A House of Cards
Need for Reform in Civil Services

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The Central Civil Services (Conduct) Rules, 1964, which apply to all public servants in the country, date from colonial times and are reflective of a colonial mindset. Civil servants no longer want to be treated as unruly kids ignorant of their roles and responsibilities. These dated rules must be consigned to the dustbin of history and replaced by a new code of ethics based on self-regulation, accountability, and transparency.

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Reason? What does anybody want reason for?
Rules are the only thing that is ever needed.
— *Tasher Desh*, *Rabindranath Tagore*

In his celebrated satirical dance drama "Tasher Desh" (The Land of Cards), Rabindranath Tagore portrayed a sterile society governed strictly by listless conventions and lifeless rules, imposed with an arthritic rigidity. In such a society, there is no place for inquiry or exploration, and nobody is allowed to question the propriety of these rules or ask for the reasons behind conventions. This society demands unquestioning obedience to rules, and views even the slightest prospect for change with great apprehension. It is a closed society caught up in a time warp that wants to continue in this way for ever. The metaphor of the cards encapsulates the sterility of this society, in which no one has any occasion to think, inquire, or debate. It is a stale, comatose society that kills all endeavours, and sacrifices growth for the sake of status quo, where rules roost supreme and human beings exist merely for the purpose of satisfying the rules.

The plethora of archaic rules dating from the colonial times and reflective of a colonial mindset that still govern our lives is reminiscent of such a society. One such gem is the Central Civil Services (CCS) (Conduct) Rules, 1964, which apply to all public servants in the country. These require them to maintain absolute integrity, devotion to duty, and political neutrality, which are essential requirements of any public servant in any country, but being guided by a surveillance mentality, their writ often assumes ludicrous proportions. They prohibit government servants to take part in the editing or management of any newspaper or periodical, to accept any gift, not even by their family members, except from near relatives or friends on certain occasions. And, if the value of such gift exceeds specified limits that are linked to the position of the public servant in the government hierarchy, they have to report it to the government. They cannot speculate in stock, share, or any other investment except "occasional investments made through stock brokers." There are many other prohibitions as well.

The actions proscribed in these rules are much older than the rules themselves. Specific actions were forbidden from time to time through notifications issued under the Fundamental Rules and

the Civil Service Regulations, like barring government servants from accepting gifts (1876), buying and selling property (1881), making commercial investments (1885), promoting companies (1885), and accepting commercial employment after retirement (1920).[1] In 1947, with the enactment of the Prevention of Corruption Act, a new set of offences was added. In the 1930s, a compendium of instructions containing "do's and don'ts" was issued and collectively called Conduct Rules, which was issued as distinct rules in 1955. In 1964, the following recommendations of the Committee on Prevention of Corruption (Santhanam Committee), these rules were considerably enlarged.

These have subsequently been updated to include additional norms of behaviour such as prohibiting demanding and accepting dowry, prohibiting sexual harassment of women employees, and, recently, prohibition to employ child labour as domestic help, reflecting the changing expectation of society from public servants. But, the spirit behind these rules, surveillance, command, and control, and the mistrust inherent in them have not changed in their 50 years of existence, though the country has moved far ahead with the times.

These rules are likely being observed more in breach than compliance, but the most interesting and outrageous of them is Rule 9 that prohibits any public servant to publish "in his own name or anonymously or pseudonymously or in the name of any other person" any "statement of fact or opinion which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government." This is an anachronism completely out of tune with the modern times. These rules were framed when the government's philosophy was dominated by an overwhelming command-and-control attitude that brooked no criticism and demanded uniform and unquestioning obedience from all its employees. This command and control structure has since been dismantled, but the surveillance and disciplining attitude still remains intact. A set of rules framed 50 years ago cannot be applied mindlessly to situations that are now vastly different.

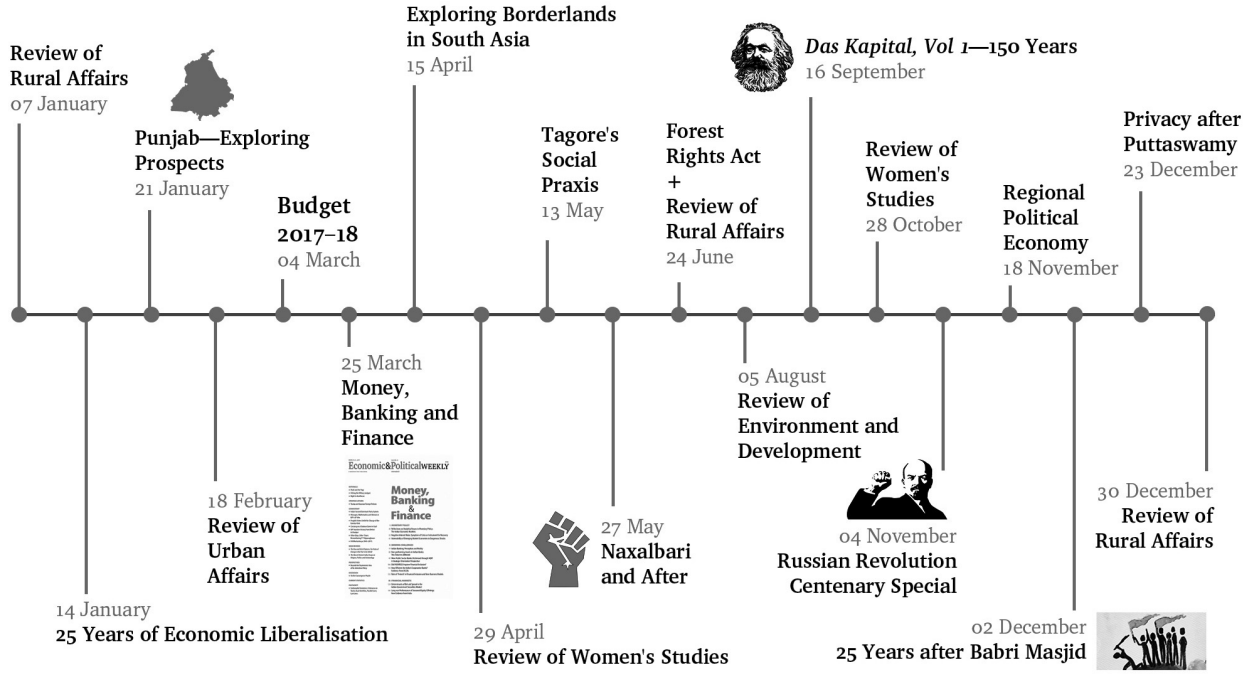
Rule 9 of the CCS (Conduct) Rule is, in fact, an assault upon the fundamental right to freedom of speech and expression guaranteed in the Constitution to every citizen, which also includes government servants. As the former justice of Andhra Pradesh High Court, Alladi Kuppuswami, has rightly observed,

> Democracy is based on fair criticism; and freedom of speech and expression is highly protected by the Indian Constitution. A blanket prohibition of criticism of the policies of the government is invalid and void, and it makes no difference if the person criticising happens to be a government servant or the employee of a public institution.[2]

Various Supreme Court judgments also unequivocally corroborate this view.

Article 19(1)(a) of the Constitution guarantees the fundamental right to "freedom of speech and expression" to "all citizens" of India, subject to "reasonable restrictions" which are enumerated in sub-clause (2). Freedom to criticise is inherent in the freedom of expression, subject to the above restrictions. In *Kameswar Prasad v State of Bihar* (AIR 1962 SC 1166), the Supreme Court held that "as Article 19 applies to all citizens, government servants in common with all other citizens enjoy the protection of

EPW's Special and Review Issues Published in 2017



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all fundamental rights"[3] and that by becoming a government servant, one certainly does not surrender one's fundamental rights.

> We find ourselves unable to accept the argument that the Constitution excludes government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III (Fundamental Rights), the Court had observed.[4]

The Supreme Court has repeatedly emphasised through various judgments that fundamental rights are basic to the structure of the Constitution, which is unalterable. In *Romesh Thappar v State of Madras* (1950 SCR 404), the Supreme Court also observed, "There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation."[5] In *Kedaranath v State of Bihar* (AIR 1962 SC 955), while holding that Section 124A of the Indian Penal Code does not infringe on Article 19(1)(a) and is valid, the Supreme Court observed: "criticism of public measures or comment on government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental rights of freedom of speech and expression."[6] It had further stated categorically that a

> citizen has a right to say or write whatever he likes about the government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the government established by law or with the intention of creating public disorder.

The "reasonable restrictions" upon the fundamental right to freedom of speech as enumerated in Article 19(2) of the Constitution include restrictions imposed

> in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

However, under Article 33, Parliament is empowered to modify, restrict or even abrogate any of the fundamental rights in their application to the armed forces, police, intelligence agencies, etc, which again corroborates that Parliament has no power to impose such restrictions on any other citizen. Further, under Article 13(2), the state shall not make any law that takes away or abridges fundamental rights and any law that contravenes this clause shall be void. Hence, if the restrictions imposed by a rule are not reasonable, then such rule contravenes Article 19(1)(a).

What Is 'Public Order'?

Among the reasonable restrictions, the one most often resorted to by the government in disciplining civil servants is "public order." In this context, the question as to what constitutes public order and whether a rule prohibiting a government servant from criticising the policies of government can be considered a reasonable restriction in the interest of public order within the meaning of Article 19(2) assumes importance. In *Superintendent of Central Prison v Ram Manohar Lohia* (1960, 2 SCR 821), it was held that "public order is synonymous with public safety and tranquillity. It is the absence of disorder involving breaches of local significance." Earlier, in the *Kameswar Prasad v State of Bihar* case, the Court had observed that there must be a proximate and reasonable nexus between the nature of the speech prohibited and public disorder, and that the connection has to be intimate, real and rational. This is supported by the judgment in *Rex v Basudev* (1949 FCR 657): "the connection contemplated between the restriction and public order must be real and proximate, not far-fetched or problematical."[7]

Courts in India have increasingly been supportive of the protection of citizen's fundamental rights and in particular of the right to freedom of speech and expression. In the recent judgment striking down Section 66A of the Information Technology act, 2000, the Supreme Court was unsparing in its criticism of the act and in particular of the possibility of its misuse by the powers that be:

> We hold that the section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth.

The judgment strongly emphasised that liberty of thought and expression was something that would not be compromised under any situation in a democracy, and hence the section was declared unconstitutional as "being violative of article 19(1)(a) and not saved by Article 19(2)" which kicks in only when the views expressed reach the level of incitement causing public disorder. The Supreme Court further observed that

> Section 66A is cast so widely that virtually any opinion on any subject would be covered by it, as any serious opinion dissenting with the mores of the day would be caught within its net. Such is the reach of the section and if it is to withstand the test of constitutionality, the chilling effect on free speech would be total.[8]

Given the coverage of definition, this argument can be applied mutatis mutandis to Rule 9 of the CCS Conduct Rules also.

Governments have always felt jittery and threatened at the slightest signs of dissent, for obvious reasons. Even Nehru, a democrat at heart, unhesitatingly went with the first amendment to our Constitution in 1951, amending Article 19(2), imposing "reasonable restrictions" as discussed earlier. This was ironically in response to the Supreme Court judgment in the *Romesh Thapar v State of Madras* case, overturning the ban on the Marxist journal *Crossroads*, in recognition of the unfettered freedom of expression of citizens in a democracy as enshrined in the original Constitution drafted by the Constituent Assembly. Even in September 2014, the Supreme Court had delivered a landmark judgment which went virtually unnoticed amidst the din of J Jayalalithaa's arrest and subsequent Supreme Court judgment granting her bail in the disproportionate assets case.

The case, *Vijay Shankar Pandey and Others v Union of India and Another*, involved a civil service officer of the UP cadre when he, along with Julio Rebeiro and others, had filed a writ petition on behalf of the non-governmental organisation (NGO), India Rejuvenation Initiative (IRI), on the need to flush the black money stashed by Indians abroad. The Akhilesh Yadav government reacted by filing a charge sheet against him on five counts, including one for not taking government's

permission for joining the NGO and "deposing in an inquiry where the Central and State Governments were likely to be criticised" and hence rendering his conduct violative of the applicable Conduct Rules. The court held that joining in averments made in a writ petition before a court was tantamount to participating in a judicial process that required no permission whatsoever. It reiterated that an individual's fundamental rights did not get diminished by being a member of the civil service. Holding that "the purpose behind the proceedings appeared calculated to harass the appellant since he had dared to point out certain aspects of mal-administration," the Court was unscathing in its remarks against attempts to restrict the citizens' rights:

> The Constitution declares that India is a sovereign democratic Republic. The requirement of such democratic republic is that every action of the State is to be informed with reason. State is not a hierarchy of regressively genuflecting coterie of bureaucracy.[9]

Criticism is inherent in the right to freedom of speech and expression. Rule 9 makes an underlying assumption that any criticism of the government is synonymous with indiscipline and insubordination. The reasoning that if every employee begins to criticise the government, it would lead to widespread chaos and disorder is too fallacious. Criticism does not mean that disobedience and criticising the government is not tantamount to disobeying the orders of the government. Democracy is based on fair criticism and that is the reason why the right to freedom of speech and expression has been made a fundamental right protected by the Constitution. Under Article 13(2), Rule 9 of the CCS (Conduct) Rules is therefore ultra vires to this fundamental right and is, hence, automatically void.

The CCS (Conduct) Rules, 1964 have been severely criticised by commentators, demanding their replacement by a broad set of "code of ethics" like in other countries. In the United Kingdom, as per the Civil Service Values (2006) and a legally enforceable code of conduct, civil servants are expected to observe integrity, honesty, objectivity and impartiality. In the United States (US), government employees follow a code of ethics that was devised in 1958. The Ethics in Government Act, 1978 established the US office of government ethics to foster high ethical standards for employees to strengthen the public's confidence that the government's business is conducted with impartiality and integrity and without conflict of interest. The Organisation for Economic Cooperation and Development Council and the European Union both prescribe a broad set of principles governing ethical conduct of employees in public institutions.[10] In contrast, the CCS (Conduct) Rules, 1964 do not lay down a code of ethics for Indian public servants, but merely prescribe a series of do's and don'ts.

Way back, in 1957, the Department of Administrative Reforms of the Government of India had prepared a code of ethics for public services, prescribing standards of integrity and conduct which were never issued. In 2006, the Department of Personnel had drafted a Public Service Bill emphasising political neutrality, objectivity, impartiality, integrity, honesty, etc, for all public servants, but like the code of ethics, this too was soon forgotten. The second Administrative Reforms Commission in its Fourth Report (2007), while recommending a code of ethics for public servants, also emphasised a set of "civil service values" "like integrity, impartiality, commitment to public service, open accountability, devotion to duty and exemplary behaviour," the transgression of which should attract disciplinary action.[11]

Nearly 70 years after independence, civil servants in this country no longer want to be treated as unruly kids ignorant of their roles and responsibilities. The house of cards in which they have been made to live for so long needs to be dismantled once and for all. The dated CCS (Conduct) Rules, 1964, must be consigned to the dustbin of history and replaced by a new code of ethics based on self-regulation, accountability and transparency.

NOTES

1 Fourth Report of the second Administrative Reforms Commission, Para 2.7.3 to 2.7.4, http://arc.gov.in/4threport.pdf, accessed on 18 May 2015.
2 Justice Alladi Kuppaswamy, "Conduct Rules and Fundamental Rights," *Frontline*, Vol 16, No 18, 1999, http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl1618/16180860.htm, accessed on 10 April 2015.
3 Justice Alladi Kuppaswamy, 1999.
4 http://indiankanoon.org/doc/687159/, accessed on 12 April 2015.
5 http://indiankanoon.org/doc/456839/, accessed on 22 April 2015.
6 http://indiankanoon.org/doc/111867/, accessed on 20 April 2015.
7 Justice Alladi Kuppaswamy, 1999.
8 Judgment of the Supreme Court in the case of *Shreya Singhal v Union of India*, paragraphs 83 and 90, http://supremecourtofindia.nic.in/FileServer/2015–03-24_1427183283.pdf, accessed on 16 May 2015.
9 Para 42 of relevant Supreme Court Judgment, http://judis.nic.in/supremecourt/imgs1.aspx?filename=41944, accessed on 1 May 2015. R K Raghavan, "In Furtherance of Good Governance," *Hindu*, 25 October 2015.
10 Tenth Report of the second Administrative Reforms Commission, Chapter 16, http://arc.gov.in/10th/ARC_10th Report_Ch16.pdf accessed on 18 May 2015. B P Mathur, *Ethics for Governance: Reinventing Public Services,* Routledge, New Delhi, 2014, pp 286–96.
11 B P Mathur, 2014, pp 302–09.

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