CHAPTER - 3

DOCTRINE OF PLEASURE
CHAPTER –III

THE DOCTRINE OF PLEASURE

-Sir Warren Fisher, Permanent Head of the British Treasury.

“Determination of the policy is the function of the ministers, and once the policy is determined it is the unquestioned and unquestionable business of the civil servant to strive to carry out the policy with precisely the same energy and precisely with the same good will whether he agree with it or not. This is axiomatic and will never be dispute. At the same time it is the traditional duty of civil servants, while decisions are being formulated, to make available to their political chiefs all the functions 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 of the Ministers of the relevant facts, the ascertainment and marshaling of which may often call into play the whole organization of a Department, demands of the civil servant the greatest care. The presentation of inferences from the fact equally demands from him all the wisdom and all the detachment he can command. The preservation of integrity, fearlessness and independent 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 enlighten government as – whether or not Minister can accept advice thus frankly placed at their disposal, and acceptance or rejection of such advice is exclusively a matter for their judgment – it enable him to be assured that their decision are reached only after the relevant facts and the various considerations have, so far as the machinery of the government can secure, been definitely brought before the minds.”145

In the second chapter discussed elaborately the protections provided to the civil servants during the East India Company, during British period especially with reference to the Government of India Act 1919 and the Government of India Act 1935. The most important aspect has been

discussed are the discussion on providing protections to the civil servants in the Constituent Assembly and its adoption under the Constitution of India. In the present chapter discussed about the Doctrine of Pleasure in United Kingdom and India its origin, scope and implications of the Doctrine of Pleasure.

The Civil Servants tenure of office is conditioned by the ‘Doctrine of Pleasure.’ Doctrine of Pleasure means that the Civil Servants hold office during the Pleasure of the King, i.e. Services of the Civil Servants can be terminated at any time without assigning any reasons and without giving any compensation for such termination. In India, the Doctrine of Pleasure though modeled upon the British pattern is different from English approach. In England the public officers and servants of the Crown held their office during the pleasure of the appointer or during the good pleasure. This doctrine is based upon the Latin maxim ‘durante bene placito.’ It means that any appointment as a Crown Servant is terminable at will unless it is expressly provided by the Law of British Parliament. In India Civil Servants hold office during good conduct known as ‘dum bene se gesserit’ also called ‘quadiu se bene gesserit,’ which means as long as he shall behave himself well.\(^{146}\)

3.1 DOCTRINE OF PLEASURE IN ENGLAND

The rule of English Common law is that a Civil Servant holds office during the pleasure of the Crown. This means that his service can be terminated at

\(^{146}\text{Union of India V. Tulasiram Patel.AIR 1985 SC 1416 at p1426}\)
any time without assigning any reasons and as per the law laid down by the English Court in *Firrty V. Odlum*, a Civil servant could not even claim arrears of his salary due or any damage for his wrongful dismissal against the Crown. Nor a Civil Servant could enforce in a Court of law any of the conditions of his service. Therefore a Civil Servant had no remedy against the Crown. The ‘Doctrine of Pleasure’ is based upon the public policy, however this doctrine is subject to what may be provided otherwise by legislation passed by the Parliament, because in United Kingdom Parliament has legislative sovereignty.

The law relating to tenure of Civil Servants has been stated by Halsbury in Halsbury’s Laws of England that:

> Except where it is otherwise provided by statute all public officers and servants of the Crown hold their appointment at the pleasure of the Crown and are generally subject to dismissal at any time without cause assigned, nor will an action for wrongful dismissal be entertained even though a special contract be proved.

The ‘Doctrine of Pleasure’ has been interpreted and applied by the English Court in *Shenton V. Smith*. Held that ‘even where the appointment is for the fixed term or during the good behaviour or under a special contract the Crown is not bound thereby.’ The decision of the Court shows that the Crown has an absolute right or power to dismiss a civil servant could not be fettered by entering into a contract. Further the Queen’s Bench in *Dunn V.*

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147(1790) 3 TR 68
148Samaraditya Pal., “law relating to Public Services”, 1988 Eastern law House P 12
150(1895) AC 292.
Queen\textsuperscript{151} held that public servant under the British Crown had no tenure but held his position at the absolute discretion of the Crown.

The Common law ‘Doctrine of Pleasure’ was, however, subject to the only limitation is that it could be fettered by statute. This could be seen in the decision of English Court in \textit{Guld V. Stuart}\textsuperscript{152} held that certain provisions of the New South Wales Service Act, 1884 were inconsistent with the conditions of the tenure at pleasure and therefore such provision being intended for the benefit and protections of the Civil Servants restricted the power of the Crown.

Lord Hebhouse observed that;

\begin{quote}
‘Unless in special cases where it is otherwise provided, Servants of the Crown hold their office during the pleasure of the Crown, not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement. If any public servant considers that he has been dismissed unjustly his remedy is not by law suit, but by an appeal of an official or political kind.'\textsuperscript{153}
\end{quote}

The only exception that was recognised from the earlier times was that the Doctrine of Pleasure could be excluded by a statute, since Crown was a party to every statute.\textsuperscript{154}

At the latter stage it was recognised that the Civil Servant could recover arrears of pay due to him before the termination of his service. Subsequent development towards the restricting the Doctrine of Pleasure took place, it

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\textsuperscript{151}1896 (1) QB 116.  
\textsuperscript{152} (1896)AC 575.  
\textsuperscript{154} Ibid.
was laid down that, if a Crown appoints a person to an office on the terms that he shall hold office during good behaviour or that he only be removed for cause, he would be entitled to bring an action against the Crown, if he was removed without cause. But no action would lie if the appointment merely stated that, the public servant would remain in service until he attain specified age as the Crown has the prerogative to terminate the service of the public servant at any time and without showing any cause.

The Crown is not bound by the contract of service between the Crown and the Civil Servant because the tenure of the Civil Servant is always subject to ‘Doctrine of Pleasure.’\textsuperscript{155} If the Statute prescribes a Civil Servant cannot be dismissed unless he is given an opportunity of being heard, the Pleasure of the Crown is restricted. Thus where a Statute governs the service conditions, it has to be seen whether expressly or by necessary implications, certain procedural requirement have to be observed. If that is so, the Pleasure of the Crown would stand modified to that extent. But non statutory regulations cannot fetter the Pleasure of the Crown.

\textbf{3.2 DOCTRINE OF PLEASURE IN INDIA}

The DOCTRINE OF PLEASURE derives from the common law of England, where any person holding an office in the service of the Crown, would hold such post till the Crown was pleased with his services. Which means when the Crown of England ceased to be pleased with the services of the Official in His Majesty’s service, his services could be dismissed, removed or reduced

\textsuperscript{155} Supra note 152
the rank. This whole thing was arbitrary and most of the times there were no reasons given for such reduction in rank, removal or termination in service.

With the establishment of Democratic form of Government this Pleasure doctrine was subjected to certain protections, so that the individual is safeguarded against the arbitrary action of the Crown, which was mostly carried out by the staff of the Crown. It was with great travail that this pleasure doctrine was altered by the parliament and the Constitution of India had adopted the pleasure doctrine with certain procedural safeguards.

These safeguards have been secured after seeing the plight of many Civil Servants who had been the victim of the conspiracies and political expediencies in the Administration in India by the British. The constituent assembly debates during the deliberations on this topic discussed the importance of incorporating the protections in the Constitutional law of India.

Paid employment is a common feature of modern life, whether the service is provided by the private sector or public sector. The question that remains eternally relevant is the employee’s job security. Laws are made by different states that seek to protect the employee in all civilized nations. The aim is to check the arbitrary exercise of the power to hire and fire by the employer. The question is whether these laws are effective in achieving the purpose of protection for the employee? For the Civil Servants, the question becomes more relevant. The Civil Servants contributes to the effective functioning of modern government. Because governments have a predilection for taking
actions that may impact negatively on the public servant’s employment, it is important that in order to enable him to discharge his functions creditably, impartially and without any kind of influences some level of protection must be accorded to the Civil Servants.

The intention of the founding father of the Constitution dealing with the security of the tenure of Civil Servants has been adopted and incorporated under Article 310 of the Constitution of the India.

Article 310 was introduced in the light of the certain changes consequential to independence and the changed circumstantial set of Government. The Pleasure of the President in case of the public servants of the Union and the Pleasure of the Governor in case of the Public Servants of the State was substituted in place of the Pleasure of the Crown.\(^{156}\) Prior to the coming into force of Indian Constitution that there was a statutory recognition that the Government Servants held office during the Pleasure and could, therefore be dismissed or removed by the Government at Pleasure subject to some protections. The position is same under the Constitution of India in its Article 310. Article 310 of the Indian Constitution reads as follows;

\textit{Article 310(1): Except as expressly provided by this Constitution every person who is a member of Defence Service or of a Civil Service of the Union or of an All India Service or holds any posts 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 posts under a State holds office during the Pleasure of the Governor of a State.

(2) Notwithstanding that a person holding a Civil Post under the Union or a State holds office during the Pleasure of the President or as the case may be, of the Governor of a State, any contract under which a person, not being a member of Defence Service or of an All India Service or of any Civil Service of the Union or a State, is appointed under the Constitution to hold such a posts may, if the President or the Governor, as the case may be, deems it necessary in order to secure the service of the person having special qualifications provided for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

The Hon’ble Supreme Court of India explained the contrasted position of English Common law and the Indian law of Doctrine of Pleasure in the leading case of *Purushottam Lal Dhingra V. Union of India*\(^{157}\) observed that:

Under the English Common law all Servants of the Crown held office during the Pleasure of the Crown and were liable to be dismissed at any time and without any reason being assigned for such dismissal but the Indian law has not adopted this rule of English law on the subject in its entirety. Section 96-B of the Government of India Act 1919 for the first time incorporates a statutory restrictions and force to the English Common Law rule that the Servants of the Crown held their office during the pleasure of the Crown and further imposed the restriction upon the exercise of the Crown Pleasure that

\(^{157}\text{AIR 1958 SC 36}\)
a Servant might not be dismissed by an authority subordinate to that by which he had been appointed.

Section 96-B of the Government of India, Act 1919 was reproduced as Section 240 of the Government of India Act 1935. Sub section (3) of the Act provides that no such servant must be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Reduction in rank was not referred to in Section 96-B of the Government of India Act, 1919 but for the first time reduction in rank was added to in sub- section (3) of Government of India Act 1935.

3.3 ORIGIN OF THE DOCTRINE OF PLEASURE

The origin of the Doctrine of Pleasure in the day of absolute monarchs and its continuance down to modern democracy is very difficult to identify. Nevertheless, some attempt have been made by the Judges and jurists from time to time to find out the basis upon which the plenary power of Pleasure of dismissal is rests. The important theory upon which the Doctrine of Pleasure is emerged is the ‘royal prerogative.’

The ‘royal prerogative’ may be defined as being that pre-eminence with the sovereign enjoys over and above all other persons by virtue of the common law, but out of its ordinary course, in right of her royal dignity, and

comprehends all the special dignities, liberties, privileges, power and royalties allowed by the common law to the Crown of England.\textsuperscript{159}

The second important theory upon which the Doctrine of Pleasure is emerged was that ‘implied term'. The rule is frequently expressed in the form that in all contract of service, except in special cases where it is otherwise provided by statute; there is an implied term that the Crown may dismiss at will.

Lord Hobhouse in \textit{Shenton}\textsuperscript{160} asserted that ‘unless in special cases where it is otherwise provided, the Servants of the Crown hold their office during the pleasure of the Crown not by virtue of special prerogative of the Crown but because such are the terms of the engagements. The Supreme Court in \textit{Union of India V. Gurbaksh Singh}\textsuperscript{161} held that the power to appoint a servant ordinarily implies a power to determine the employment.

The third theory is that it is a fundamental principle based upon the public policy that the Crown should have an unfettered discretion to terminate a public servant and that even a contract to engage him for a fixed term, if there is no statute or a law, authorising it would be ineffective. Such a contract will be invalid it being against the public policy. Therefore, the principal foundation must be that the rule exists for the public benefits and cannot be limited because public policy requires it.

\textsuperscript{159} Halsbury’s Law of England Vol VII p. 340  
\textsuperscript{160} (1895) AC 292.  
\textsuperscript{161} AIR 1975 SC 641.
During the East India Company in India the Pleasure Doctrine was not based upon prerogative, because the Board of Directors of the East India Company could not have any such prerogative to dismiss servants, as the power of prerogative can be exercised only by the Crown. The East India Company’s rule comes to an end in 1858 and on termination of Company’s government, the Indian Administration came directly under the control of Crown. Under the Government of India Act 1919 and 1935 the basis of the Doctrine of Pleasure according to one view is that doctrine be based not on prerogative. The power to remove or dismiss the services recognised under the two statutes was the power recognised in the general law of master and servants and it was not based upon the prerogative. The other view was that since India was the part of British Empire at the time when the Government of India Acts was in force and was governed by the Crown. The prerogative possessed by the Crown under the law of England was available to him in his capacity as sovereign India.\textsuperscript{162} The prerogative right of the Crown has been recognised by the Federal Court in \textit{J.R.Baroni V. Secretary of State},\textsuperscript{163} held that, the doctrine of Pleasure is based on two grounds namely prerogative and public policy.

Therefore the position under the Government of India Acts 1919 and 1935 seems to be that the Doctrine of Pleasure was based on royal prerogative.

After Indian Independence there is no room for any Crown in India. The President or the Governor although the executive head of the Union or the

\textsuperscript{162} S. Balakrishnan, Law relating to Services and Dismissals. P 112.
\textsuperscript{163}AIR 1929. Rangoon, 207
State has no power as those defined by the Constitution. Inherent power as the Crown was armed with is no longer exist. Moreover the prerogative is the anomaly in a written Constitution. The purpose of written Constitution is to lay down that the society is intended to be governed by well-defined rules and regulations and to avoid uncertainty of rights and protections from tyranny. Prerogatives are uncertain and the prerogative of pleasure is an extreme uncertain factor in any social order.\textsuperscript{164}

The pleasure incorporated under Article 310 of the Indian Constitution is not absolute as the pleasure of the Crown; it is bound at both the sides by restrictions. Article 310 of the Constitution begins with the term ‘except as expressly provided by this Constitution’ shows the power of President or the Governors under the Constitution is not absolute. Therefore under these circumstances it is difficult to hold that the Doctrine of Pleasure in India, under the present Constitution is based on the theory of prerogative.

The Hon’ble Supreme Court of India has accepted the public policy as the basis of Doctrine of Pleasure in India in \textit{Moti Ram V. North East Frontier Railway},\textsuperscript{165} the Hon’ble Justice Subba Rao expressed the basis of ‘doctrine of pleasure’ in the following words; \textit{The Doctrine of Pleasure is not based upon the any prerogative of the Crown but on public policy.}

Further the Supreme Court of India in \textit{Tulasiram Patel V. Union of India}\textsuperscript{166} held that, the doctrine of pleasure, protections provided to the civil servants and withdrawal of protections are based upon the public policy,

\textsuperscript{164} Supra note 158.p.81.
\textsuperscript{165} AIR 1964 SC 600
\textsuperscript{166} AIR 1985 SC 1416.
public good and public interest. Therefore the Civil Servants have to
discharge their duties with sense of responsibility for the public good.

3.4 NATURE OF THE DOCTRINE OF PLEASURE

The important question that arose before the Hon’ble Supreme Court of
India as to whether the ‘Doctrine of Pleasure’ is in the nature of power or a
right in *State of Uttar Pradesh V. Babu Ram Upadhyay*\(^{167}\) It was contended
that Article 310 of the Indian Constitution was a part of the executive power
of the State, that power under Article 154\(^{168}\) could be exercised by the
Governor directly or through officers subordinate to him, and that under
Article 154(2)(b) Parliament or legislature of a State could confer the same
power on any authority subordinate to the Governor or could make a law
prescribing that Governor could exercise the said Pleasure through the
particular officer. The Supreme Court of India negatives the above said
contention and held that;

> ‘the power of the Governor under Article 310 to terminate the service of
> the Government Servant at Pleasure was not a part of the executive
> power of the State under Article 154 of the Constitution, but formed part
> of the Constitutional power of the Governor. The power of the Governor
to dismiss a Civil Servant at Pleasure, subject to the provisions of
> Article 311, is not an executive power under Article 154, but a
> Constitutional power and is not capable of being delegated to officers

\(^{167}\)AIR 1961 SC 751.
\(^{168}\) Article 154; Executive power of the State,(1) The executive power of the State shall be
vested in the Governor and shall be exercised by him either directly or through the officers
subordinate to him in accordance with the Constitution.
(2) Nothing in this Article shall-
(a) be deemed to transfer to the Governor or any functions conferred by any existing law on
any other authority; or
(b) Prevent Parliament or legislature of the State from conferring by law functions on any
authority subordinate to the Governor.
subordinate to him and can be exercised by him only in the manner prescribed by the Constitution.

Further the Supreme Court of India in *Jayanthilal Amrat Lal V. F.N.Rao*\(^{169}\) observed that, the power of the President under Article 311(2) cannot be delegated. Again in *Sardarilal V. Union of India*\(^{170}\) it was reiterated by the Supreme Court of India that power to dismiss a public servant is outside the scope of executive power of Article 154 of the Constitution and cannot be delegated by the President or the Governor. But the above said propositions laid down by the Supreme Court of India are no longer a good law after the decision of the Supreme Court of India in *Shamshir Singh V. State of Punjab*\(^{171}\) Wherein, the Supreme Court overruled the earlier decisions of the Supreme Court. The Supreme Court held that, the President as well as the Governor of the State acts on the aid and advise of the Councils of Ministers in executive action and it is not required by the Constitution to act personally. Therefore, held that the appointment or dismissal or removal of a person belonging to the service of the State is not personal function but an executive function of the Governor exercised within the rules made in that behalf under the Constitution.

Therefore it is now well settled that the Pleasure of the President or the Governor under Article 310(1) is exercised not in any personal capacity but as the head of the Government acting on the aid and advice of the Councils

\(^{169}\)AIR 1964, SC 648.  
\(^{170}\)\{1971\}1 SCC 411.  
\(^{171}\)\{1974\}2 SCC831.
of the Ministers. The power of removal at Pleasure under the Constitution is in the nature of an executive power of the President or the Governor.

Further in the Historical decision of the Supreme Court of India in *Union of India V. Tulasiram Patel* \(^{172}\) held that the Pleasure of the President or the Governor is not required to be exercised by either of the President or the Governor personally. Clause (1) of Article 311 of the Constitution provides that government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Therefore, though under Article 310(1) the tenure of the Civil Servants is at the Pleasure of the President or the Governor, the exercise of such Pleasure can be either by the President or the Governor acting with the aid and the advice of the Council of Ministers or by the authority specified in the Acts made under Article 309 of the Constitution or in rules made under such Acts.

Therefore after going through the various judgments of the Hon`ble Supreme Court of India it is now well settled that the power of the President or the Governor to dismiss or remove a Civil Servant at Pleasure under the Indian Constitution is in the nature of an executive power of the President or the Governor.

\(^{172}\)AIR 1985 SC 1416.
3.5 SCOPE OF THE DOCTRINE OF PLEASURE IN INDIA

The 'Doctrine of Pleasure' is not absolute in India. The 'Doctrine of Pleasure as incorporated in Article 310 of the Indian Constitution is not an absolute and is not untrammeled or free of all fetters. Unlike the Doctrine of Pleasure in United Kingdom, in India the Doctrine of Pleasure in Article 310 is not subject to any law made by the Parliament of India but is subject to what is expressly provided by the Constitution. Therefore the only restriction placed on the exercise of the Doctrine of Pleasure is an express provision in that behalf in the Constitution. Article 311 of the Constitution of India expressly provided provisions imposing fetter or restriction upon the exercise of Pleasure by the President of India or the Governor of the State as the case may be.

The scope of the Doctrine of Pleasure has been considered by the Supreme Court of India in *State of Bihar V. Abdul Majid*\(^{173}\) the rule of English law expressed in Latin maxim *durante bene placito*\(^{174}\) has not been fully adopted under the Constitution of India. In the instant case a Sub- Inspector of Police, was dismissed from service on the ground of cowardice and was later reinstated in service. The Sub- Inspector of Police filed a petition for claiming arrears of salary. The Government contested the claim of the arrears of salary for the period of dismissal of the Government servant. The Hon'ble Supreme Court upheld the claim of the petitioner on the ground of contract or quantum merut.

\(^{173}\)AIR 1954, SC 245.
\(^{174}\) 'Means that any appointment as a Crown Servant is terminable at will unless it is expressly provided by the Law of British Parliament.'
The view of the Supreme Court stated supra was reiterated by the Supreme Court in *Om prakash V. State of Uttar Pradesh*\textsuperscript{175} It was held that when the dismissal of the Civil Servant was found to be unlawful, the Civil Servant is entitled to get his salary from the date of dismissal to the date when his dismissal was declared unlawful.

Article 310 of the Indian Constitution which embodies the Doctrine of Pleasure applies to the following categories of the persons they are;

(i) Members of the Defence Services,
(ii) Holders of any posts connected with Defence,
(iii) Members of Civil Services,
(iv) Holders of any posts, and
(v) Members of All-India Services.

Therefore this includes the entire Government Service on the Civil as well as on the Defence side. There no distinctions between the various types of Government Services and Article 310 of the Indian Constitution applies to all, whether a servant is a permanent, temporary or on probation.

Thus it clearly shows that, the rule of an office being held during the Pleasure of the Governor cannot be extended to an office under the Universities or such other authorities. The Pleasure doctrine does not extend to a person who is not a Government Servant. Similarly the provisions of Article 310 of the Indian Constitution cannot be made applicable to a

\textsuperscript{175}AIR 1955 SC 600.
statutory bodies constituted under a statute. A statutory body has to act in accordance with the terms of the Statute.\textsuperscript{176}

Article 310(1) starts with the word “Except as otherwise expressly provided by the Constitution” means that the Doctrine of Pleasure is not absolute and is limited by other provisions of the Constitution. In respect of certain Constitutional functionaries, the tenure is specially provided for in the Constitution. These Constitutional functionaries are Judges of the Supreme Court and High Courts, Comptroller and Auditor General of India and the Chief Election Commissioner.

Thus it appears that special provisions have been incorporated in the Constitution relating to the manner of termination of these officers. The Judges of the Supreme Court, High Courts, Comptroller and Auditor General of India and the Chief Election Commissioners hold office during good behaviour and can be removed from office on the ground of ‘proved misbehaviour.’

The Doctrine of Pleasure as developed in England has not been accepted in full in India. It is subject to the provisions of Article 311 which laid down procedural safeguards to Civil Servants. Therefore Article 311 becomes a proviso to Article 310 of the Constitution. It indicates that the services of a Civil Servant cannot be terminated at pleasure unless the mandatory provisions of Article 311 have been followed. The Doctrine of Pleasure is further restricted by the General Law which empowers any Civil Servant to

approach the Court of law to institute a suit for enforcing any conditions of his service.

The Pleasure doctrine under Article 310 of the Constitution of India is applicable to the members of the Civil Service as well as the defence services. Whereas Article 311(2) of the Constitution places certain restrictions upon the exercise of the pleasure is applicable only to the members of the civil service. Therefore the power of the President in relation to the servants serving in defence service is absolute. The Supreme Court of India in *Union of India V. K.S.Subramanian*,¹⁷⁷ held that noncompliance with the rules before terminating the services of the a member of the defence services does not call for any interference. Therefore the power of the President under Article 310 of the Constitution of India is absolute in respect of defence personnel.

The limitation or restrictions on Doctrine of Pleasure under the Constitution has been interpreted by the Supreme Court of India, in *Dinesh Chandra V. State of Assam*¹⁷⁸ The Hon`ble Supreme Court of India observed that;

> The Services of the permanent Government Servant cannot be terminated except in accordance with the rules made under Article 309 of the Indian Constitution, subject to Article 311(2) of the Constitution and the fundamental rights.

Therefore in addition to Article 311(2) and fundamental rights, Article 309 also places restrictions on the Doctrine of Pleasure as envisaged by Article 310 of the Constitution.

¹⁷⁷ SLR 1976(2) SC 519
¹⁷⁸ AIR 1978 SC 17.
It is true that according to Article 310 of the Indian Constitution the Civil Servants holds office during the Pleasure of the President or the Governor as the case may be, but the Pleasure under Article 310 of the Constitution has to be exercised according to the rules framed or according to law made under Article 309 of the Constitution of India.

Further the Supreme Court of India in *Union of India V. J.N. Sinha*\(^{179}\) held that the Doctrine of Pleasure is subject to the rules or the law made under Article 309 of the Constitution as well as the conditions prescribed under Article 311 of the Constitution.

The above decisions of the Supreme Court of India shows that Article 309 of the Indian Constitution is not an exception to Article 310(1) of the Constitution, it merely confers upon the appropriate legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the Constitution. Thus Article 309 is subject to Article 310 (1) and any provisions restraining the exercise of the Pleasure of the President or the Governor.

The Important question arose before the Supreme Court of India is whether the Doctrine of Pleasure can be fettered by contract, in *Satish Chandr V. Union of India*.\(^{180}\)

\[^{179}\text{AIR 1971 SC 40 at P 42}\]  
\[^{180}\text{AIR 1953 SC 250.}\]
may be cannot be restricted under any contract entered into with the employee and if there is any such agreement, the same could be void.

Thus the power of President or the Governor as the case may be, to dismiss a Government Servant cannot be taken away by any agreement; even if such agreement is made it will be invalid. The service of an employee can be terminated even before the expiry of the contract period.

Further in *Anil Kumar Singh Yadav V. Union of India and anothr* the question arose as to whether the Doctrine of Pleasure is applicable to pure personal or political appointments. The Division Bench of the High Court of Allahabad observed that;

‘Where the appointment of a Chairman and a member of Oil selection Board was made on purely personal or political considerations and in the order constituting the Board tenure was not fixed, but it was stipulated in the terms and conditions of the appointment of the Chairman and the members that the maximum limit of the tenure of appointment would not exceed two years without any restrictions as to the minimum limit of tenure, the Board could be dissolved terminating the appointments of the Chairman and the members at any time applying the Doctrine of Pleasure and the members cannot complain that the termination is either contrary to the definition of tenure or the termination violates Article 14 of the Indian Constitution.

Further observed that where the appointment which are made purely on personal or political consideration do not create any legal right in the appointee to challenge the same before the Court of law for reinstatement.

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Thus where the appointment is not governed by Article 309, 310 311 of the Constitution of India the respondents are certainly competent in terminating the appointment applying the Doctrine of Pleasure.\textsuperscript{182}

Further the Doctrine of Pleasure of President or the Governor does not applicable to the civil servant beyond the age of superannuation. The Supreme Court in \textit{State of West Bengal V. Nripendranath}\textsuperscript{183} held that a civil servant holds office during the pleasure of the President or the Governor as the case may be. But when the civil servant is retired from the service in accordance with the conditions of service, he ceased to hold the office from the date of retirement. The pleasure of the President or the Governor does not empower to continue the civil servant beyond the age of superannuation for the purpose of holding disciplinary proceedings.

The Scope of the Doctrine of Pleasure of the President of India has been interpreted by the Constitutional Bench of the Hon’ble Supreme Court of India in \textit{B.P. Singhal V. Union of India and another}\textsuperscript{184} The Writ Petition is filed as public interest litigation in the wake of removal of the Governors of the States of Uttar Pradesh, Gujarat, Haryana and Goa on 2.7.2004 by the President of India on the advice of the Union Council Ministers.

The learned senior council Mr. Soli Sorabjee, appearing on behalf of the Petitioner, submitted that to ensure the independence and effective functioning of the Governors, certain safeguards will have to be read as limitations upon the power of the removal of Governors under Article 156(1)

\textsuperscript{182}Ibid at Para 22.
\textsuperscript{183} AIR 1966 SC 447
\textsuperscript{184} Writ Petition (civil) NO. 296 OF 2004. Dated 7\textsuperscript{th} May, 2010.
having regard to the basic structure of the Constitution. He clarified that the petitioner’s submission is not that a Governor has a fixed irremovable tenure of five years, but that there should be some certainty of tenure so that he can discharge the duties and functions of the Constitutional office effectively and independently. Certainty of tenure will be achieved by fixing the norms for removal. On the other hand, recognising the unfettered discretion will subject to a Governors to a constant threat of removal and make him subservient to the Union Government, apart from demoralizing him.

On the other hand the learned Attorney General appearing on behalf of the respondents submitted that the provision that the Governor shall hold office during the Pleasure of the Government, meant that the President’s Pleasure can be withdrawn at any time resulting in the removal of the Governor, without assigning any reason. Further submitted that founding father had specifically provided that the Governor will hold office during the Pleasure of the President, so as to provide the Union Government, the flexibility of removal if it lost confidence in a Governor or if he was unfit to continue as Governor.

The Supreme Court observed that ‘Doctrine of Pleasure’ means that the holder of an office under pleasure can be removed at any time, without notice, without assigning cause and without there being a need for any cause. But where a rule of law prevails, there is nothing like unfettered discretion or unaccountable action. Constitution of India provides that some office will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the “fundamentals of the Constitutionalism”. Doctrine of Pleasure however, is not a licence to act with unfettered
discretion to act arbitrarily, whimsically or capriciously. The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the authority, but can only be for valid reasons.

Therefore the Doctrine of Pleasure as developed in England has not been accepted in India. The Doctrine is subject to the provisions of Article 311 of the Constitution which lays down the procedural protections to the Civil Servants against the arbitrary dismissal, removal and reduction of rank. Thus Services of any Civil Servant cannot be terminated at Pleasure unless the mandatory provisions of Article 311 of the Constitution have been observed. The power to terminate a Service of the Civil Servant is not a personal right of the President or the Governor of the State. It is an executive power which is to be exercised at the advice of the Councils of the Ministers.

3.6 LIMITATIONS ON DOCTRINE OF PLEASURE

The Doctrine of Pleasure as incorporated under Article 310 of the Indian Constitution is not absolute in India and is subject to limitations lays down under the Constitution of India. The following are the limitations on the exercise of the Doctrine of Pleasure.

(i) The pleasure of the President or the Governor is clearly controlled by the provisions of Article 311, so the field that is covered by Article 311 on the fair and reasonable constructions of the relevant word used in that Article, would be excluded from the operation of the absolute Doctrine of Pleasure. The Pleasure of the President is still
available, but it has to be exercised in accordance with the requirement of Article 311 of the Constitution.\textsuperscript{185}

(ii) The Doctrine of Pleasure does not confers a power on the President or the Governor to compel a government servant to continue in service against his will after reaching the age of superannuation, except where the service of such person are required in the public interest.

(iii) The tenure of the Judges of the Supreme Court,\textsuperscript{186} Judges of the High Courts,\textsuperscript{187} Comptroller and Auditor general of India,\textsuperscript{188} The Chief Election Commissioner,\textsuperscript{189} and The Chairman and the

\textsuperscript{185} Moti Ram Deka V. General Manager, North East Frontier Railway, AIR 1964 SC 600

\textsuperscript{186} Article 124(4); A judge of the Supreme Court shall not be removed from the office except by an order of the President after an address by each House of Parliament supported by majority of the total membership of that House and by a majority of not less than two- third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

\textsuperscript{187} Article 218 A judge of the High Court shall not be removed from the office except by an order of the President after an address by each House of Parliament supported by majority of the total membership of that House and by a majority of not less than two- third of the members of the House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

\textsuperscript{188} Article 148(1) there shall be a Comptroller and Auditor General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as the Judges of the Supreme Court.

\textsuperscript{189} Article 324(5) Subject to the provisions of the any law made by the Parliament, the conditions of the service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:
Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as the Judge of the Supreme Court and the conditions of service Chief Election Commissioner shall not be varied to his disadvantage after his appointment.
Provided further that, any other Election Commissioners or a Regional Commissioners shall not be removed from the office, except on the recommendations of the Chief Election Commissioner.
members of the Public Service Commissions\textsuperscript{190} are not dependent
upon the pleasure of the President or the Governor.

(iv) The Doctrine of Pleasure is subject to the Fundamental Rights.
Articles 14, 15, 16 and Article 19 of the Indian Constitution place
limitations on the free exercise of the power of the President or the
Governor in terminating the Services of the Civil Servants.

The Hon`ble Supreme Court in \textit{Kameswar Prasad V. State of
Bihar}\textsuperscript{191}Rule 4A of the Bihar Government servant`s conduct rules,
1956, in so far as it prohibited any form of demonstration was
struck down as being violative of the fundamental rights contained
under Article 19(1)(a) and 19(1)(b) of the Constitution of India.

(v) Article 320(3)(c) places the limitation on the Doctrine of pleasure.

Article 320(3)(c) provides that in all disciplinary matters relating to
the Civil Servants, Union Public Service Commission or the State
Public Service Commission is to be consulted etc.,

(vi) The Constitutional protections provided to the Civil Servants are
restrictions upon the Doctrine of Pleasure. These protections are
available against the arbitrary exercise of power of terminating the

\textsuperscript{190} Article 317 Removal and suspension of a members of Public Service Commission.-{(1)
Subject to Provision of clause (3), the Chairman or any of the members of Public Service
Commission shall only remove from his office by an order of President on the ground of
misbehaviour after the Supreme Court, on reference being made to it by the President, has,
on enquiry held in accordance with the procedure prescribed in that behalf under Article
145, reported that the Chairman or such other member, as the case may be, ought on any
such ground to be removed.

(2) The President, in case of the Union Commission or a Joint Commission and the Governor
in case of a State Commission, may suspend from office the Chairman or any other member
of the Commission in respect of whom a reference has been made to the Supreme Court
under clause (1) until the President has passed the orders on receipt of the report of the
Supreme Court on such reference.

\textsuperscript{191} AIR 1962 SC 1166.
services of Civil Servants. The Doctrine of Pleasure in India is based on the implied power of the master to remove his servant under the general law of master and servant and on public policy.

3.7 - IMPLICATIONS OF DOCTRINE OF PLEASURE

The object of the doctrine of Pleasure as incorporated under Article 310 of the Constitution of India is, the Government has the power to punish any of its servants for misconduct committed not only in the course of his official duties but even for the misconduct in private capacity. The Government has right to expect that all the Servants of the Union of India as well as the Servants of the State have to observe certain standards of decency, morality and ethics for the good administration. If the Government fails to maintain the standard and discipline among the Civil Servants of the State there would be a catastrophic fall in the in the administration.

However, the Doctrine of Pleasure has dangerous implications also. That the Pleasure doctrine allows the President or the Governor to terminate the Service of the Civil Servants confers the scope of political victimisation and is frequently misused. This position has been strengthened by the Judgement of the Supreme Court of India in Tulasiram Patel’s case\(^{192}\) wherein the Supreme Court held that government employees should be kept outside the preview of the principles of natural justice so far as the service conditions are concerned.

\(^{192}\) AIR 1985 SC 1416
Further, the repugnant theory was supported by, The former Union Minister for Law and Justice, M. Veerappa Moily, said that the Centre would consider amending Articles 309, 310 and 311 of the Constitution removing protection and safeguards in prosecuting corrupt public servants.

The Minister was of the view that prior sanction should not be necessary for prosecuting a public servant "who has been trapped red-handed or found in possession of assets disproportionate to known sources of income.

Further he said: "There is no gainsaying that the provisions of Article 311 have come in the way of bringing corrupt civil servants to book. Article 311 would require a revisit." Article 311 of the Constitution might be repealed along with the Article 310 and legislation should be passed under Article 309 to provide for the terms and conditions of service of public servants, including necessary protection against arbitrary action.\(^{193}\)

But what is the intention of the Government in divesting the servants of the State of these fundamental principles of natural justice? The founding fathers of the Constitution did not allow the Government to deprive the protections provided under the Constitution. However it is the duty or the obligation of the Servants, to maintain and to observe certain standards of decency, morality and ethics for the good administration. The Hon’ble Supreme Court of India in a landmark Judgment in \textit{T.R Rangarajan V.}\(^{193}\)

\(^{193}\) The Hindu 'Need to revisit constitutional provisions giving protection to civil servants': Mr Veerappa Moily dated 13th September 2009
Government of Tamil Nadu\textsuperscript{194} held that the Government Servants has no right to go on strike, neither moral nor statutory. In the instant case the Government of Tamil Nadu took an unprecedented action and terminated the services of the two lakh employees under the Tamil Nadu Essential Services Maintenance Act 2002. The Government employees had gone on strike for their demands. The employees had challenged the validity of the Act and Ordinance. The Court said that ‘Government employees cannot hold society to ransom by going on strike.’ Further Court said that, if the employees felt aggrieved by the Government action, they should seek redressal from the statutory machinery provided under different statutory provision for redressal of their grievances.

Therefore the Doctrine of Pleasure is applicable to both the Defence as well as civil personnel. The Pleasure of the President or the Governor to dismiss or remove the servants does not extend to the servants of the autonomous bodies, servants and officials of the Supreme Court and High Court. The Pleasure Doctrine also does not apply to the persons governed by special Constitutional provisions like Chief Election Commissioner, Judges of the Supreme Court and High Courts, Auditor General, who holds office during the good behaviour.

The power of Pleasure of President or the Governor is not unrestricted or unlimited; it is subject to the other Constitutional provisions. The most important Constitutional provision is Article 311. The Article 310 of the Indian Constitution confers Power upon the President or the Governor and

\textsuperscript{194} AIR 2003 SC 3032
Article 311 of the Constitution imposes a restrictions upon the power are always read to gather. The Pleasure doctrine is also subject to fundamental rights. The doctrine of pleasure neither is fettered by legislation nor by contract. The pleasure of the president to dismiss or remove the civil servants does not mean that a civil servant can be compelled to hold any post against his will, it is open for the civil servants to continue or not to continue in a particular post is the right of the civil servant.

Therefore Article 311 of the Constitution has improved the position of the Civil Servants in as much as the guarantee the security of the tenure to discharge their lawful duties without any sort of fear of taking action and it also extends even to a case of removal of Civil Servants. Article 311 is not a limitation on the power of the President or the Governor of the State to terminate the services of the Civil Servants of the Union of India or the State as the case may be. The two Articles 310 and 311 of the Constitution shall be read together.