
UNIT 24 RIGHTS OF PUBLIC SERVANTS

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24.0 OBJECTIVES

After you have read this unit, you should be able to:

- explain the fundamental and other rights guaranteed to the citizens and the public servants
- discuss the restrictions imposed by the government in exercise of the rights by Public Servants
- highlight the service rights of the government employees.

24.1 INTRODUCTION

The constitutions of different countries guarantee certain fundamental rights to all the citizens irrespective of birth, caste, creed, colour or sex. The public servants are the citizens of the country, constitutions empower the states to regulate their rights and impose obligations on the public servants.

In regard to various rights of public servants, different countries have evolved different systems of rights over a period of time depending upon the genius of their peoples, their historical background, the stage of their economic development and their political and administrative structure.

The public servants are first citizens and then employees. But they have a special duty to maintain the structure of the states' Law and Order. There is a special status of double status applicable to the employees as citizens and as Public Servants. Their position is closely related to the conception of democratic government which expects employees to render faithful service to all the people, without the thought of their own interests. There are also arguments that public employees must be granted the role of the normal citizen even though they are public employees and they cannot be treated as second class citizens.

In this unit, we will study the fundamental and other rights guaranteed to the citizens and the public servants, restrictions imposed by the government in exercise of the rights by Public Servants and highlight the service rights of the government employees.

24.2 FUNDAMENTAL RIGHTS GUARANTEED TO THE CITIZENS

The citizens are guaranteed certain fundamental rights by the Constitution. The rights may be classified as under:

- a) Right to Equality
- b) Right to Freedom
- c) Right against Exploitation

- d) Right to Freedom of Religion
- e) Cultural and Educational Rights
- f) Right to Constitutional Remedies

Some of these rights may not be available to persons serving in the armed services. Moreover fundamental rights except protection against conviction and protection of life and personal liberty may be suspended. Freedoms guaranteed automatically get suspended during emergency. Restrictions are imposed or reservations are made on certain rights with regard to public employment and public services.

24.3 CLASSIFICATION OF FUNDAMENTAL AND OTHER RIGHTS

The rights guaranteed to the citizen by the Constitution may be classified into following:

1. Personal Rights
2. Civil Rights
3. Political Rights
4. Trade Union Rights
5. Service Rights

24.4 PERSONAL RIGHTS

Some of the personal rights are:

- a) **Right to life and liberty:** The private life of an individual is considered a matter of his conscience, freedom of which is guaranteed by all the states. The Constitution of India (Article 21) provides protection of life and liberty to all persons. It includes also the freedom of movement.
- b) **Equality before law and equal protection of law (Article 14):** It means that the state cannot discriminate the citizens on grounds of religion, race, caste, sex, or place of birth. However, Article 15 provides protective discrimination and reservations for women, children, backward castes, scheduled castes and scheduled tribes as "Socially and Educationally Backward Classes of Citizens" in the matters of education and employment.
- c) **Right to freedom of Religion (Articles 25-28):** Under this right, all persons have the freedom of conscience and the right to profess, practise and propagate religion under certain regulations.
- d) **Right to private property:** Under this right all the persons may acquire, hold and dispose property.
- e) **Right to practise any profession or to carry out any occupation, trade or business.**

The Constitution guarantees all these rights to the citizens, but in regard to the public servants, the state regulates their personal conduct and private relationships which tend to affect their integrity, reputation, confidence and the dignity of the public office. Therefore, the governments through Civil Servants Conduct Rules and Codes prescribed and regulated the required behaviour from the public employees. The relationship between the government and the civil servants rests on contractual basis. Any breach of the code, conduct rules and the contract leads to different types of punishment, dismissal from service. However, the imposition of these restrictions is not an abrogation of their fundamental rights or an invasion of fundamental rights.

24.5 CIVIL RIGHTS

Right to Private Trade and Employment

The civil liberties of the government employees are curtailed under the Civil

citizens by the special duties imposed on them and the special responsibilities they hold by virtue of their office. With regard to civil servants, civil life, the state regulates their conduct and private relationship in so far as they tend to affect their integrity and reputation. In view of this, certain restrictions are placed on an official's right to take part in private business. In most cases, it is positively forbidden for an official to have any business dealings in the fields with which he/she comes into contact in the ordinary course of his/her duties. The temptations which might arise could place an unreasonable strain on one's integrity, particularly if his official duties require him to control certain branches of business.

Therefore, certain restrictions, limitations are imposed by the Civil Service Regulations. Except with the previous permission of the government, no civil servant can engage in trade or business or in support of the business owned or managed by any members of the family.

American government restricts the personal right of civil servants in the sense that they cannot coach anybody either individually or in group in order to prepare him/her for taking the competitive examinations for entry into government service. It is improper for any government servant to be associated with any such programme either by way of tuition or in any other manner. The government servants cannot accept the membership of such societies, institutions or clubs which oblige their members to go on strike in pursuance of their objectives. But with the framework of the rules the federal employees have the right to petition to the Congress either individually or collectively.

In France the civil servants enjoy civic rights more than any other country. They may join any political party. They have the right to strike. These rights have wide and far-reaching consequences. The government servants in India, U.K. and U.S.A. do not have such rights.

Right to Contract

Freedom of contract is a fundamental right of the citizens. In view of the integrity and impartiality, for the civil service this right to contract is restricted. Such as they are not allowed to:

- engage in any speculative investment,
- permit trade by any member of their family,
- lend money to any person living in the locality of their authority,
- borrow money from, any other person with whom they are likely to have official dealings.

Further, they are required to take prior permission of the government for purchase and disposal of their properties exceeding certain limits.

Right to Vindication of his Acts or Character

In parliamentary democracy where the civil servants are expected to be in the background and where they are supposed to be neutral, the minister holds responsibility for the commissions and omissions of the civil servants. As such, in India, the civil servants are precluded from taking recourse to a law court or to the press for the vindication of any of their official acts which has been subject matter of adverse criticism or attach of defamatory character. However, in France, the civil servants have the right to file suits in the courts against such administrative decisions which have an adverse impact on the collective interests of the civil service and in the event of violation of rules and norms of personnel administration.

The government employees are also required to so manage their personal affairs as to avoid habitual indebtedness of insolvency as it affects their own reputation as well as the government.

Subscriptions and Gifts

Civil servants are not allowed to ask for or accept any contributions or associating themselves with the raising of any fund in pursuance of any object. It was declared that in the interest of maintaining the efficiency and integrity of government employees, it is essential to prevent them from soliciting or receiving funds for any purpose unconnected with his office.

Public employees also cannot accept any gifts. Even their family members are also not permitted to accept any such gifts. They have to report to the government when they accept any gifts and seek permission of the government to accept them.

24.6 FREEDOM OF SPEECH AND EXPRESSION

In the Commonwealth countries of Australia, Canada, England and India, the Civil servants have to seek prior permission of the competent authorities for publishing a book or article or for speaking to general audiences. However, Australia takes a somewhat more lenient attitude towards the violation of these norms by its civil servants than Canada, India or England.

In the United States of America the Hatch Act of 1939 allowed its federal employees to express their views on political subjects, rather than only to express them privately. However, at the same time, it proclaimed that the Act was intended to prohibit the same activities that the Civil Service Commission considered legitimate under 1907 Regulations, which allowed only private expression. The second Hatch Act of 1940 extended these regulations to positions in state employment and allowed public employees to express their opinion on 'candidates' as well as on political subjects.

A French official outside his office can criticise the government and express views contrary to the general policy of government. But he cannot express personal criticism directed towards the work of the particular service to which he belongs. Similarly in Germany, outside the service a public servant can express his personal opinions on political questions also. He cannot adopt a standpoint which is in opposition to the government. But he must have a certain regard for his position. The law of 1953 obliges him to exercise that moderation and discretion with regard to political activities which incumbent upon him in his position as servant of the community.

In India, the Civil Servants cannot express against any policy or action of the government. They cannot also express on any matter pertaining to politics of parties and matters of public controversy.

Criticism of Government Policy

According to the Civil Service (Conduct) Rules in India, government servants are not permitted to communicate anything to the press, make any public utterance, make any statement of fact or opinion which has the effect of an adverse criticism of any policy of the government or which leads to embarrassing relations between the internal governmental agencies and the governments of foreign states. The employees are also forbidden from giving any evidence without prior permission to any inquiry which is not duly authorised.

The purpose of this restriction is to maintain the political neutrality of the civil services and to keep them away from public controversies and to enable the civil servants to serve the government of the day with all the loyalty.

In Britain, the civil servants have freedom to express their opinions on non-political matters of public importance provided they do not direct their activities towards any party politics.

In U.S.A. the government may restrict the exercise by its employees of their right to criticise government policy. The employees may be disciplined: a) if their criticism is false and is made with actual malice, b) if criticism involves disclosure of information which is confidential, c) if the criticism is made outside the channels prescribed by, or is in violation of a statute, Executive order or regulation, and d) if the criticism adversely affects job performances, discipline, work relationships or the goals of the organisation.

Speech and Expression on Political Matters

In India the civil servants are prohibited from participating in any political activity and movement. They cannot make any public expression of their views other than those of purely literary, scientific or artistic nature. They are restricted from participating in any way in the editing, managing any publication. Thus, they are completely deprived of the freedom of press.

In Britain, the civil servants those who involve in the formulation and execution of public policy (executive group) have no freedom of expression on political matters. However, the Minor and Manipulative Groups, whose duties are of only routine character have freedom to political expression as well as activity.

Unauthorised Communication of Official Information

In U.S.A. under the Hatch Act 1939, no employee of the government can use his official authority or influence for the political purposes. Any person violating the provisions of this Act shall be removed from the position held by him.

In India, as per the Conduct Rules, no government servant shall communicate directly or indirectly any official document or information, except in the form prescribed, to any government or person to whom he is not authorised to communicate. The official Secrets Act 1923 also lays down service restrictions on unauthorised communication of official information. The restrictions and severe punishments are necessitated to prevent the employees from communicating such information to the enemy countries or to unsocial elements or to use such information to serve the personal ends of the employees. Therefore, the civil servants are put under special obligation to use and protect official information with the utmost care.

Check Your Progress 1

Note: 1) Use the space given below for your answers.

2) Check your answers with those given at the end of the unit.

1) Discuss the Fundamental and other Rights guaranteed to the citizens.

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2) Explain Civil Rights of civil servants.

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3) In India whether civil servant can express against any policy or actions of the government — discuss.

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24.7 POLITICAL RIGHTS

Right to Political Activity

The right of political activities of the public servants in a democratic government is determined by the constitutional theory of government. Political neutrality of civil servants has been regarded as one of the cardinal conditions for the success of a democratic government. The parliamentary form of government demands from civil service not only neutrality and unimpeachable but also integrity and impartiality to conduct.

The question of rights to engage in political activities in U.K. was referred by the government to Masterman Committee in 1948. As per the recommendations of the committee and in consultation with the employees a set of regulations were issued in 1953. While the concept of political neutrality has been kept intact, particularly of the higher civil service, a distinction has been drawn between national and local political activities. The civil servants has been classified into (a) the politically free group (b) the

politically restricted group and (c) those who are allowed to participate in national political activity, subject to permission.

In regard to local political activities, barring those civil servants who are required to obtain permission for participation, all others allowed to take part in those activities. A civil servant in the politically free group who is contesting for parliament is obliged to submit his resignation before nomination. He is entitled to be reinstated in the post whether he is elected to parliament or not.

All staff in the intermediate and restricted groups who have not been given permission to engage in any of the political activities are expected at all times to maintain a reserve in political matters and not to put themselves forward prominently on one side or the other.

In U.S.A. regulations are laid down on the political activities of public employees. They prohibited the following activities:

- 1) serving as a candidate or alternate to a political party convention,
- 2) soliciting or handling political contributions,
- 3) engaging in electioneering,
- 4) being a candidate for elective political office,
- 5) leading or speaking to partisan political meetings or rallies.

In India, the government servants, under the Conduct Rules are not free to indicate the manner in which they propose to vote or have voted. They are forbidden to canvass or use their influence in an election to any legislature or local authority. The government servants are not expected to attend election meetings organised by any political party except in the official capacity. They cannot stand for election to the parliament or to state legislature. They are required to resign in order to contest elections. Thus, in India, the civil servants are debarred from taking part in politics. They cannot be members of any political party nor even subscribe or assist any political movement or activity.

In many democratic countries with certain exceptions, right to political activities of the civil servants are restricted in one way or the other. They can exercise only the right to vote. The restrictions imposed on the rights of political activities will only show the nature of the democratic government and the expected role of the public employees in the government. It is a part of the evolutionary process of the government.

Right to Contest Elections

France has the most liberal electoral laws. Irrespective of the levels all French Civil Servants are allowed to run for any representative office in the country. During their tenure in the representative assembly they continue to be on the public service rolls and enjoy their seniority and pension rights. Germany and Australia have a great deal of liberalism in this respect. In Germany and Australia public servants have to resign their positions in public service after their election. However, if they lose in the election or else intend to return to public service after the expiry of their term in the legislature they enjoy the privilege of re-instatement to a position equivalent to their previous positions in the public service.

England follows different methods as per the recommendations of Masterman Committee. The entire public service has been divided into three categories. Of the total employees in the state service, 62 per cent including Industrial Staff and most of the Non-Industrial Staff have no restrictions on their political activities; clerical staff, typists and some minor technical staff representing 22 per cent may with the approval of their departmental authorities, take part in all political activities, except contesting for election to parliament. The executive and higher staff representing 16 per cent are debarred from any political activity, but may be granted permission to engage in local political activity.

The electoral rights of civil servants in Canada are relatively more liberal than U.K. The federal public servant in Canada may apply to the Public Service Commission for a leave of absence without pay for seeking political nomination of federal, provincial or territorial legislature. If a civil servant elected, he ceases to be a public employee.

In the United States of America the Hatch Act of 1939 and 1940 regulates the political activities of the federal and to a limited extent those of provincial and local civil

servants. However, they are allowed to run in the local elections so long as their participation in local politics does not affect their efficiency.

In Italy and Spain, the public servant if elected to Parliament is granted indefinite leave of absence and if he ceases to be a member of Parliament, he is entitled either to return to his post or if he is too old he can retire from service. In Denmark, Sweden and Austria the civil servants can remain in office and also can sit in parliament. In these countries precaution is taken that no civil servant contests in the area of where he had worked last.

24.8 TRADE UNION RIGHTS

Right to Association

The public servants in Australia and France enjoy the right to association with trade unions. In Canada, India, Germany and England certain restrictions are imposed upon public servants' right to association. In Germany its Civil Servants may join or form only those associations whose objectives are in keeping the objectives of existing constitutional order only. In Canada and England the public servants are not allowed to associate with outside unions. In India the right to association has been guaranteed to every citizen. Public Servants, therefore, are free to form associations or join associations already in existence, but the government would consult or negotiate with only those associations which have been recognised by it. In United States the public employees are legally free to form associations and unions and to associate themselves with outside associations or organisations.

Right to Strike

Whether the civil servant's right to strike is granted or not, this right is exercised widely in India, France, Canada, Australia, America and in England.

In England the public servants are not denied the right to strike under the law. In France they have the right to strike. In Germany, however, public servants right to strike does not exist under the law. The penalties for violating the law include loss of one's job. In India all non-industrial public servants are denied the right to strike the law. The public employees in America do not have right to strike, under the provisions of the Act of 1947 strikes by the Government Servants had been declared illegal. In all the countries, wherever the employees go on illegal strikes, penalties or punishments are awarded as per the disciplinary or Conduct Rules.

24.9 SERVICE RIGHTS

Civil Service has a special relationship with its government when compared to the relationship between employer and employee in private employment. The civil service enjoys good prospects of public employment like the security of tenure, career, service facilities, superannuity benefits. On the other it maintains relations with the public in whom the state sovereignty lies. As such the civil service occupies a key position in the government. Therefore, the state provides certain service rights to the employees to enable them to discharge their rightful job in the right manner.

Appointment

Today, the public employer in democratic countries guarantees equal protection of the laws to all citizens seeking public employment. However, under the constitutional provisions or executive orders certain 'reservations' are made to the minorities and backward communities and socially weak. The judiciary has viewed such representative public services as desirable. However, the principle of equality of opportunity cannot be denied by the process of selection. But, discriminatory law in respect of residential qualifications, age, language, etc., may be enacted by the state. Thus, in India, reservations are provided in public employment of S.Cs and S.Ts. The state is empowered to require every able-bodied person within its jurisdiction to work for a reasonable period for "public purposes" such as Defence services, Home guards, social services etc. Public employees are expected to serve anywhere under any conditions prescribed by the government.

Life Tenure

Public employment is more attractive due to its life tenure and prestige attached to it. However, the sovereign employer enjoys the pleasure to terminate, dismiss the services of any employee, without assigning any reasons for such kind of action. The principle of 'during the pleasure of the government' has now been converted in practice into 'during the good behaviour'. Therefore, only in cases of 'misconduct', gross negligence or incompetence this provision is exercised. Otherwise the civil service in general, remain in service, irrespective of change of the governments. Thus, the continuity of service under the different rules of the government is ensured. The civil servants are also entitled to certain privileges, facilities, allowances, advancements and promotions under the rules prescribed from time to time. The government cannot alter the conditions of their service to the disadvantage of the employees except by changing the existing Laws and Rules.

Rights and Privileges

Although the service tenure of all government employees is at the pleasure of the government, normally, they hold office during the good behaviour and their terms of service are regulated by Executive Rules and Administrative orders. Such of the Rules and Orders are issued subject to the provisions of the constitution. Sometimes the government is required to consult the public service commission for their opinion. Therefore, the governments cannot make rules and change rules without constitutional authority. The government is further required to place these rules and regulations on the Table of the Legislature for their approval. Thus, the civil servants enjoy privileges and rights guaranteed by the constitution. The civil servants are not at the mercy of the executive government without changing the existing rules.

Procedural safeguards in the event of removal or dismissal

The constitution and the rules framed under the provisions of the constitution provides certain important procedural safeguards to prevent any injustice. Any punishment can be imposed on the civil servant only according to prescribed procedure, which is laid down in India under Classification, Control and Appeal Rules (CCA Rules). As per the Rules no civil servant can be removed or dismissed by an authority subordinate to the one who appointed him. No one can be removed or dismissed until the civil servant has been given a reasonable opportunity of showing cause against the action proposed to be taken. Compulsory retirement before the age of superannuation is not considered removal or dismissal as there is no substantial loss of accrued service benefits like pension etc.

Check Your Progress 2

Note: (1) Use the space given below for your answers.

(2) Check your answers with those given at the end of the unit.

1) Analyse the Right to association of Indian Civil Servants with other countries, civil servants.

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2) Political Neutrality of civil servants has been regarded as one of the cardinal conditions for the success of a democratic government — discuss.

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3) Explain the Service Rights of civil servants.

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24.10 LET US SUM UP

Though the civil servants are more enlightened citizens, all the rights guaranteed by the constitutions of different countries, do not guarantee such rights to their public employees. The grant of different rights and their denial is governed by the theory of the constitutional government and the place and role assigned to the public servants. The government servants for this purpose are classified into Industrial, Non-industrial, Administrative and Clerical, Ministerial and accordingly were given the rights depending upon their extent and nature of participation in the arrangement of public offices. All the governments in theory believe in the concept of sovereign employer in which the public employers are 'Government Servants', required to conduct themselves under a framework of Rules, Regulations. However, they are not second class citizens but enjoy certain privileges and facilities more than the ordinary citizen.

24.11 KEY WORDS

Strikes: Organised method of withholding labour supply in order to force the employer to grant employees their demand.

Fundamental Rights: Those rights which are protected against any violation either by the authority of the executive or by the legislature through an independent and impartial judiciary. Part III of the Indian Constitution contain these rights.

24.12 SOME USEFUL BOOKS

Bhaskara Rao V. 1978. *Employer-Employee Relations*, Concept Publishing House: New Delhi.

Singh Biswanath. 1964. 'Political Rights of Civil Servants in India' *Indian Journal of Public Administration*, Vol. XI, No. 2.

Parris Henry, 1973. *Civil Service Staff Relations*, Allen & Unwin: London.

Jay M. Shafrit, Walter L. Balk, Albert C. Hyde, and David H. Rosenbloom. 1978. *Personnel Management in Government : Politics and Process*, Marcel Dekker, New York.

Tyagi A.R. 1961. *Rights and Obligations of Civil Servants in India*. Atma Ram & Sons: Delhi.

24.13 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress 1

1) Your answer should include the following points:

- Right to Equality
- Right to freedom
- Right against exploitation
- Right to freedom of Religion
- Cultural and Educational Rights
- Right to Constitutional Remedies
- Personal Rights
- Civil Rights

- Trade Union Rights
- Service Rights

2) Your answer should include the following points:

- Right to Private Trade and Employment
- Right to Contract
- Right to vindication of his acts or character
- Subscriptions and Gifts

3) Your answer should include the following points:

- In India the civil servants have to seek prior permission of the competent authorities for publishing book, article and speaking to general audiences.
- In India, the civil servants cannot express against any policy or action of the government.
- They cannot also express on any matter pertaining to politics of parties and matters of public controversies.
- According to Civil Service (Conduct) Rules in India, government servants are not permitted to communicate anything
 - To the press
 - Make any Public Utterance
 - Make any statement of fact or opinion which has the effect of an adverse criticism of any policy of government or which leads to embarrassing relations between the internal governmental agencies and the governments of foreign states
- The employees are also forbidden from giving any evidence without prior permission to any inquiry which is not duly authorised.
- Purpose of this restriction is to maintain the political neutrality of the civil services and to keep them away from public controversies and to enable the civil servants to serve the government of the day with all the loyalty.

Check Your Progress 2

1) Your answer should include the following points:

- Australia and France enjoy the right to association with trade unions
- In Canada, India, Germany and England certain restrictions are imposed upon public servants' right to association
- In Germany its civil servants may join or form only those associations whose objectives are in keeping with the objectives of existing constitutional order only
- In Canada and England the public servants are not allowed to associate with outside unions
- In India the right to association has been guaranteed to every citizens.
- Civil Servants therefore are free to form associations or join associations already in existence, but government would consult or negotiate with only those associations which have been recognised by it.
- In United States the public employees are legally free to form associations and unions and to associate themselves to outside associations or organisations.

2) Your answer should include the following points:

- The right to political activities of the public servants in a democratic government is determined by the constitutional theory of government.
- The parliamentary form of government demands from civil service not only neutrality and unimpeachable integrity and impartiality to conduct.
- In India, the government servants, under the Conduct Rules are not free to indicate the manner in which they propose to vote or have voted.
- They are forbidden to canvass or use their influence in an election to any legislature or local authority.
- The government servants are not expected to attend election meetings organised by any political party in the official capacity.
- They cannot stand for election to the parliament or to state legislature. They are required to resign in order to contest elections.
- India, the civil servants are detained from taking part in politics.
- They cannot be members of any political party nor even subscribe or assist any political movement or activity.
- In many countries with certain exceptions right to political activities of the civil servants are restricted in one way or the other.
- They can exercise only the right to vote.
- The restrictions imposed on the rights to political activities will only show the

nature of the democratic government and the expected role of the public employed in the government.

*3) Your answer should include the following points:

- Appointment
- Life Tenure
- Rights and Privileges
- Procedural safeguards in the event of removal or dismissal