e. penal element) to the character and conduct of a civil servant, it attracts the provisions of Article 311(2). But if unless it is established from the order itself that a charge or imputation of misbehaviour or incapacity or that the officer is losing the benefit already earned, the order cannot be said to be one of removal or in the nature of penalty. In a case where the order itself does not disclose any such ingredients, it is not open to the court to go behind the order and to hold that it attaches a stigma on the basis of the proposed or recommendation made by an officer subordinate to the authority exercising the power.


The Supreme Court is also of the view that compulsory retirement includes premature retirement as held in S.C. Jain v. State of Haryana. In instant case a Superintending Engineer was retired from service after giving him three months salary in lieu of notice according to rule 3.26 of the Punjab Civil Service Rules, Vol. I. The Court held that an S.E. in the Public Works Department could not be retired under Rule 3.26, because according to this rule the age of retirement was 58 years and by implication he could not be retired earlier than 58 years, even compulsorily for the reason that in the situation compulsory retirement includes premature retirement.

In Sikander Pal Jain v. State of Haryana, where an employee who filed a review application against compulsory retirement order, the Review Board took three years and three months in disposing of the review petition. Later on a writ petition was filed in which the High Court dismissed on ground of laches. The Supreme Court held that the period consumed by the Review Board in disposing off the review petition could not be held as any lapse of delay on the part of the writ petition.

Government has the right to frame such a rule, regulation or policy and determine that when a government servant should retire from service on superannuation in compliance with such rule etc. It is something done in the

exercise of the inherent right which a Government has.

The Supreme Court held in *Murar Mohan Dev v. Secretary to Govt. of India* that where service rules prescribed an age of super annuation and no mention of age of compulsory retirement, the government servant who was given order of compulsory retirement made by way of penalty imposed upon him for misconduct after holding an inquiry attracts Article 311.

The purpose and object of premature or compulsory retirement of Government employee is to weed out the inefficient, corrupt, dishonest or dead wood from the government service.

The Supreme Court further held that it is now firmly settled that the power to retire a Government servant compulsorily in public interest in terms of a service rule is absolute provided the authority concerned forms an opinion bonafide that it is necessary to pass such an order in public interest. It is equally well settled that if such decision is based on collateral grounds or if the decision is arbitrary, it is liable to be interfered with by Courts. The Government is empowered to provide for different ages of compulsory retirement for different class of government servants.

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compulsory retirement of an employee without any adverse remarks carry no stigma and moreover retirement does not amount to removal. In such a case employee cannot take protection un Article 311. The State can increase the age of retirement, e.g., 55 to 58 and it can reduce the same way from 58 to 55 etc. because retirement is not removal, even if it is termination and does not carry any a stigma especially when the retirement order does not allege any charge against the employee.

In G. Nageshwar Rao v. State of Andhra Pradesh, it has been held that Government or the Review Committee competent to go into the record of the officer concerned and pass an order of compulsory retirement in public interest. Also held that the finding that the Government servant had no requisite potential for continued useful service did not cast any stigma.

In Tehal Singh v. State of Punjab, where an Assistant Sub Inspector was retired prematurely on the grounds of confidential reports, containing adverse entry, doubtful integrity. The P. and H. High Court held that premature retirement is valid. Further held that Senior Superintendnet of Police was competent to pass the order of premature retirement.

78. 1994(2) S.L.R. 405(P. and H.).
In a recent case Mukhtiar Singh A.S.I. v. State of Haryana where order of compulsory retirement were based on adverse entries relating to integrity and honesty of employee. The P. and H. High Court held that the order is based on entire record. The order of compulsory retirement is valid notwithstanding the fact that promotion had been granted to the concerned employee after recording adverse remarks.

Guidelines for compulsory retirement, were given in an important decision, Rajkunth Nath v. Chief Medical Officer by the Supreme Court. It was held that the Government can compulsorily retire its employees without assigning any reason or following the principles of natural justice. The three judge Bench laid down the following principles -

(i) An order of compulsory retirement is not a punishment. It implies no stigma.

(ii) The order has to be passed by the Government on forming opinion that it is in the public interest to retire a government servant. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. However, courts will interfere if the order is passed malafide or there is no evidence or if it is arbitrary.

(iv) The Government (or the Review Committee) shall have to

79. 1994 (1) S.L.R. 671 (P. and H.)
consider the entire record of service before taking a decision in the matter particularly during the later year's record and performance.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were taken into consideration. The circumstances by itself cannot be a basis for interference.

The question whether voluntary retirement can be accepted after the expiry of date prayed for, has been considered in the below case. In a recent case Tulsi Ram Sharma v. State of Rajasthan where the petitioner sought voluntary retirement initially with effect from 1.5.1984 about which no acceptance was received. He continued in service. Thereafter he again gave second notice in May 1985 for his voluntary retirement with effect from 15.7.1985. This request was also not accepted and petitioner continued in service. Nor did he withdraw his prayer for voluntary retirement. The Rajasthan High Court held that there is no illegality retiring him w.e.f. a subsequent date and other than one mentioned in the notice. Government is competent to ask a Government servant to retire from a later date if he continues to work after notice period and does not withdraw his notice meanwhile. Acceptance of voluntary retirement of a Government servant with effect from

81. 1994(1) S.L.R. 287 (Rajasthan).
a subsequent date other than mentioned in the notice itself cannot be treated to be a fresh proposal. Government servant unless he withdraws from his offer of voluntary retirement, bound to accept the date given by the Government if he had not ceased to work on the date mentioned in his notice or on expiry of three months' from the date of such notice.

In S.K. Jain v. U.O.I. 82 where disciplinary proceedings without placing under suspension was proceeded during disciplinary proceedings, the applicant the Executive Engineer applied for voluntary retirement. The CAT held that the applicant is entitled to voluntary retirement under F.R. 56(k).

The doctrine of pleasure is invoked by the Government in the public interest by compulsorily retiring an employee after he attains the age of 50 years or has completed 25 years of service. Compulsory termination of service under Fundamental Rule 56(b) does not amount to removal or dismissal by way of punishment because it is constitutionally permissible. Under this rule the Government reserves its right to compulsorily retire a Government servant even against his wish. Similarly, it is corresponding right of the Government servant under F.R. 56(c) to voluntarily retire from service by giving the Government three months' notice. There is no question of acceptance of the request for voluntary retirement by the Government which the Government servant exercises his right under F.R. 56(c).

82. 1994 (1) S.L.R. 228(CAT: Hyderabad).
A premature retirement of a Government servant in 'public interest' does not cast a stigma on him and no element of punishment is involved in it and hence the protection of Article 311 will not be available. The Government exercises this power in public interest where a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility.

The right to order premature retirement is regulated by civil service rules. In *Brij Mohan Singh Chopra v. State of Punjab* the dispute was of premature retirement without following the rules. According to the rules, the premature retirement could be sought by the Government employee himself or the State could do so in the public interest after the employee completed 25 years of service or attained the age of 50 years, provided three months' notice in either case was served. In this case Brij Mohan Singh challenged the validity of the Punjab Government's order of premature retirement of him, which was struck down by the Supreme Court holding as -

(i) In premature retirement cases, overall assessment of the service record should be examined, attaching more importance to the confidential reports to the years immediately preceding such consideration.

(ii) Old and stale entries should not be taken into account while considering the question of premature retirement.

(iii) Entries of recent past of five to ten years should

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84.AJ.987 S.C. 948.
be considered in framing the opinion.

(iv) Adverse entries should be communicated to the officer and his representation thereto properly considered.

12. Abolition of post under pleasure

The Government has power under Article 310 to abolish the post, yet such an action whether executive or legislative, is always subject to judicial review. The question whether a person whose services are terminated as a result of the abolition of post should be rehabilitated by giving alternative employment is a matter of policy on which the Court has no voice. Where abolition of post is due to bonafide reasons, Article 311(2) need not be complied with because such abolition of post does not involve 'punishment' at all. Hence, abolition of post is also a power exercised under the doctrine of pleasure but with bonafide reasons.


Under Article 12 the definition of 'the State' is provided, accordingly 'Local or other authorities' also come under the definition. It is a wide definition and this definition is relevant for the purpose of Part III of the Constitution i.e., Fundamental Rights. But the phrase 'Local or other authorities' has been excluded while applying it on Part XIV, relating to services i.e. (Arts. 308-323). The difference of application is because Part XIV does not deal with Fundamental Rights as such rather deals with service conditions.

86. Rama Rao v. State of A.P., A. 1961 S.C. 564 (para. 9);
of the employees of the Union or a State Government.

Therefore, the employees of Local or statutory authorities who come under Article 12, cannot invoke the safeguards embodied in Part XIV, also they do not hold their post at the 'pleasure' as contained in Article 310.

In Kalra v. P.E. Corpn., the Supreme Court held that where a corporation or company acts as an agency or instrumentality of the Government within the purview of Article 12, the principles underlying Article 311(2), such as fairness, non-arbitrariness and natural justice which can also be deduced from Articles 14, 16, can be invoked by the employee of such State Agency, so that the distinction between Government and non-Government employees under State agencies would become unsubstantial.

Hence, the employees of Company, Universities or Corporations are not covered under the definition of "The State" inspite of the fact that their institution act as instrumentality of the Government. The words Union and State used in Part XIV of the Constitution means the list provided in First Schedule of the Constitution.

14. Article 310(1) is subject to Fundamental Rights

Supreme Court has established in many decisions that Article 310(1) cannot override the Fundamental Rights. A Rule which vests unguided discretion in an authority to


terminate the services of its permanent employees (e.g., by merely serving a notice) would be violative of Article 14.

It was held by the Supreme Court in State of Orissa v. Dhirendranath that, if against two public servants similarly circumstanced, enquires may be directed according to procedures substantially different at the discretion of the Executive authority, exercise whereof is not governed by any principles having any rational relation to the purpose to be achieved by the inquiry, the order selecting a prejudicial procedure, out of the two open for selection, is hit by Article 14. A Rule may not be levelled against a single individual unless there is any intelligible differentia which distinguishes such person from others. The principles of natural justice have also been imported into Article 14 to invalidate a Rule which empowers an employer to terminate the services of his permanent employees by simply issuing a notice, without giving him any opportunity to be heard. A Rule which empowers the Executive to select particular employees for termination of their service under a special procedure, without furnishing definite guide for such selection would attract Article 14.

89. Bhandari v. I.T.D.C., A. 1987 S.C. 111 (paras 4-7);
W.B.S.E.B. v. Desh Bandhu, A. 1985 S.C. 722 (723);

90. A. 1961 S.C. 1715;


Where there has been an arbitrary discrimination in terminating the services of a particular employee on the ground that he belongs to another State or on the ground that he should make room for 'political sufferer's or on the ground of colour attracts the Fundamental Rights under Article 14 and 16.

In other words, the civil servants enjoy the Fundamental Rights in general same as enjoyed by an ordinary citizen of India and specifically enjoy Article 16 and 14.

15. Exceptions to the tenure at 'Pleasure'.

The opening words 'Except as expressly provided by this Constitution' embodied in Article 310 clearly point out that the doctrine of pleasure will not apply to such offices of whom, the tenure of office has been specifically fixed in the Constitution itself. Although these offices relate to civil side of administration in the country. Even the limitations contained in Article 311 are also not applicable. It means, the holders of these offices, hold their office, not at the pleasure of the President or Governor rather according to the provisions of the Constitution or in other words, during good behaviour. These are certain very important offices. Following are such offices:

A. The judges of the Supreme Court (vide Article 124),

94. Union of India v. Pandurang; A. 1962 S.C. 630(632);
B. the Comptroller and Auditor General of India (vide Article 148),

C. the judges of the High Courts (vide Articles 217 and 218)

D. Chairman and Members of the Public Service Commission (vide Article 317),

E. The Chief Election Commissioner, Election Commissioner and Regional Election Commissioner (vide Article 324 of the Constitution).

The above mentioned Articles provide a special procedure for removing persons appointed to these posts. The provisions of Article 310 has no application to these cases.  

A little discussion of the tenure of these offices is necessary here, therefore each category is discussed separately:

A. The Judges of the Supreme Court - Article 124.

The independence of the judges is very necessary because in many cases the Union or a State is a party. In such cases, in order that the judges may administer justice freely, that is, without 'fear or favour', it is essential that tenure should not depend upon the mere pleasure of the Government, but upon what is called 'good behaviour'.  

Clause (4) of Article 124 provides that a judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of


97. See Act of Settlement, 1701; under Article 124(2); Denning, Road to Justice, 1955, pp. 14-15.
Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to The President in the same session for such removal on the ground of provide 'misbehaviour' or 'incapacity'. Hence, the judges of the Supreme Court enjoy the security of tenure guaranteed by the Constitution itself. Clause (2) of Article 124 provides that he shall hold office until he attains the age of sixty five years. It means the retirement age has also been provided in the Constitution itself.

In the Constitution 'misbehaviour' or 'incapacity' have not been defined. In general, it would include any form of misconduct which would destroy public confidence in the holder of the office. But error in judgement, however gross, cannot amount to misbehaviour. The expression 'incapacity' means, it may be physical or mental due to which the judge is unable to discharge the duties of his office efficiently.

As regards, their independence, appointment by the Executive, of itself, would not impair judicial independence, provided, after such appointment, the Executive has no scope to interfere with the work of a judge.

98. These expressions are borrowed from section 72 of the Australian Constitution.


Whether judges of the Supreme Court or High Courts are 'Government servants.' It has been held\(^2\) that even though appointed by the Government, Judges of the Supreme Court or of the High Courts are not 'Government servants' because the following features distinguish these judges from other Government servants:

(a) Government has no power to direct what work or the manner in which a Judge shall discharge his judicial duties.\(^2\)

(b) their tenure of service, salary and other conditions of service are guaranteed by the Constitution.


Although appointment of the Comptroller General and Auditor General of India shall be made by the President but the tenure has been secured in the Constitution of India. According to Article 148(1), he shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court. It means the grounds are 'proved misbehaviour' and 'incapacity.'\(^3\) Hence Presidential address to both house of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting is necessary.\(^3\)


\(^3\) See Article 124(4) of the Constitution.
Yet the Comptroller and Auditor General do not enjoy the same powers as enjoyed by the Chief Justice of India in case of appointment of the staff. The Comptroller and Auditor General has no power of appointment of staff and hence no power of disciplinary control in respect to his subordinates.

Hence, security of tenure is provided in the Constitution and his tenure does not depend upon the pleasure of the President of India.


The Constitution itself has fixed the age of retirement as sixty two years under Article 217(1). During this period a judge of the High Court may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court. Hence the judge of the High Court shall be removed by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in same session for such removal on the ground of proved misbehaviour or incapacity.

As regards effect of resignation upon tenure, it has been held that if, however, by such writing, he intends to

4. See Article 146(1) of the Constitution.
5. See also Article 218 of the Constitution.
resign from a future date, his tenure does not terminate before such date, so that, at any time before the arrival of that date, the Judge may withdraw his letter of resignation, because the Constitution does not bar such withdrawal.

Hence, the tenure of the judges of the High Court is statutory as prescribed in the Constitution itself and such tenure is not at the pleasure of the President. The President shall have to follow the procedure prescribed in Article 124(4).

D. Chairman and Members of the Public Service Commission

The tenure of office of the Chairman or Members of the Public Service Commission is not at the pleasure of the President or the Governor as the case may be. Rather their tenure has been secured by the Constitution of India. Special procedure of removal has been prescribed under Article 317. Clause 1 of Article 317 contains that he can be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

The President may by order remove from office the Chairman or any other member of a Public Service Commission

7. See Article 145(1) (j) of the Constitution.
without following the procedure prescribed by clause (1) of Article 317 if the Chairman or such other member, as the case may be -

(a) is adjudged on insolvent; or
(b) engages during his term of office in any paid employment outside the duties of his office; or
(c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

E. The Chief Election Commissioner, Election Commissioner and Regional Election Commissioner - Article 324.

The tenure of the above Commissioners is not at the pleasure of the President or Governor as the case may be. Rather security of tenure has been guaranteed in the Constitution itself under Article 324. Clause (5) of Article 324 provides that:

"Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as such as the President may by rule determine!

Provided that the Chief other Election Commissioners shall not be removed from their office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the above Election Commissioners shall not be varied to their disadvantage after his appointment.

8. See Article 317 (3) of the Constitution.