CHAPTER I
INTRODUCTION

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 in the State structure. The interrelation between the authorities empowered to govern the tenure and termination of those in respect of whom the tenures are varied or fixed is determined by the Statutory laws, whereby they attain the ‘capacity to change legal relationship’. The study of ‘the tenure, the termination and the processual justice in the Defence forces’ of India is essentially a journey into the past and the present systems of administration and gradual development of this concept from the customs of war and usage and eventually becomes a subject of profound interest.

The constitutional history of India reveals that the constituent assembly took more than two years in framing the constitution of India which acquired the distinction of being the longest written constitution in the world. The provisions for recruitment, appointment and removal were made 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. In the similar vein, a Common Law Doctrine has been imported into the Indian Constitution, whereby the Indian President like the

Crown in England was conferred the absolute power of removal with respect to his servants.

The omniscience and foresight of the constitutional forefathers was however, visible in the elasticity of our constitution which allows its citizenry to pursue various fields of activity in all directions. The gradual introduction of representative government in the country with all its constitutional characteristics are revealed in the following words of H.M. Seervai²:-

*The gradual introduction of representative government had familiarized political parties in British India with the working of cabinet form of representative government. And the study of, and admiration for the constitutional history of England made the British form of Government, adapted to a federal constitution, appear to be the most appropriate form of government under our constitution. That form of Government had increasingly demanded high standard of character and conduct from members of legislature, the judiciary and the higher civil service. Our founding fathers believed that those high standards of character and conduct would be maintained under our constitution.*


Before independence, the tenure, termination and the processual justice in the Defence forces have been essentially in conformity to the “Articles of War”. However, the rich conventions – the British and local put together had to an extent

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tempered the hardcore laws of England into a friendly mix which was acceptable to the British as well as to the natives.

As regards the services including the defence forces, the status of a Crown’s employee in relation to the King in England has always stood on a different platform from that of a common citizen. So, there is a difference in liability also. An employee of the Crown carries a liability, that of a servant to his master, which though emanates from a contract and thus binds the latter by its conditions, which Crown may, in certain situations repudiate unilaterally. The power of removal or termination of a servant in England is the Royal prerogative and however, has no application to a person other than an employee of the Crown. According to the rule of employment, the Crown appoints his servants and removes them at will, and this power to remove resides in the Sovereign. This in short is also termed as the ‘pleasure of the Crown’ vis-à-vis his servants. The same concept was imported and adapted to the Defence services in India. ‘The Mutiny Act of 1754’, the ‘Articles of War’ and then the ordinances of the Viceroy and the Governor General, all fell into place to create the Indian Military and the Naval Law.

As to their characteristics, the ‘services’ in general, in a State are considered essential, indispensable and redundant at the same time. In many cases these have been even termed as ‘peculiar’. For instance, with regard to the services in the Great Britain, Ivor Jennings has remarked, “Civil service is in many respects the most peculiar of the institutions of the British Constitution.” Sir William R. Anson also observed:

The Crown is not Sovereign, nor is either House of Parliament, still less are the ministers or servants through whom the Crown conducts its executive business of the Government; but each of these stands in established relations to the other and to the general body of citizens, and of these relations some are fixed by law and some by custom.

However, contrary to the above position held by the English jurists, Austin assumed that the sovereign was at all times and for all purposes omnipotent. A study of the English history also reveals that the British political and administrative environment, during the Anglo Saxon or even during the earlier regimes, was dominated by a ‘consultative and tentative absolutism’. Winds of change are, however, irrepressible. With evolution of public liberties, the services also remained in step as a part of the State set up and shared the dais with the legislature. This change became evident in the seventeenth century England. Ivor Jennings observed that between the late 16th and early 17th centuries, the public servants in England were allowed to sit in the Parliament as they represented a power of patronage which was very useful to the king both in influencing elections and in keeping a majority in the House.

The law of services and the institution of the King under it is generally understood with the help of the famous adage, *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. It is a popular legal adage of common law, ‘A king can do no wrong’! The concept of the ‘Pleasure of the Sovereign’ is the progeny of this adage according

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5. VR Mehta, ‘Foundation of Indian Political Thought’ edn.(1992).
6. Supra note 3, p.203.
to which it is manifestly believed that the ‘King’ represents the divinity on earth and has thus to rule his kingdom according to some holy dictat which is equally inaccessible to the lesser mortals as to the courts. The Pharaohs of Egypt or the Pompeii and Caesar in Rome, Louis XIV in France or the Czars of Russia ruled their respective kingdoms as the representatives of the God and usurped and assumed in themselves the powers from the inaccessible heavens with dictates to rule and govern unpardonably. They ruled as they pleased. This led to an absolute but despotic rule of the King. The concept of freedom for all was foreign to these rulers. That was also the age of slavery where the freedom of one person could be bought by another person and men and women could be traded like animals. The Bill of Rights, the *Magna Carta*, thus stands like a lone light house in the West. On the contrary, in India, the concept of *freedom* and the *State accountability* was rather old. King, who held the power of ‘dismissal’ though elected by the people, was endowed with divine qualities. His justice was divine justice and to it, there was no appeal. This idea of a divine king and his powers of appointment and dismissal of his servants in accordance with the Dharamshastras continued in India for many centuries but was later replaced by the *Arthashastra* of Kautilya.

### 1.2 The Status in India

The services in modern India, were brought up by the Britishers for perpetuation of their regime in this country. We have followed the British model, *mutatis mutandis*, in our civil services as well as in the Defence forces including in its veritable hierarchy and have also replicated the model of the Chief Executive. The *Queen* in England and the *President* under the Indian Constitution both have the power to terminate or remove
a servant (civil or Defence employee) from service without assigning any reasons, for the power of the crown in England and the President under the Indian Constitution on this count is absolute. Concerning the civil servants in India, before independence, a similar provision i.e. Section-96 was available in the Government of India Act, 1919. The words of this section find an almost verbatim mention in the Army, Navy and the Air Force Acts. However, while incorporating the provision with regard to the pleasure of the President in these legislations, the expression “subject to the provisions of this Act and of Rules made there under” has been removed. The provision relating to pleasure in relation to the Defence forces thus remains beyond any subjection. This expression however, finds a reference in the provisions of all these Acts where the power of termination from service by way of cashiering, dismissal, removal etc. is exercised by the Central Government.

This special power of the executive is its exclusive domain and is not subject to the legislative control of the parliament in India unlike in Britain, where power of the crown, can be modified by the parliament by passing legislations and regulating its exercise. It has been explained that the Central Government and other disciplinary authorities under respective Acts relating to the defence services, also exercise a similar power of termination in the form of dismissal, removal, discharge or compulsory retirement of its officers and employees but exercise of this power is subject to extensive judicial review by the courts in India. Grounds for exercise of this power vary in

8. **Section 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....”
every case though misconduct of the government servant is one major ground for termination. The Dharamshastras in the pristine India exhorted supremacy of good conduct over everything else. “The rule of conduct is transcendental law”, declared by the Manusmriti 9 as follows:-

Whether it be taught in the revealed texts or in the sacred tradition; hence a man who possesses regard for himself, should be always careful to follow it.

This being the crux of the government employment, Sardar Vallabh Bhai Patel, the first Home Minister of Independent India also described it as an essential quality of a state servant in the following words10:-

Have you read that history? (the history of safeguards for the Indian civil service) or you do not care for recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand on your pledged word; and, also, as a man of experience. I tell you do not quarrel with the instruments with which you want to work. Have morals no place in the new parliament?....... 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. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself...

It has to be seen as an admitted and undeniable fact that the ‘services’ within the Union of India which primarily comprise of the civil services and the Defence Forces of the Union, are integral to the Government. This model of governance took time to form. Appreciating the role of the Constituent Assembly in the formulation of services in India, Sh. H.M. Seervai, the revered jurist of India writes as follows:

*It took the constituent assembly over two years to frame the constitution of India. It was no mere accident that it was written in English. The British Constitution is an unwritten unitary constitution, and it is based on the doctrine of the supremacy of the British Parliament. Its main feature was cabinet form of representative government with a monarch as its constitutional head. That form had been adapted by the British Parliament in enacting the federal constitutions of Canada and Australia, and had been adapted in a modified form for the federal government envisaged in the Government of India Act, 1935. Our supreme court has held that our constitution is based on the Westminster model of cabinet Government, incorporating most of its characteristic features. The gradual introduction of representative government had familiarised political parties in British India with the working of cabinet form of representative government. And the study of, and admiration for the constitutional history of England made the British form of Government, adapted to a federal constitution, appear to be the most appropriate form of government under our constitution. That form of Government had increasingly demanded high standard of character and conduct from members of legislature, the judiciary and the higher civil service. Our founding fathers believed that those high*
standards of character and conduct would be maintained under our constitution.\textsuperscript{11}

Seen in the light of the objectives it seeks to achieve, the advent of the civil service has always preceded that of the Defence Forces. One way or the other, the military campaigns in the history have been planned and executed in pursuit of some non military objective. Hence a discussion on the Defence Forces as services under the constitution will remain incomplete without a reference to the all pervasive civil services of India. The role of the civil service in a democracy is well defined. Sir Warren Fisher, the Permanent Head of the British treasury explained this role in the following words:-

\textit{Determination of policy is the function of Ministers, and once a policy is determined, it is the unquestioned and unquestionable business of the civil servant to strive to carry out that policy with precisely the same energy and precisely the same good will whether he agrees with it or not. That is axiomatic and will never be in dispute. At the same time it is the traditional duty of civil servants, while decisions are formulated, to make available to their political chiefs all the information and experience at their disposal, and to do this without fear or favour, irrespective of whether the advice thus tendered may, accord or not with the minister's initial view. The presentation to the minister of the relevant facts, the ascertainment and marshalling of which may often call into play the whole organization of a department, demands of the civil servant the greatest care. The presentation of influences from the facts equally demands from him all the wisdom and all the detachment he can command. The preservation of integrity, fearlessness}

\textsuperscript{11. Ibid.}
and independence of thought and utterance in their private communion with ministers of the experienced officials selected to fill the top posts in the service is an essential principle in enlightened government as – whether or not ministers can accept advice thus frankly placed at their disposal, and acceptance or rejection of such advice is exclusively a matter for their judgment – it enables him to be assured that their decisions are reached only after the relevant facts and the various considerations have, so far as the machinery of government can secure, been definitely brought before their minds.  

It is amply clear from the above that the strength of our nation lies in its well trained, strong and articulate services, the civil and the Defence. The services in India have scrupulously avoided the ‘spoils system’ which is prevalent in the United States of America where appointments are made as a reward for political service to a party. So the services in India grew in an environment of political neutrality which was otherwise also considered necessary to win the confidence of the citizenry. The Defence Forces in India have remained out of the national political rigmarole, committed to the Constitution of India, to which they unquestionably abide and submit while assiduously guarding the nation from external aggressions and internal turmoil.

With respect to their role in the composition of the State, the Defence Forces of the Union represent the ligament of the state. These occupy a distinct platform in the National Constitution. Over a period of time, the role of the Defence forces in India has however, undergone a paradigm shift from that of a war fighting organization exclusively, to the role of peacekeepers,

12. Ibid.
peacemakers, peace builders and peace enforcers. Rightly so, the constitution of India devotes a whole chapter (Chapter XIV) to the services of the Union of which the bureaucracy and the Defence Forces occupy the centre stage as one is integral to the governance of the country, the other is necessary for the protection of the nation from external aggression. Part XIV of the constitution of India is titled as “Services under the Union and the States” and goes on to lay down the guidelines which the Central and the State Governments are required to bear in mind while framing their ‘Rules’ for recruitment or with regard to the tenure, termination and processual justice with respect to the services.

The time is a prime factor in all walks of life and the change which it brings with it is an inflexible rule. Consequently, the role of military is also changing in response to the changes at the geo-political level on the one hand and our perception of the role of the military on the other. Since the tenure and the termination aspect of the Defence services is governed by their respective legislations, the constitution specifically excludes them from the operation of the provisions given in Part XIV. The provisions relating to the tenure, termination and the process followed thereto are understood in the manner they appear in the respective legislations.

Since a distinction is invariably drawn between the service in the defence and the service in the civil, the principal factor which distinguishes the service in the Defence forces from that of the civil organization is the terms and conditions of the particular service. Chapter IV of the Army Act, 1950, chapter V of the Navy Act, 1957 and Chapter IV of the Air Force Act, 1950

14. Ibid., p.11.
enshrined the ‘Conditions of Service’ in respect of the personnel belonging to the Army, Navy and the Air Force respectively. Section 18 of the Army Act, 1950 lays down that every person subject to this Act shall hold office during the pleasure of the President. The power of the Central Government to terminate the services of Army personnel is contained in Section 19 of the Army Act, 1950. Similarly, section 20 of the Army Act, 1950 lays down the power of the Chief of Army Staff (COAS) and other officers to dismiss remove or reduce in rank any person subject to the Act other than an officer. However, the power under section 20 is restricted only up to Junior Commissioned Officers. In other words, an officer of the Indian army can be dismissed or removed from the service either by the President under Section 18 or by the Central Government under section 19. Persons other than officers can be dealt with under section 20 of the Army Act. The legislation thus not only delegates the power of termination but also regulates it against its indiscriminate exercise.

With respect to the naval persons, the tenure of service of the officers and sailors in the Indian Navy is specified under Section 15 of the Navy Act, 1957. The distinction between the provisions relating to the persons under the Army and the Navy

15. **Section- 18. Tenure of service under the Act.** Every person subject to this Act shall hold office during the pleasure of the president; see Appendix - I for details.

16. **Section- 19. Termination of service by central government.** Subject to the provisions of this Act and the rules and regulations made there under the central government may dismiss or remove from the service any person subject to this Act; see Appendix- I for details.

17. **Section- 15. Tenure of service of officers and sailors.** (1) Every officer and sailor shall hold office during the pleasure of the President. (2) Subject to the provisions of this Act and the regulations made there under, clause (b) of section 15 subsection (2) further provides, "the chief of Naval staff or any prescribed officer may dismiss or discharge from the Naval service any sailor."
Acts are with respect to their ranks which are of a different nomenclature. Another difference is with regard to the power of the Central Government to dismiss or remove from service an army personnel being a separate independent provision under the Army Act as compared to the one dealing with the naval persons. Beside the above, there is no mention of word 'discharge' in sections 18 19 or 20 of the Army Act. The process followed to arrive at the decision of termination or dismissal by these authorities is exactly similar. Hence, notwithstanding the aforesaid, the principles governing the subject of tenure, termination and processual justice in all the three services remain the same.

As regards the servicemen in the Air Force, the power of the President to remove its personnel from the Air Force service is enshrined in section 18 of the Act\textsuperscript{18}. Section 19 of the Air Force Act deals with the termination of the persons subject to the Air Force Act, 1950, by the Central Government\textsuperscript{19} and Section 20 of the Act confers power of dismissal, removal or reduction in rank, on the Chief of Air Staff (CAS) and other officers.\textsuperscript{20} A reading of Army and Air Force Acts, 1950 together reveals a close similarity between the provisions relating to the tenure, termination and processual justice. The crux of these powers lies in their judicious exercise. Judicious exercise of ‘discretion’ is what is meant by adherence to the ‘rule of law’\textsuperscript{21}.

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\textsuperscript{18} Section- 18. Tenure of service under the Act- Every person subject to the Act shall hold office during the pleasure of the president.

\textsuperscript{19} Section-19. Termination of service by central government – subject to the provisions of this Act and the rules and regulations made there under, the central Government may dismiss or remove from the service any person subject to the Act.

\textsuperscript{20} Section- 20(1). The chief of Air Staff may dismiss or removal from the service any person subject to the Act other than an officer.

\textsuperscript{21} Shri Shiv Raj Patil, His Excellency, the Governor, Punjab State and Administrator, Union Territory of Chandigarh, in his inaugural address at the Army Institute of Law, Mohali, Punjab, during the All India Moot Court Competition - Checkmate-2013 on 22 February, 2013.
The following observation of the Supreme Court in Union of India v. SK Rao\textsuperscript{22} reinforced the aforesaid point of view:-

*Invoking the power of President under the pleasure doctrine is an exceptional power conferred upon him by Army Act section 18 and Article 310 of the constitution of India. The said discretionary power is very sparingly resorted to, under exceptional circumstances only, where it is not possible to deal with the delinquent military personnel under any other provision of the Army Act and that their retention in service is not in national interest. No doubt, even while acting administratively, the authorities must act bonafide, but that is different from saying that they must act judicially.\textsuperscript{23}*

The most characteristic feature of the provision governing the tenure and termination by the central government is the opening sentence of the provision itself, "*subject to the provisions of this Act and the rules and regulations made thereunder*"\textsuperscript{24} which means that the manner in which the power of *tenure and termination* is exercised under the legislation, is regulated by the provision itself i.e., by the 'rule of law'. The hallmark of these provisions is thus the inclusion in them, of the checks and balances which are otherwise mandated by part III of the constitution. With regard to the importance which the procedural safeguards occupy in the field of exercise of power of termination, the Supreme Court held observed:

*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{25}

The court further fortified its views with the help of the following words of Justice Frankfurter of the United States of America:-

\textit{If dismissal from employment is based on a definite procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed}...\textit{This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.}\textsuperscript{26}

The exercise of power of removal should thus be tested on the grounds of ‘legality’, ‘rationality’ and procedural ‘propriety’.\textsuperscript{27} This is termed as the action in accordance with the rule of law on which the court held that the ‘Act and the Rules (relating to the Army) constitute a self contained code’.\textsuperscript{28}

The certainty in the service of the Union depends upon the guarantee of its continuity. The personnel of the Defence Forces in India 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 may vary owing to the nature of their jobs. For instance, the President of India, under the Constitution, is the Supreme commander of the Defence Forces and thus holds a special

\textsuperscript{25} Ranjit Thakur v. Union of India & Others, AIR 1987 SC 2390.
\textsuperscript{26} Frankfurter, j. in Vitarelli v. Seaton, 359US 535., as quoted in Ranjit Thakur’s Case, AIR 1987 SC 2386.
\textsuperscript{27} The words appearing as ‘illegality’, ‘irrationality’ and ‘procedural impropriety’ in Ranjit Thakur v. Union of India & Others, AIR 1987 SC 2386.
\textsuperscript{28} Supra note 26.
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 which he exercises with the aid and advice of the Council of Ministers. Generally believed to be outside the purview of judicial review, or being subject to a very limited judicial review.

The constitution of India has kept the Defence Forces out of the purview of Articles 310 and 311 but has allowed the

29. **Article- 310.** Tenure of office of persons serving the Union or a State – (1) Except as expressly provided by this constitution, every person who is a member of a Defence service or of a civil service of the Union or of an all India service or holds any post connected with Defence or any civil post under the Union, holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

30. **Article- 311.** Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State– (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply –

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such inquiry.

(3) If, in respect of any person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.
Parliament to pass legislations in respect of each force for its governance. For their overall allegiance to the Union, Article 52 of the constitution of India declares, “There shall be a President of India” and Article 53 has vested the executive power of the Union and the resultant supreme command of the three forces in the President. There is thus no doubt that the highest executive authority under the Constitution as far as the Defence Forces of the Union are concerned is vested in the President. This authority is for all purposes i.e., for the appointment of the personnel into the service and also for their removal there from. The exclusion clause is contained in Article 310 itself. Article 310 thus makes it clear that every member of the Defence Forces of the Union is subject to the pleasure of the President. As far as the civil servants are concerned, the Constitution provides an elaborate procedure for exercise of this pleasure by the President in accordance with Article 311 of the Constitution. But as regards the Defence Forces, the provision does not go beyond what is contained in Article 310. No procedure with respect to the persons of the Defence Forces is thus provided in the constitution. It means the rules relating to the pleasure of the President with respect to the personnel of Defence Forces must be contained in the legislations outside the Constitution framed.

31. Article- 53. Executive power of the Union.- (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.
(3) Nothing in this Article shall –
(a) be deemed to transfer to the President any function conferred by any existing law of the Government of any State or other authority; or
(b) prevent Parliament from conferring by law functions on authorities other than the President.
under the authority of Article 309 of the Constitution. The constitution actually guarantees continuous and uninterrupted employment for a specified period and its sanctity whenever challenged, is upheld by the courts.

Servants of the government enjoy fixed tenures of service. The legislations dealing with the ‘tenure’ and ‘termination’ 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.

1.3 The Doctrine of Presidential Pleasure

According to the Webster’s New World College Dictionary, ‘pleasure’ literally means the state of being happy or satisfied. However, as per the New Penguin English Dictionary, pleasure means a ‘wish’ or ‘desire’ especially when there are various options available. When related to service under the State, this would suggest that a person’s continuance or discontinuance in

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32. Article-309. Recruitment and conditions of service of persons serving the Union or a State – subject to the provisions of this constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.


a particular state of affairs is contingent upon his acceptance in that state by the competent authority. It seems that the term ‘pleasure’ of the ‘Crown’ or the ‘President’, as the case may be cannot be precisely defined when the pleasure is used as a prerogative of the crown or the president.

The doctrine which emerges out of this proposition is the Doctrine of Pleasure which if undertaken in its meticulous details will itself invite a separate and detailed research. Since the doctrine deals with one important aspect amongst the many in the vast arena of the service jurisprudence, it would attract some focus of the study though only in relation to its essential, important and relevant aspects.

Study of the role of the Chief Executive vis-a-vis his servants, reveals a relationship of master and servant 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 as a servant. “The rule of conduct is transcendental law”, declared the Manusmriti.36

Peculiarity of pleasure in respect of the Defence personnel is that the exercise of pleasure with respect to the Defence Forces remains beyond any subjection thus becomes an unfettered pleasure of the supreme commander unlike the pleasure of the crown in England which is subject to the Parliamentary control. In Britain, the power of the crown can be modified by the parliament by passing legislations regulating its exercise. Interestingly, the expression “subject to the provisions of the Act and the Rules made there under”, 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 President is regulated by the Rules thereby confirming inherent check on the power of authorities as mentioned above. It is another thing that the exercise of this power is subject to extensive judicial review by the courts. Grounds for exercise of this power however, vary in every case though misconduct of the government servant is one major ground for termination. Termination of service follows various modes viz., by trial, where termination comes by way of punishment awardable by a court martial; termination of service by authorities other than the court martial viz., the Central Government, the Chiefs of Army, Navy and Air Force Staff or the Officers below the Chiefs of Army, Navy and Air Force Staff, upto the rank of Brigadier in the Army or equivalent in the other two forces. Law on this issue has long ago been settled. In Dharampal Kukreti v. union of India, the Supreme Court held that termination is justified even in those cases where a court martial after trial has not awarded dismissal as a punishment. And also that such termination will not amount to double punishment and will thus not be affected by the doctrine of double jeopardy.

The concept has been borrowed from Britain where a servant of the crown always holds office during the pleasure of the crown. This indeed being, a common law doctrine, has its origin in the customs of England. The tenure of office of a civil or a Defence servant can be terminated at any time at will without assigning any cause or notice. Under common law practice, the civil servant has no right to take recourse to courts, or claim
damages for wrongful dismissal. He cannot file a case even for arrears of his salary. The moot point is that the crown is not bound by any contract between itself and its servants; the power of the crown is thus unfettered. “.........the civil servant is in law only a servant of Crown, dismissible at the Queen’s pleasure without notice or compensation, or retiring allowance or pension.”37 The doctrine is based on public policy as the crown is not bound to retain in service any person whose conduct is not above board and satisfactory.

In the Indian context, with respect to the servants of the union, irrespective of their status whether in the civil employment or as a part of the Defence forces of the union, their continuance in the service of the union is subject to the pleasure of the President.38 Similar power and authority is conferred on the governor of a State in respect of the servants employed by the respective state governments. This power however does not extend to the person employed by private individuals or companies. This exercise of pleasure by the President in the union or by the governor in the state in accordance with the law is termed as the ‘Doctrine of Pleasure’.

1.4 NATURE AND SCOPE OF TENURE AND TERMINATION

With a view to understand the inherent characteristics of a term or a subject, it is essential that the meaning, nature and scope of that term or the subject are generally understood in the context in which those are used. However, to understand any term, we invariably start with its literal connotations arising from its plain dictionary meaning.

37. Supra note 3.
1.4.1 Tenure

'Tenure', when referred to in relation to the Defence forces, is understood as a term of duty. As per the New Penguin English Dictionary\(^39\) the word *tenure* is a noun and means, the holding of a position or an office. It also means the period of time for which an office or position is held; an enhanced and more secure employment status giving freedom from summary dismissal until retirement especially in teaching post\(^40\). The expression is also used as a term ‘tenure’d for instance a ‘tenure’d post\(^41\) i.e., having or offering tenure. Similarly as per the Revised and updated Illustrated Oxford Dictionary\(^42\) is a noun and means a condition or form of right or title (esp. real) under which property is held, often followed the word ‘of’\(^43\). In the law of contracts it means the holding or possession of an office or property; the period of this.\(^44\) Used in common parlance, it connotes a guaranteed permanent employment esp., as a teacher or lecturer after a probationary period. The word *tenure* as per this dictionary has been derived from the old French ‘teneure’ also referred to as ‘tenurial’. The word ‘tenure’d is an adjective and as per the same dictionary means (of an official position) carrying a guarantee of permanent employment (of a teacher, lecturer etc.) having guaranteed tenure of office. Black’s Law Dictionary\(^45\) defines the word ‘tenure’ as, ‘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 the time.

\(^40\) Ibid., p.1454.
\(^41\) Ibid.
\(^43\) Ibid., p. 858.
\(^44\) Ibid.
Referred to an employment, the “term of office” means the period during which “elected officer or appointee is entitled to hold office, perform its functions, and enjoy its privileges and emoluments.”\textsuperscript{46} The expression is closely associated with the word ‘term’ which is used to express a definite concept in a particular branch of study. The same dictionary\textsuperscript{47} defines it as conditions or stipulations or a ‘limited period of some state or activity or a period over which operations are conducted and results contemplated’.\textsuperscript{48} As per the Law Lexicon of British India\textsuperscript{49} the word tenure is also used in combination with the other words e.g., hereditary tenure; permanent tenure; political tenure; under tenure etc. When used in connection with the expression “tenure of office”, it means the ‘term of office’.\textsuperscript{50} The same lexicon uses the expression ‘tenure of office’ which means period fixed for the holding of office\textsuperscript{51}, a space of time when used with reference to a term of office means the period of limit of time during which the incumbent is permitted to hold.\textsuperscript{52} There is definiteness about the fixity of time or the term when we talk about ‘tenure’ in any sense. The other derivatives are terminable, terminal and terminally meaning as ‘that may be terminated’, ‘coming to an end after some time’, ‘in the last stage’, ‘an extremity’\textsuperscript{53} with its origin in Latin word terminalis. The New Penguin Dictionary\textsuperscript{54} defines the word term as a noun – an

\begin{itemize}
\item \textsuperscript{46} Ibid.
\item \textsuperscript{48} Ibid., p. 858.
\item \textsuperscript{49} ‘The Law Lexicon of British India’, compile and edited by P. Ramanatha Aiyar; Madras Law Journal Office, Mylapore, Madras (1940), p. 1269.
\item \textsuperscript{50} Ibid., p.1269.
\item \textsuperscript{51} Ibid.
\item \textsuperscript{52} Ibid.
\item \textsuperscript{53} Ibid., p.858.
\end{itemize}
expression that forms part of a fraction or proportion or of a series or sequence. As a verb the word term signifies an overt activity for instance ‘I term it as simple or difficult’ etc. The other derivatives of term such as terminable, terminal etc., are similar as explained earlier.

The expression tenure appears to have been later dovetailed into a judicial term, “continuous Officiation”. This new term was coined by the courts. As early as 1967, a Constitution Bench of the Supreme Court of India in Nim v. Union of India case,\(^{55}\) invented this principle which found its mention in a later case Narendra v. Union of India\(^ {56}\) followed by a host of other judgements by the Apex court.\(^ {57}\) In Patwardhan v. State of Maharashtra case, it was held that “continuous Officiation, in a non fortuitous vacancy ought to receive due recognition in determining rules of seniority as between persons recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear similar responsibilities.\(^ {58}\)

The words ‘tenure’ and ‘term’ in fact determine the functions and responsibilities of the incumbents holding specific appointments with a specified mode of their discharge, breach of which may be reprehensible. The same position was held in a later case of Baleswar v. State of Uttar Pradesh case.\(^ {59}\) The other terms which are read alongside the word ‘tenure’ are ‘deemed’ ‘same’ and ‘similar’. The other words which appear in the firmament are ad-hoc and fortuitous. The tenure thus

\(^{55}\) AIR 1967 SC 1301.

\(^{56}\) (1986)2 SCC 157.


\(^{58}\) AIR 1977 SC 2051.

\(^{59}\) AIR1981SC 41.
presupposes a continuous, elongated officiation for a term which is determined by the rules on recruitment, the undertakings by the incumbents, the necessities of the organisation and the vagaries of time. The other three are found more or less constant and subject to the interaction of forces and the domain of law, i.e., the State and the rule of law. Expanding the scope of the term continuous officiation which is seen as associated with tenure, the Supreme Court of India has applied the dictum in the cases pertaining to transfer as well. This concept hinged on the organizational necessity in conformity with the best interest of the organisation or the public. This is irrespective of any other consideration.

The Defence forces i.e., the Army, the Navy and the Air Forces of India are governed by special Acts and provisions as far as the law on tenures in respect of their Officers, Junior Commissioned Officers, the Non Commissioned Officers, the Jawans, the Shipmen and the Airmen are concerned. The tenures in the Defence services are in fact governed by the specified periods of time as different ages of retirement for persons of different ranks and ratings. For instance the officers of different ranks have different ages of retirement dependent upon the rank each one holds at the time of his or her superannuation. In spite of the wide variety of the ranks and appointments in the forces, the terms of tenure are generally uniform in a particular rank. For Instance rule 16A of the Army Rules, 1954 lays down the ages of retirement for various ranks in the Army. The rule goes on to lay down the specific ages of retirement for the specific ranks in a particular arm. Similarly, the ages of retirement for Navy and Air Force are given in their respective Rules and Regulations.

Madhavan v. Union of India, AIR1987SC 2291.
1.4.2 Termination

The next expression to be dealt with in the study is the word ‘termination’. The word and expression ‘termination’ has been derived from the Latin word *terminatus* i.e., ‘ended’ which means the ‘act or instance of terminating’ an ending or result of a specified kind’. The other derivative of the Latin word is in its verb form ‘terminate’ i.e., bring or come to an end. The word as such carries no legal consequences of any kind. However, when read in the context of an employer and employee, a host of consequences are attached to the word ‘terminate’ or to the act of ‘termination’ as it is bound to have some legal consequences. The severing of the relationship of a workman can just not be a termination simpliciter as such an action is incomprehensible unless as a penal consequence. The act will undoubtedly have penal consequences. Hence a definite legal action is expected to ensue. This would otherwise be in line with the dictum of ‘reasonable expectation’. The new Penguin Dictionary defines termination as a past participle of the Latin word *terminare* (from the word terminus i.e., the end boundary) as to take action to end prematurely, to go and extend as far as a particular point and then stop. The expression literally does not contemplate consent though it highlights the end of a deal, a contract or an obligation. The law on Defence forces specifically lays down the rules for the tenure and its ‘cessation’ referred as ‘termination’ in the study. The most appropriate meaning of this expression is found in the Black’s Law Dictionary’, wherein the word terminate precedes termination. In its literal sense, the word terminates

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62. Ibid.
means, ‘to put an end to; to make to cease; to end.’ Termination as a word and expression has a variety of meanings but the most relevant to the study is the one given in the Black’s Law dictionary, 6th edition, 1990. Here the ‘termination’ means, “End in time or existence; close; cessation; conclusion.” It has a specific connotation in relation to the expiry or lapse of the Insurance policies or ending of a lease or contract under the Commercial Codes. But termination of employment by the State is what is of utmost relevance to us. Termination of service is generally read as interchangeable with the expressions ‘dismissal’ and ‘removal’ which is invariably visited by penal consequences. ‘Termination’ in certain cases ipso facto amounts to dismissal or removal irrespective of any penal consequences being involved because the employee had a right to hold the post till the age of superannuation or some other specified time.

1.4.3 Processual Justice

The word ‘processual’ is an adjective of the noun ‘process’ which means, a series of actions or steps towards achieving a particular end. Concise Oxford English Dictionary defines it as ‘relating to or involving the study of processes’. When referred to with respect to the Defence forces, it entails the processes adopted in dispensing justice by the administrative authorities in the Defence forces. Normally, this process in the Defence forces is deemed to commence with the convening of a Court of Inquiry in the form and manner under chapter VI of the Army

65. Ibid., p.1417.
INTRODUCTION

Rules. It would also mean the Boards of Inquiry ordered under the Navy Regulations and the Courts of Inquiry ordered under the Air Force Act. These are assemblies of Officers, officers, junior commissioned officers and non commissioned officers or of junior commissioned officers and non commissioned officers or of junior commissioned officers and non commissioned office ordered to collect evidence. The evidence so collected, the findings and the opinion given thereon become the basis for initiating administrative action in the nature of ‘termination of service’ of Defence personnel. ‘Termination of service’ referred herein is different from the ‘cashiering’ or ‘dismissal’ which also amounts to termination resulting as a consequence of a trial held by a ‘court martial’. The Vth Chapter of the Army Rules entitled as “Investigation of Charges and Trial by Court-Martial”, kicks off an elaborate disciplinary process which may or may not culminate into trial by court martial and a consequential dismissal accompanied with or without other punishments provided by the respective Statutes. Here the cashiering or dismissal comes as a sentence awarded by a court martial consequent to a conviction after trial. An important link in the whole process is the hearing of charge in terms of Army Rule 22, in respect of the Army personnel, and other corresponding Rules and regulations in respect of the other two services. Compliance to this Rule is mandatory as non compliance thereto renders the whole subsequent disciplinary proceedings as null and void. But when followed correctly in letter and spirit, the exercise of this power by the commanding officer creates an edifice so legal and strong that it acts as a bar to subsequent

68. See Appendix - I for details; Army Rules, 1954, Chapter VI, Courts of Inquiry
trial by court martial. The remedy available to the delinquent is to raise the plea in bar of trial as per Army Rule 53.\footnote{70}{See Appendix- I for details.}

Readings into the processual justice in the Defence forces brings into focus another provision, viz., Army Rule 23.\footnote{71}{Ibid.} The marked feature of this rule is the opportunity to cross examine witnesses at the recording of summary of evidence. This is in contradistinction to the provisions relating to the Court of Inquiry ordered under Chapter VI of the Army Rules\footnote{72}{Ibid.} which is preliminary in nature and where the principles of natural justice are not attracted.\footnote{73}{Maj GS Sodhi v. Union of India, 1991(2) SCC 382.}

After all the evidence has been summoned and recorded, the summary of evidence is then placed before the commanding officer for consideration in accordance with Army Rule 24 who decides to remand the accused for trial by court martial\footnote{74}{See Appendix- I for details; Army Rule 24.} on an application to the officer empowered by a warrant to convene a court martial of appropriate description. The application is submitted on the form IAFD 937.\footnote{75}{IAFD-937(Revised).} The kind, the composition, the convening and the power to confirm are given in Chapter X of the Army Act, 1950 and the corresponding provisions of the Navy and the Air Force Acts of 1957 and 1950 respectively. The procedure of courts martial is given in Chapter XI of the Army Act, 1950 and the corresponding chapters of the Navy and the Air force Acts. In view of the foregoing, there is no dispute that a comprehensive process of administration of justice in the Defence forces of the union is in place. The *processual justice* in
the Defence forces is thus based on a firm footing of Statute and conventions which due to a prolonged use have attained the sanctity of law. Adherence to the procedures which are mandatory in nature is ascertained by the legal experts in the Defence forces called the Department of the Judge Advocate General.\textsuperscript{76} The commanders with the help of these advisers, administer justice in the forces and enforce the rule of law. \textsuperscript{77} It can thus be safely concluded that the processual justice is not a fiction but a reality in the defence forces.

\textsuperscript{76} See Appendix- I for details; Army Act Section 129. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General or if no such officer is available, any person approved of by the Judge Advocate General or any of his deputies.

\textsuperscript{77} See Appendix- I for details; Army rule 105. Powers and duties of judge-advocate.—The powers and duties of a judge-advocate are as follows:—

(1) The prosecutor and the accused, respectively, are, at all times after the judge advocate is named to act on the court, entitled to his opinion on any question of law related to the charge or trial, whether he is in or out of court, subject, when he is in court, to the permission of the court.

(2) At a court-martial, he represents the Judge-Advocate-General.

(3) He is responsible for informing the court of any informality or irregularity in the proceedings. Whether consulted or not, he shall inform the convening officer and the court of any informality or defect in the charge, or in the constitution of the court, and shall give his advice on any matter before the court.

(4) Any information or advice given to the court, on any matter before the court shall, if he or the court desires it, be entered in the proceedings.

(5) At the conclusion of the case, he shall sum up the evidence and give his opinion upon the legal bearing of the case, before the court proceeds to deliberate upon its finding.

(6) The court, in following the opinion of the judge-advocate on a legal point, may record that it has decided in consequence of that opinion.

(7) The judge-advocate has, equally with the presiding officer, the duty of taking care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity to examine or cross-examine witnesses or otherwise, and may, for that purpose, with the permission of the court, call witnesses and put questions to witnesses, which appear to him necessary or desirable to elicit the truth.

(8) In fulfilling his duties, the judge-advocate must be careful to maintain an entirely impartial position.
1.4.4 Opportunity to show cause integral to processual justice in the Defence forces

Whenever on the basis of a court of Inquiry or a summary of evidence, termination of service of an officer or another rank is contemplated, by the Central Government or an authority

78. See Appendix- I for details; section-14- Termination of service by the Central Government on account of misconduct.—

(1) When it is proposed to terminate the service of an officer under Section 19 on account of misconduct. he shall be given an opportunity to show cause in the manner specified in sub-rule (2) against such action:—

Provided that this sub-rule shall not apply :

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court; or

(b) where the Central Government is satisfied that for reasons, to be recorded in writing, it is not expedient or reasonably practicable to give to the officer an opportunity of showing cause.

(2) When after considering the reports on an officer's misconduct, the Central Government or the Chief of the Army Staff is satisfied that the trial of the officer by a court martial is inexpedient or impracticable, but is of the opinion, that the further retention of the said officer in the service is undesirable, the Chief of the Army Staff shall so inform the officer together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and Defence:

Provided that the Chief of the Army Staff may withhold from disclosure any such report or portion thereof if, in his opinion, its disclosure is not in the interest of the security of the State.

In the event of the explanation of the officer being considered unsatisfactory by the Chief of the Army Staff, or when so directed by the Central Government, the case shall be submitted to the Central Government, with the officer's Defence and the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(3) Where, upon the conviction of an officer by a criminal court, the Central Government or the Chief of the Army Staff considers that the conduct of the officer which has led to his conviction renders his further retention in service undesirable, a certified copy of the judgment of the criminal court convicting him shall be submitted to the Central Government with the recommendation of the Chief of the Army Staff as to the termination of the officer's service in the manner specified in sub-rule (4).

(4) When submitting a case to the Central Government under the provisions of sub rule (2) or sub-rule (3), the Chief of the Army Staff shall make his recommendation whether the officer’s service should be terminated and if so, whether the officer should be:-

(a) dismissed from the service ; or

(b) removed from the service ; or

(c) compulsorily retired from the service.

5. The Central Government after considering the reports and the officer’s Defence, if any, or the judgement of the criminal court, as the case may be, and the recommendation of the Chief of the Army Staff, may—

(a) dismiss or remove the officer with or without pension or gratuity; or

(b) compulsorily retire him from the service with pension and gratuity, if any, admissible to him.
other than the Central Government, issue of a show cause is mandatory. The provision which is considered as the most apt are the Sections 19 and 20 of the Army Act, 1950 and rules 14 and 17 of the Army Rules. The mandatory procedure outlined in these rules fortifies the position that administrative action in the Defence forces stands on the pillars of processual justice which is indeed just fair and equitable.

‘Tenure’, ‘termination’ and the processes dealing with them are main aspects of administration of the Defence Forces. The law or policy made for regulating this important aspect of service is for all purposes, a valid law, though every time a new provision is inserted; it has to pass the test of conformity to the provisions of the constitution. Thus, the legislations relating to the Defence forces have been examined with regard to their validity and found them to be in order. Further, the term civil servant 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 of Constitution of India is also not deemed to be extended to the persons belonging to the Defence forces. 79 Likewise, the protection available under the constitutional provisions relating to the services, and the rules made under Article 309 of Constitution of India are not applicable to the Defence personnel as they remain subject to the President’s pleasure. 80

1.5 Hypothesis

The Service Jurisprudence in India has followed a course charted by the conventions mellowed with the practices, legislations, precedents, ordered by the judicial

pronouncements, the principles of Administrative & the Constitutional Law, the Fundamental Rights and also very importantly, by the principles of Natural Justice. The law of tenure and termination in the Defence forces has been so far interpreted by the courts viz., the Supreme Court, the High Courts and now the Armed Forces Tribunal. However, the canvass of administrative powers under the Defence forces legislations is vast, and so are the ramifications of their exercise which form an important subject for a detailed and critical study demanding a profound knowledge of the legislations governing this aspect. So far, no research in this field has been made, hence with no past studies to bank upon, or to derive guidance for the coming generations of students and practitioners of military law, the task is challenging. The focus of the study is thus on the specific provisions concerning the tenures and termination of service and the processes followed which ultimately culminate into the orders of cashiering, dismissal, removal or discharge, applicable to various ranks in the Army, Navy and the Air Force. This would involve, examination of the multifarious facets of administrative and disciplinary processes adopted in the Defence forces to regulate the tenures of service of all ranks, order termination of service, and follow the process, the principles underlying these processes and their new vistas necessitated by the developments in the relative fields such as the new thought brought about by the judicial pronouncements. Lastly the researcher will explore the possibility of suggesting methods for further improvement in the system and help create a valuable treasure of analysis and contemplated thoughts in the form of an aide memoir for the commanders, the students and
the scholars, in uniform or otherwise, of the Law relating to the Defence Forces, in their service aspect which in fact should be the reference point for further research.

1.6 Object of the Study

Personnel of the Defence Forces in India 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 three services which are separate and peculiar to each service. The object of the present study is firstly, to trace out the evolution of the law relating to the Defence forces in India from the pre-vedic to the modern times. Secondly, to critically examine the various modes by which the tenures of service in respect of the personnel of the three services can be varied. For instance, the President of India, under the Constitution, is the Supreme commander of the Defence Forces and thus holds a special status vis-à-vis the three services in as much as, the President enjoys the absolute power of appointment and removal in respect of all of them. The President however, exercises this power with the aid and advice of the Council of Ministers. Being a vast executive power, the ramifications of its exercise have been an important subject for study. Due to a restricted and doctrinaire approach, towards the functioning and powers of the three services, the courts in India, have been rather reluctant in examining the scope of these powers vested in various disciplinary authorities of the Army, Navy and the Air Force. Whatever be the background for such an approach, a restricted judicial review inhibits the free flow of
ideas on a subject and cloaks the exercise of power in ambiguity. The researcher thus desires to study the following:

(a) the meaning, nature and scope of the tenure, termination and the processual justice in the Defence forces;

(b) the evolution of the concept of tenure and termination and the processual justice in the three services;

(c) the customs and usage of the three services dealing with tenures, the principles governing the tenures, terminations and the processual justice;

(d) the parallel provisions of the Indian Constitution relating to tenure, termination;

(e) the legislations relating to the tenures and termination in the three services;

(f) the systems pertaining to the tenures, termination and the processual justice in Defence forces, in the United Kingdom and the United states of America; and

(g) finally by the study, after a careful and critical analysis of all the above aspects of the subject, the researcher will then submit conclusion and suggestions.

1.7 Significance of the Study

In the midst of various incidents of service in the defence forces, termination is an important incidence and is like any other step in the service is mentioned as just an ‘incidence of service’. However, as a subject of study it reveals all its forms and effects along with its legal connotations. Since it results into
cessation of tenure of service and the benefits integral to it affecting the rights and status of the individual affected thereby. Lack of any kind of study or research in this subject so far, has relegated it to a less important subject of study. Hence, by undertaking the detailed study of this subject, the researcher will make a sincere attempt to highlight it as a subject fit for path breaking legal research which could become a guide line for commanders and executive authorities dealing with the tenure, termination aspect of service in the defence forces.

1.8 Research Questions

1. At the outset, the preliminary study by the researcher has revealed that no comprehensive definition of the terms tenure, termination and the processual justice is available in the texts. Hence, the first step has been to ascertain as to how can these terms be holistically explained?

2. There is no doubt that the subject of tenure, termination and processual justice is one of universal importance and is influenced by the systems prevalent in the United Kingdom and the U.S.A. The researcher’s enquiry was, therefore, directed towards the study of similarities and the dissimilarities between these countries and our own system.

3. The customs and usage have a major influence on the tenure and termination aspect in the Defence forces. The next important question has, therefore, been to ascertain
the prevalent customs and their significance in the service tenures and the termination.

4. Besides the customs of the service, the researcher’s enquiry is focused, to trace out from the plethora of legal texts and treatises, and then, to highlight the fundamental principles on which the concept of the tenure, termination and the processual justice in the three services is based.

5. The governing principles of tenure and termination and the procedure laid down therefor, are traced to the respective legislations of the forces. The researcher’s enquiry encompassed the various Acts, Rules and Regulations, dealing with respective legislations relating to the three forces with respect to their legality and sufficiency in the present context.

6. Constitution of India occupies the highest pedestal when it comes to testing the propriety of the subject. Ascertainment of the status of the tenure, termination and the processual justice in respect of the Army, Navy and the Air Force of India under the Constitution has been the next important step of the study.

7. Finally, Researcher will ensure that the conclusion drawn from the study and the suggestions made are in conformity with the aims set and commensurate with the developments in the relevant field.
1.9 Research Methodology

Considering the nature of the subject, the researcher commenced his study by utilizing the rich treasures of books and treatises available in the library and picked up from them the material relevant for tracing the historical evolution of the concept of service and thereafter proceeded ahead to extensively examine other materials like the various legislations, commentaries by the jurists, the statutory interpretations by the Supreme Court and the High Courts of India, the customs and conventions prevalent in the Defence Forces on the aspect of tenure and termination. The researcher considers the ‘Doctrinal’ or the ‘Traditional’ method of research as the primary method for study. Researcher also intends to conduct research by applying the Anthropological Study, Critical Study, Comparative Study by collecting the data as secondary as well as Primary source of information. The research would involve an intense study of the history of modern Defence services which are considered to be strongly entrenched in the British history and tradition. An intense study of the books of the yore and the contemporary India is also contemplated so as to include the thoughts or the theories derived from the Indian scriptures, books, the sayings of various Indian and the Western scholars, and those borrowed from the service tradition.

1.10 Framework of the Study

After making in-depth study of the subject, the research work is divided into seven chapters.
INTRODUCTION

1. **Chapter I** - Being the first chapter of the study, the researcher in this chapter, presents an introductory outline of the subject and discusses the meaning, nature and scope of the terms *tenure, termination* and the *processual justice* in the defence forces. The other highlights of the chapter are the hypothesis, object and significance of the research, the research questions and the methodology adopted.

2. **Chapter II** - This chapter contains an analysis of the evolution of the concept of *tenure, termination* and the *processual justice* in Defence forces over the different periods. Further, the relationship between the king or the monarch, the president or the chief executive and the disciplinary authorities vis–a–vis the personnel of the Defence forces is traced, discussed and explained with meticulous details.

3. **Chapter III** - This chapter contains discussion and analysis of the comparative view about the tenures and termination of the three systems of the Military, Naval and the Air Force in India, United Kingdom and the United States of America. The comparison is relevant as the UK and the US models are the most appropriate in the Indian context.

4. **Chapter IV** - In this chapter researcher brings to light the age old customs and the usages, which are being scrupulously followed in the Defence services and have effect on the tenures of service. The *fundamental principles* on which the tenure and termination of service in the Defence forces is based have also been discussed.
5. **Chapter V**- In this chapter researcher brings to light the Legislations relating to the tenure and termination of service in Defence forces by analyzing and examining them. Provisions and their inter-relationship with each other are also discussed in detail.

6. **Chapter VI**- In this chapter the provisions of the Constitution of India, which deal with the aspect of appointments, tenures and terminations of service in Defence forces are examined and analysed.

7. **Chapter VII**- In this chapter, after making in-depth and extensive study on the subject, the researcher puts forth the conclusion in conformity with the aims set in the beginning and submits his suggestions.

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