CHAPTER VII

CONCLUSION AND SUGGESTIONS

The study has so far shown that the advantages of an elaborate bureaucratic bulwark – the services, have been felt in all systems of administration. Admittedly, the defence forces occupy a central place among the services. The interrelation between those who are empowered to regulate the conditions of service in respect of whom these can be varied or fixed, are determined by the Statutory laws of the services. The study of the tenure, the termination and the processual justice in the defence forces of India, essentially turned out to be a journey into the past and the present systems of administration, and a gradual development of this concept from the customs of war and service.¹ The constitutional history of India revealed that the constituent assembly made the provisions for recruitment, appointment and removal as a part and parcel of the constitution itself. The defence forces which were governed by the erstwhile “Articles of War”, and an assortment of customary practices, too were given their respective statutes. This was the affirmation of the evolutionary trend in the laws relating to the holding of appointments, tenures of service, terminations and removals from service in the defence forces. Due to the fascination of the British with military ethnography the defence service law nestled in tradition and then transited to the Statute.²

¹ For details see chapter-4.
² Ibid.
Before independence, the rules of administration in the defence forces were seen in conformity to the Articles of War. Perusal of the Manuals of Military Law revealed that the foundation of the law of Defence forces in India lay in the East India Company Mutiny Act, 1754. Thereafter separate military codes were framed by the presidencies. The Act of 1833 for the first time provided a common code for the native armies. This too was later repealed by the Acts of 1845, 1861 and 1869. The amalgamation of the three native armies in 1895 necessitated amendments in the Indian Articles of War particularly with regard to their conditions of service. A Bill was accordingly drafted consolidating the existing law and passed into an Act on the 16th March 1911 as the Indian Army Act, 1911. The Statutory law of services remained fixed to the English and the American law and procedures as the concept of the due process clause was discreetly finding its way into the Indian administrative jurisprudence which had otherwise been so far dominated by the principles of common law. The evolutionary trends were noticed in the fields of justiciability of the Doctrine of Pleasure, recording of reasons, interpretation of restrictions on fundamental rights, scope of judicial review in trial proceedings under the defence services legislations, conditions of service and the scope of service privileges vis-a-vis the responsibilities of the newly independent nation. Though thousands of nautical miles apart, the underlying thought between India, U.K., and America with regard to the law of services was interestingly similar. The comparative study of the three systems revealed more similarities than differences.

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3 For details see chapter-2.
4 Ibid.
5 Ibid.
6 For details see chapter-3.
In Post Independence, the Act of 1911 was found to be unduly harsh and inadequate as it was prepared in a colonial setting. With the changed environment, the pleasure powers of the Governor General were to be now replaced by that of the President. Hence with a view to consolidate and amend the law relating to the government of the regular Army, the Army Act, 1950 came into force into the new Indian Republic. Correspondingly, the Air Force Act, 1950 and later the Navy Act, 1957 were also enacted.

The principal factor which has distinguished the service in the defence forces from that of the civil organisation albeit the government, is the terms and conditions of the defence forces service. Chapter IV of the Army Act, 1950, chapter V of the Navy Act, 1957 and Chapter IV of the Air Force Act, 1950 enshrined the ‘Conditions of Service’ in respect of the personnel belonging to the Army, Navy and the Air Force respectively. The crux of these provisions lies in their judicious exercise. The judicious exercise of ‘discretion’ is what is meant by adherence to the ‘rule of law’ under the respective legislations of the forces. The high ideals of loyalty, obedience and unqualified submission to the due authority have been the hallmark of the disciplined defence forces of India. Going by their role, the ethos which permeates the warp and woof of the Indian Defence Forces is illustrated in the messages of Sir Philip Chetwode and Simonides. However, as the servants of the government, the personnel of the Defence Forces like their civilian counterparts enjoy the privilege of fixed tenures of service which are governed not only by the legislations of the Parliament but also by well settled customs and conventions of the services where the periods of tenures vary owing to the nature of their jobs. For instance, the President of

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7 For details see chapter-2.
8 See Appendix-I.
India, under the Constitution, is the Supreme commander of the Defence Forces and thus holds a special status vis-à-vis their personnel, in as much as, the President enjoys the absolute power of appointment and removal in respect of all the three services, generally considered to be outside the purview of judicial review.

**Another marked feature** is that the constitution has kept the Defence Forces out of the purview of Articles 310 and 311 but has allowed the Parliament to pass legislations in respect of each force for its governance. The exclusion clause is contained in Article 310 itself. No procedure with respect to the persons of the Defence Forces is thus provided in the constitution. It means the rules relating to the procedure with respect to the personnel of Defence Forces must be contained in the legislations outside the Constitution. These legislations provide necessary mechanism for dealing with cases involving resorting to premature termination on grounds of misconduct, conviction by criminal courts or falling into unacceptable medical category due to negligence or acts or omissions not attributable to the defence service. The mechanism in each case depends upon the ground or the reason for which the termination has been contemplated.

**The concept of termination of service** with strong procedural overtones is relatively of a recent origin when compared with other punishments in vogue in the society, for instance the infliction of corporal punishment or punishments retributive in nature. Notwithstanding the foregoing discussion, the term “termination” is found to be not of so recent an origin as the concept itself. This has been revealed from the perusal of the Webster’s Dictionary published as early as 1831, in which, it has included and translated the term *terminate* and *termination*

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9 For details See Chapter 5.
which now the Webster’s third New International Dictionary of the English Language, provides as the ‘end in time or existence; to bring to an ending or cessation in time, sequence or continuity’.\(^\text{10}\)

The evolution of the concept of termination is found linked with the evolution of the relationship of master and servant. Be it the State vis-a-vis its subjects or a private individual as master and another individual as a servant. The systems in vogue in other democracies are also found to have a strong influence on the Indian Administrative thought. What however, dominates the modern thought is summed up in the following words engraved on the southern face of the arch on the North Block, Raisina Hill, New Delhi:-

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\text{Liberty will not descend to a people,} \\
\text{A people must raise themselves to liberty;} \\
\text{It is a blessing that must be earned before it can be enjoyed.}^{\text{11}}
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The law of service is found to govern the administrative intercourse of the servants with the sovereign. The power and functions of the sovereign in turn are found to be resting on the adage, “\textit{rex non debet esse homine, sed sub deo et sub lege quia, lex fecit regem},” i.e., the king is under no man, yet he is under God and the law, for the law makes the king.\(^\text{12}\) This principle of administrative jurisprudence is complimented by another belief, ‘\textit{A king can do no wrong},’\(^\text{13}\) which with the evolution of the State, acquired a gradual judicial acceptance. However the activities of the sovereign in the field of administration came under scrutiny on the grounds of propriety and justice subjecting it to the

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10 See footnotes at chapter-1.  
11 Also see appraisal, chapter-4.  
12 For details see chapter-2.  
13 \textit{Ibid.}
statute or to extensive judicial review by the courts. In India, the concept of freedom and the State accountability are rather old. The equity, justice and good conscience were integral to services since olden times. The most characteristic feature of the provisions governing the services is thus found to be the provisions themselves. For instance, appearance of the words, “subject to the provisions of this Act and the rules and regulations made thereunder” suggest that the manner in which the power under the provision is exercised under the legislation, is regulated by the provision itself. The hallmark of these provisions is thus the inclusion in themselves, of the checks and balances which are otherwise mandated by part III of the constitution. This infact leaves no room for arbitrary exercise of power at any level. Coupled with this is the ever vigilant judiciary of India. The observations of the Supreme Court on procedural safeguards in the case of Prithipal Singh Bedi are, the procedural safeguards should be commensurate with the sweep of powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute.\textsuperscript{14} This point is found further amplified when the court exhorted the supremacy of justice over everything else as it observed, “....no doubt, even while acting administratively, the authorities must act bonafide, but that is different from saying that they must act judicially.”\textsuperscript{15}

The guideline provided is clear that the exercise of power under the law of services should be tested on the grounds of ‘legality’, ‘rationality’ and ‘procedural propriety’. This is termed as the action in accordance with the rule of law on which it has

\textsuperscript{14} For details see case study in chapter-4.
\textsuperscript{15} \textit{Ibid.}
been ruled that the Act and the Rules (relating to the Army) constitute a self contained code.

The defence service in India is influenced by the doctrines propounded as a consequence of judicial review. This is primarily due to their nature and status being integral to the State and its constitution. The important doctrines are three viz., the doctrine of *Presidential pleasure*, the doctrine of *continuous officiation*\(^\text{16}\) and the doctrine of *principles of natural justice*. The power of the President to ‘appoint’ and ‘remove’ a defence personnel from the service of the Union by exercise of the executive *fiat* termed as the pleasure of the President - *Duranto bene placito*, is absolute.\(^\text{17}\) The doctrine which emerges out of this proposition is the Doctrine of Pleasure. Study of the role of the Chief Executive vis-a-vis the defence personnel, reveals a relationship in which the major decisive factor is ‘conduct’ of the servant. The contract of service can be terminated by the master unilaterally if the servant is guilty of misconduct, or conduct which is inconsistent with his duties. Peculiarity of *pleasure*, however is that it is beyond any subjection thereby becomes an *unfettered pleasure of the supreme commander* unlike the pleasure of the crown in England which is subject to the Parliamentary control. Interestingly, the expression “*subject to the provisions of the Act and the Rules made there under*”,\(^\text{18}\) finds a mention in the Army, Navy and the Air Force Acts simultaneously where the power of termination by way of cashiering, dismissal, removal, discharge or compulsory retirement etc. is to be exercised by the Central Government or other authorities under the respective Acts. In other words, power of termination vested in the authorities other than the

\(^{16}\) For details see chapter-1.

\(^{17}\) *Ibid.*

\(^{18}\) See Appendix-I.
President is regulated by the Rules thereby confirming inherent check on the power as mentioned aforesaid. It is another thing that the exercise of this power is subject to extensive judicial review by the courts. The term ‘service’, has fixity of ‘time’ or ‘term’.\(^\text{19}\) This in fact helped us to understand the term ‘service’, which in fact means action or process of serving or a period of employment. Though rarely occurring, ‘officiation’ in a specific appointment is an incidence of service which affects the tenure aspect of service intimately. The principle of continuous officiation has, however, found a discreet acceptance in the defence forces owing to their peculiar nature of service which is essentially command and tenure oriented. Rule 16A of the Army Rules, 1954 lays down the ages of retirement for various ranks in the Army which are different for each rank. The Rule lays down the respective ages of retirement in various ranks in the Army in normal course. Similarly, Section 190 of Air Force Act and Section 184 of Navy Act empower the central Government to lay down the provisions with regard to tenures of services for their respective officers and men. The orders on this aspect in respect of persons other than officers are given in the defence service Regulations. Authorities empowered to authorise discharge under the Army Act are provided in Rule 13 of the Army Rules. The Rule with regard to the continuous officiation or what is referred to as the subjection to the Act is contained in Section 2 of the Army Act. Sub section (2) of the section provides, “(2) Every person subject to this Act under clauses (a) to (g), sub-section (1) shall remain so subject until duly retired, discharged, released, removed, dismissed or cashiered from the service. The right against unfair removal is found enshrined in Article 16 of the Constitution which lays down that there shall be equality of opportunity for all citizens in matters relating to

\(^{19}\) For details see chapter-1.
employment or appointment to any office under the state. The real import of this Article with respect to the Defence Forces is seen in the light of some historical decisions on this aspect. In *Prithipal Singh Bedi’s Case*, the Hon’ble Supreme Court examined the aspect of availability/applicability of Fundamental Rights to the Defence personnel. The Court held,

> “Parliament has the power to restrict or abrogate any of the rights conferred by Part III in their application to members of the Armed Force so as to ensure proper discharge of duties and maintenance of discipline amongst them.”

**Adherence to the principles of ‘Natural Justice’** is fundamental for all administrative adjudications. This is another constitutional guarantee against arbitrary exercise of power. From the perusal of various judgements arising out of the administrative orders of the authorities in the defence forces, two doctrines are generally found to influence administrative decisions viz.21, the doctrine of “Audi Alteram Partem” i.e., no one ought to be condemned unheard and the doctrine of “Nemo debet bis vexari”22 i.e., a man must not be put twice in peril for the same offence. The principles of natural justice apply both to quasi judicial as well as administrative inquiries and adjudications entailing civil consequences. However, courts have in certain situations allowed the rule of principles of Natural Justice to be excluded.

**As the final arbiter**, the courts in India have left no aspect of military, Navy or the Air force justice untouched. It may be the necessity to record reasons in SN Mukherjee’s case or the justiciability of the Presidential pleasure or the system of appeal in the armed forces, the Honourable court has shown the

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20 For details see chapter-4.
21 For details see chapter-1.
22 Ibid.
way. While expressing its views on the system of appeal under the defence forces statutes, the court found that it was an in-house but ineffective system. In the case of Prithipal Singh Bedi, the Supreme Court used an expression for this system of appeal as an appeal from ‘Caesar to the Caesar’s wife’ as no relief was anticipated in a closed door system. In other words, the administrative authority which is always a higher Military, Naval or Air Force commander and also served simultaneously as the Appellate authority for administrative and quasi-judicial proceedings and decisions, arrived thereat, would in all probability view the act of the accused as an infringement of the Military, Navy or the Air force code, maintaining the sanctity of which is his first bounden duty. Hence these proceedings as well the decisions brought in appeal before him, more from the point of view of a commander than a judicial authority, shall attract the inflexible service norms resting on the pedestal of discipline and organizational necessity often referred to as the ‘exigencies of service’. The golden words were,-

"Army is always on alert for repelling external aggression and suppressing internal disorder so that the peace loving citizens enjoy a social order based on rule of law; the same cannot be denied to the protectors of this order. And it must be realised that an appeal from Caesar to Caesar’s wife...confirmation proceeding under section 153 has been condemned as injudicious and merely a lip sympathy to form. The core question is whether at least there should be one appeal to a body composed of non-military personnel and who would enjoy the right of judicial review both on law and facts as also determine the adequacy of punishment being commensurate with the gravity of the offence charged. Judicial approach by people well-versed in objective analysis of evidence trained by experience to look at facts and law

23 For details see chapter-4.
objectively, fair play and justice cannot always be sacrificed at the alter of military discipline. Unjust decision would be subversive of discipline. There must be a judicious admixture of both. And nothing revolutionary is being suggested. Our Army Act was more or less modelled on the U.K. Act. Three decades of its working with winds of change blowing over the world necessitate a second look so as to bring it in conformity with liberty oriented constitution and rule of law which is the uniting and integrating force in our political society.  

Etymological connotations. The preliminary study of the terms ‘tenure’, ‘termination’ and the ‘processual justice’, had in fact required these terms to be defined and interpreted in their etymological sense.

It is almost a universal truth that the rule of law in the country is maintained by the presence of a strong defence force protecting the borders of the country. Hence their tenures of service are adequately protected under their respective statues. The power to terminate from service is vested in the authorities specified in those statutes but those too are governed by the rules framed under the Acts. Thereby, restrictions have been placed not on the fundamental rights of the defence personnel but also on those who exercise the powers of command and have the power of termination. Accordingly, the basic principles of the tenure, termination and the processual justice deal with the uninterrupted tenures in the defence forces which could be altered only in the manner provided in the Army, Navy and the Air Force Acts. Principles laid down are in the fields of justiciability of the Doctrine of Pleasure, removal or termination of service administratively etc. As regards the provisions

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24 Ibid.
25 For details see chapter-1.
dealing with the service aspect of the defence forces, the legislations relating to the defence forces of India i.e., the Army, Navy and the Air Force, have been scrutinized and tested on the anvil of legal and constitutional validity. All their provisions have been adjudged as legally and constitutionally valid.

A comparison is usually drawn between the systems in vogue in India, U.K., and the United States of America. A comparative study of the three systems revealed that despite being thousands of nautical miles apart, the underlying thought between India, U.K., and America with regard to the law on tenures and terminations is interestingly similar. The study has revealed more similarities than differences.  

In ideal circumstances, cessation of service is an incidence of employment occurring in due course by way of relinquishment of an appointment or employment, or discharge on completion of terms of engagement, fulfillment or expiry of contract of service, release or retirement which finds itself regulated in the manner specified in the contract of enrolment called the ‘enrolment form’ IAFK 1162, and the conditions in that form called as the enrolment conditions or the terms of engagement or in case of the officers, the terms of commission or the junior commission in the case of Junior commissioned officers as the case may be. Unregulated freedom is alien to the Defence Forces. The reason is simple, there is no concept of unregulated freedom under the State umbrella. In a democratic set up, political freedom is central to all freedoms, the rest are secondary. In the words of Hans Kelsen the ‘political freedom’ is essential to mankind. This kind of freedom means the political freedom such as guaranteed by Article 19 of the constitution. However, in respect of the defence personnel, it has been regulated by the respective
legislations as the fundamental rights have been modified in respect of the defence personnel but not the freedom to be treated equally and to be dealt with equitably. This however, may not necessarily mean to hold tenures indefinitely, as that would, in any case be contrary to the rule of law and equity. This wisdom of enjoying a regulated liberty within the parameters set by the State is the essence of governance in the defence services.

The important provisions of Military Law had eluded interpretation since it was widely believed that the scope of judicial review in respect of the matters in relation to the defence personnel was very limited. This point was repeatedly emphasized by the courts themselves in various judgements. However, it is now settled that the rules made under Article 309 are not applicable to the defence personnel as they remain subject to the President’s pleasure. The term civil servant also does not include a member of the defence force, or even an employee in defence service, hence the protection available to the civil servants under Article 311 is also not deemed to be extended to the persons belonging to the defence forces. In such a background testing the principles of good conscience and fairplay in the defence services falls within the purview of the courts. Hence, notwithstanding the limitations of the legislations and the compulsions of the organization, the judiciary has stood out as a great champion of rights irrespective of the fact whether the citizen belonged to the civil service or to the Armed Forces of the Union.27

The complete study can, thus, be summed up under the following heads:-

27 For details see chapter-4.
(a) **Usage and the Indian Ethnicity.** The Indian ethnicity played a major role in determining the rules of tenure and termination of service as it brought the native sentiments into the force and the law evolved in the backdrop of the customs. British fascination with military ethnography was evident in selecting various communities in India for their suitability for military service. The subject of tenure and termination in fact grew from the tradition to the Statute. The process to arrive at the decision of termination came later and changed with the times and awareness as it was subject to the rule of law and the principles of natural justice.

(b) **Processual Justice and the responsibility of Command in the Defence forces.** The statutes and the judicial interpretations of the law of defence forces, reveals that a soldier spends major part of his life away from the public glare, many times in highly isolated locations. While the whole world is grappling with the consequences of over indulgence, and banality of overexposure, the consequence of lack of it and adherence to the custom of service and law in the forces, in a way is least regrettable. Hence it imposes an onerous duty on the command that while dispensing justice, the best interest of the soldier is kept in mind even though the Statutory provisions have been designed to take care of this aspect and which is evident from the provisions relating to the **service privileges.**

(c) **Maintenance of discipline as the prime concern of the forces.** Discipline has always been of prime importance to the defence forces. Adherence to law is viewed as natural and its violation an exception. Compliance of law and procedure is generally seen as a natural concomitant of defence

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29 See Appendix-I.
administration. Its violation too is rare, incidental and usually inadvertent. Hence the tenure, termination and the provisions relating to the processual justice in the defence forces are seen through the prism of objectivity and not through a utopian subjectiveness.

(d) **Justice as per the rule of law.** Justice is the be all and end all of all systems. Due process which literally means fair procedure is found integral to the defence system of justice. The following revealed during the study amply illustrate the point:-

1. Provision for hearing of charge, recording of evidence, cross examination, defence and opportunity for rebuttal etc;\(^{30}\)

2. provision for the show cause notice, including an adequate formulation of the subject and issues involved in the case;\(^{31}\)

3. application of mind by the competent military, Naval or the Air force authority to the facts of each case separately before the issue of show cause;

4. provisions for Opportunity to submit reply in defence to the show cause;\(^{32}\)

5. application of mind by the military, Naval or the Air force authority to the reply of the delinquent; and finally,

6. The decision based only upon the evidence tested on the anvil of cross-examination.

As the above are essential for justice as per rule of law, the principles of natural justice and the due process are a part and parcel of system of justice in the defence forces.

\(^{30}\) See Appendix-I

\(^{31}\) See Brigadier Sivia’s case, Chapter-4.

\(^{32}\) See Appendix-I.
(e) **Interpretation of the statutory provisions.** The courts strongly lean against a construction which reduces a Statute to futility. The importance of this principle is evident from the fact that there are few legislations relating to the ‘tenure’ and ‘termination’ and the processes dealing with them, which have ever been pronounced as void for their sheer vagueness. The law or policy made for regulating this important aspect of service is for all purposes, a valid law. Thus the legislations relating to the defence forces when examined with regard to their validity are found to be in order. This is evident from the interplay between the provisions governing the tenure and termination and the procedure provided therefor in the rules and regulations with respect to the three services.

(g) **The final arbiter.** For the defence forces, the final arbiter on all matters of service is the judiciary.

(h) **Due process in defence Forces.** Due process in service matters means notice and a full evidentiary hearing before termination. It also stresses for *need for formal record*. Study of the provisions relating to the termination of service in the defence forces, reveals that neither the doctrine nor the other provisions of termination are based upon any special prerogative but are based on public policy and are invoked only in public interest and for public good. The basis of these provisions is that the public is vitally interested in the efficiency and integrity of the services and, therefore, public policy requires that servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service. The exercise of power under the respective legislations has been found to be subject to the due process clause.
SUGGESTIONS AND RECOMMENDATIONS

SUGGESTIONS

1. **Principles of natural justice more apparent on record.** Public policy and public good demand that power of removal from service can be resorted to in respect of those who are inefficient, dishonest or corrupt or have become a security risk. Application of this principle is subject to the compliance of principles of natural justice. In all such cases, the processes adopted and the material used for arriving at the decision must make it apparent on record that the *Principles of natural justice* were adopted while ordering the administrative terminations. Hence the record preceding the order of termination must be a testimony of adherence to the principles of natural justice.

2. **Post decisional hearing or opportunity.** Wherever the principle of *audi alteram partem* has been excluded in the departmental proceedings by the provision itself, post decisional hearing or opportunity in such cases can be considered.

3. **Right of Show Cause before passing the final order.** The provisions of Army, Navy and the Air Force Acts which enshrine the Power of Pleasure, are *pari materia* with Article 310, with a difference that Article 310 is controlled by Article 311 which is not the case with respect to defence forces. With due regard to the public policy, it could be considered to revisit the provisions and brought at par with Article 310 of the constitution.

4. **Constitutional safeguards as a service privilege.** Once suggestion at 3 above has been considered, the next step will be to include the constitutional safeguards available under Article 311 as a service privilege for the defence personnel.

5. **Greater transparency.** The strength of *liberty* lies in the guarantee of transparency in actions. The power of removal from service is based on the public policy is clear from the scheme of the respective legislations. But there is ample scope for
ambiguity in such cases. Greater transparency while processing cases for removal or termination will allay this ambiguity.

6. **Removal of disparity in respect of the Armed Forces.** The Hon’ble Supreme Court by its observations in *Prithipal Singh Bedi’s case* has placed the defence persons at par with their civilian counterparts on the availability of natural justice. This would necessitate suitable amendments to the rules and regulations relating to the procedure mandatory for all disciplinary and administrative actions.

7. **No forfeiture of pension.** The administrative terminations are invariably punitive though some are termed as *terminations simpliciter* yet the judgments on this issue have shown that a stigma is generally found attached to the orders of termination or removal. It will reduce the severity of action if accompanied by an order for pension or a subsistence allowance to the family of the delinquent which in most cases is unaware of the misdemeanours of the delinquent.

8. **Pleasure to be subject to the Act of Parliament.** It has been left to the courts to interpret the limitations on the power of termination. However, as a measure of administrative evolution, the power of pleasure may be considered for regulation by the provision itself.

9. **Safeguards which could be made mandatory.** Dismissal or removal from service under the exercise of pleasure under the defence law, is often seen as power which is not amenable to the principles of natural justice. Articles 310 and 311 of the constitution are however, mutually self regulating. Adopting the similar model for the defence forces may be worth considering.

10. **Processes Mandatory before termination.** Law prescribes processes mandatory before termination from service. These are, serving upon the delinquent a show-cause notice or a charge-sheet, allowing him inspection of documents, examination of
witnesses, and production of evidence in support of himself etc.
The holding of an inquiry, the giving of a show cause notice and
taking of the explanation of the servant with respect thereto,
being preliminary to all decisions, these Processes constitute the
kernel of the processual justice in the defence forces. These
processes need to be scrupulously followed in all cases without
exception.

**RECOMMENDATIONS**

1. **Procedural safeguards commensurate with the sweep of powers.** It is recommended that the procedural safeguards may be commensurate with the sweep of powers. The wider the power, the greater the need for the restraint in its exercise and correspondingly, more liberal the construction of the procedural safeguards envisaged by the statute.

2. **Definite procedure.** It is recommended that the dismissal from employment could be based on a definite procedure, even though generous beyond the requirements that bind such agency and that procedure must be scrupulously observed.

3. **Right of show cause before passing the final order.** It is recommended that the provisions of Army, Navy and the Air Force Acts which enshrined the Power of Pleasure, are *pari materia* with Article 310, with a difference that Article 310 is controlled by Article 311 which is not the case with respect to defence forces. With due regard to the public policy, it could be considered to revisit the provisions and brought at par with Article 310 of the constitution.

4. **Constitutional safeguards as a service privilege.** It is recommended that the constitutional safeguards could be included which are available under Article 311 as a service privilege for the defence personnel.
5. **Greater transparency.** It is recommended that the efforts could be taken for greater transparency while processing cases for removal or termination. The power of removal from service is based on the public policy is clear from the scheme of the respective legislations.

6. **Removal of disparity in respect of the Armed Forces.** It is recommended that defence persons could be at par with their civilian counterparts on the issue of natural justice. This would necessitate suitable amendments to the rules and regulations relating to the procedure mandatory for all disciplinary and administrative actions.

7. **No forfeiture of pension.** It is recommended that while terminating, though punitive, the pension and subsistence allowance to the family of the delinquent could be given.

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