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A STUDY ON RULE 9 OF CENTRAL CIVIL SERVICES (CONDUCT) RULES, 1964 AND FREEDOM OF SPEECH AND EXPRESSION

AUTHORED BY - GNAZHAL RANI J

Chapter 1: Introductory Chapter

Introduction:

In simple terms, civil servant denotes a person in civil service who gets remuneration from the consolidated funds of the government and performs the functions without any partiality or bias. Unlike contractual employees, civil servants are a status and there are many probabilities of this status being misused by them. Therefore, the conduct rules for the civil servants first came in 1930 and followed by the Santhanam committee report in 1964[1] for the regulation of the conduct of the civil servants. The essence of conduct Rules is that every Government servant is required to ensure absolute integrity and devotion to duty. He should not do anything which is unbecoming of a government servant. A supervisory officer has to ensure integrity and devotion to duty of Government servants under his control and authority. A Government servant should act in his best judgement while performing his official duties. To include, the CS (Conduct) Rules, 1964[2] are subject to the provisions of the constitution of India, but there are many violations to fundamental rights to civil servants via this rule and Rule 9 of CS (Conduct) Rules, 1964 is one among them that violate the fundamental right of freedom of speech and expression. Therefore, the research paper analyses the regulation and control of powers of civil servants in India on one hand and the result of violation of freedom of speech and expression of civil servants, the research paper also compares the rights available for the civil servants in France.

Research Objective:

- To trace and analyse the history, intention and need of restrictions on the fundamental rights of civil servants via conduct rules.

[1] Santhanam Committee Report, https://cvc.gov.in/screport.html#:~:text=In%20addition%2C%20the%20report%20recommended,and%20the%20 repercussions%20of%20 corruption
[2] The Central Civil Services (Conduct) Rules, 1964.

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- To critically analyse Rule 9 of CCS (Conduct) Rules, 1964 and the violation of freedom of speech and expression for civil servants
- To compare and analyse the freedom of speech for civil servants in India and France.

Research Question:

- Whether the intention behind Rule 9 of CCS (Conduct) Rules, 1964 is to restrict the rights of civil servants and thereby violate fundamental rights of the constitution?
- Whether Rule 9 of CCS (Conduct) Rules, 1964 violates Article 19 of Indian Constitution?
- Whether the rights and restrictions on the civil servants are different in France from India?

Research Problem

Indian Constitution promises fundamental right to every citizen on freedom of expression under Article 19, However Rule 9 of Central Civil Services (Conduct) Rules,1964 bars a civil servant from expressing their opinions which is contradictory to the constitution.

Research Methodology:

The research paper titled "**A Study on Rule 9 of Central Civil Services (Conduct) Rules, 1964 and Freedom of Speech and Expression.**" is doctrinal in nature and refers predominantly to secondary sources such as books, articles, newspaper, journal etc., The research paper also refers to some of primary sources such as conventions, statutes, case laws.

Literature Review:

- **Shrivastava, Rajshri. "Analysing the Rights of Civil Servants vis-a-vis the Doctrine of Pleasure in India."** ***Indian JL & Legal Rsch.*** **3 (2021): 1[3]:** This article covers the restriction of rights of the civil servants and traces the presence of such restriction rights from the British era. Predominately the research paper analysis this via the doctrine of pleasure concept and thereby the British having up hand than the Indian administrators. However, the conduct rules for the civil servants are not majorly covered and this is covered in the research paper along with the recent judicial precedents on this matter.

[3] Rajshri Shrivastava, "Analysing the Rights of Civil Servants vis-a-vis the Doctrine of Pleasure in India" 3 *Indian JL & Legal Rsch.* 1 (2021).

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- **Singh, Bishwanath. "Political Rights of Civil Servants in India."** ***Indian Journal of Public Administration*** **11.2 (1965): 236-247[4]:** This article covers the political rights available to the civil servants in India and especially the importance of such political rights of civil servants in a democratic country. However, the article doesn't cover this with respect to the Civil servants code rules and this is covered in this research paper with regard to the importance of civil servants having the right of expression on political ideas and governance.
- **CHOPRA, DS. "CIVIL SERVANTS AND FUNDAMENTAL FREEDOMS."** ***Political System in India*** **2 (1989): 275[5]:** This article covers the fundamental rights available to civil servants in India and also the rights that are restricted and the reason for restriction. However, along with this the research paper specially covers the restriction of fundamental rights on the civil servants via rule 9 of Civil Servants Conduct Rules and also compares the rights of the civil servants in France.

Chapter 2: History and intention behind Rule 9 of CCS (Conduct) Rules, 1964

2.1. Civil Servants Conduct Rules, 1964 and Santhanam Committee Recommendations

The Santhanam committee in 1964 advocated creating a Central Vigilance Commission as the main entity in charge of fighting corruption and fostering integrity in public administration. Furthermore, the Santhanam Committee underlined the necessity for a strong and impartial anti-corruption institution. Relevant to the conduct of the civil servants. The report recommended code of conduct for all the public servants which outlines the required ethical standards and professional behaviour[6]. It stressed the importance of training and teaching public officials on the ethical values plus the consequences of corruption. The first Civil Servants Conduct Rules was initially established in 1930 which covered the do's and don'ts of a civil servant. Later it was amended and brought down as principal rules in the year 1964 and subsequent amendments were brought in the rules until the year 2014.

Under which the research paper narrows down to Rule 9 and the rights of the civil

[4] Bishwanath Singh, "Political Rights of Civil Servants in India" 11.2 *Indian Journal of Public Administration* 236-247 (1965).
[5] DS CHOPRA, "CIVIL SERVANTS AND FUNDAMENTAL FREEDOMS" 2 *Political System in India* 275 (1989).
[6] Santhanam Committee Report, https://cvc.gov.in/screport.html#:~:text=In%20addition%2C%20the%20report%20recommended,and%20the%20 repercussions%20of%20 corruption

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servants to criticise the government[7]The Rule 9 of the Civil Services (Conduct) Rules specify whether a government employee may critique the government and its functions on platforms like electronic media, radio broadcast or any telecast. The platform of radio broadcast was included in the year 1995 via GSR 355, dated the 29th July, 1995[8] and apart from it, the rule remained the same from the 1930's act. This rule prohibits government employees from making statements of fact or any opinion that criticise the current or recent policies or actions of the Central or State Governments. Civil Services (Conduct) Rules talks about whether a government servant can criticise the government on any platform and in short it covers the opinions or facts like,

"Adverse criticism; Embarrassing relations between Central and State Government or between Central and Foreign State[9]"

Retd. SC Judge, B N Srikrishna, stated that each Indian citizen has the inherent right to openly express their ideas and the civil servants are no different from them. However, the disciplinary sanctions may preclude them from joining any political group or in this expressing their ideas and opinions on the functioning of the nation or the governance. Retd. SC Judge, B N Srikrishna, stated that each Indian citizen has the inherent right to openly express their ideas and the civil servants are no different from them[10]. However, the disciplinary sanctions may preclude them from joining any political group or in this expressing their ideas and opinions on the functioning of the nation and governance. In the case of *Lipika Paul v. State of Tripura*[11], it was held that the civil servants enjoyed the free expression of rights despite being a civil servant. However, they can exercise this right subject to the conduct rules of civil servants. , 1964. Also, the case held that these are sets of rules and not laws and if in case of necessary these rules in turn can also be challenged.

2.2. The intention behind the inclusion of Rule 9 of CCS (Conduct) Rules, 1964

The Government and civil servants operate on a contractual basis. In some circumstances, the contract is shown by a formal instrument, but even in the absence of a formal

[7] The Central Civil Services (Conduct) Rules, 1964, R.9.
[8] Circular No. 11013/4/93 - Est.(A) dated, July 1995 https://documents.doptcirculars.nic.in/D2/D02est/11013_4_93-Estt.A-12071995.pdf
[9] The Central Civil Services (Conduct) Rules, 1964, R.9.
[10] DS CHOPRA, "CIVIL SERVANTS AND FUNDAMENTAL FREEDOMS" 2 *Political System in India* 275 (1989).
[11] (2020) 1 SCT 688.

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document, the parties condition implies a contract which is in reference to the case of *Gould v. Steuant*[12]- where the court held that even in the case of absence of contract it was considered as contract of service. Numerous rules combined compose the conditions and terms of such contract of employment, and specify the rights, duties, and obligations for government officials and also the civil servants. Therefore, when an individual with consent participates in Government service agrees to these norms and conditions in his or her own best interests[13]. Henceforth in case of any breach to the government conduct rules will lead to immediate removal or severe consequences implied.

Thereby the restrictions imposed which are in fact and essence are placed on them which are actually accepted and abided by them[14]. As a result, the application of these guidelines cannot be construed as an infringement on any fundamental right. When the civil servant is not using these fundamental rights to the fullest extent possible, it is because for the best interest of the state and government and the circular also stated that there's also a possible way to resign from the post. It also put forwards that in every contract of employment would inevitably violate the Fundamental Rights of civil servants and other employees in a variety of ways. For example, a public servant's contract of service compels him to dedicate his time and energy to the fulfilment of his official tasks, and it prohibits from participating with any kind of trade to professions and also requires him to devote energy be in specific places for a specific period of time which precludes them to not attend other places.

Therefore, in this way of interpretation every service of contract of government would be considered as breach of fundamental rights. Therefore, the government of India, under this circular dated 1952 covered that the conduct rules for the civil servants are not inconsistent with the provisions of the constitution i.e. the freedom of expression, rather it is a duty bound to the civil servants to protect the interest of the state and government[15].

[12] (1896) A.C. 676
[13] Rajshri Shrivastava, "Analysing the Rights of Civil Servants vis-a-vis the Doctrine of Pleasure in India" 3 *Indian JL & Legal Rsch.* 1 (2021).
[14] Rajshri Shrivastava, "Analysing the Rights of Civil Servants vis-a-vis the Doctrine of Pleasure in India" 3 *Indian JL & Legal Rsch.* 1 (2021).
[15] Circular No.141/51-Ests. G dated ,11 th August 1952 : https://documents.doptcirculars.nic.in/D2/D02est/141_51-Ests.-11081952.pdf

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Chapter 3: Judicial Trend

3.1. Judicial precedents on Rule 9 of CCS (Conduct) Rules and Violation of fundamental rights

This is a famous case, where an IAS officer from Telangana - Smita Sabharwal tweeted using her personal account in favour of Ms. Bilkis Bano and also questioned the government of Gujarat decision to release 11 men convicted of gang-rape during the 2002 Gujarat riots[16].This has sparked a controversy about whether a public officer violated the Conduct Rules of 1964, as well as a renewed debate regarding public servants' right to free expression of personal opinions on legal and governance issues. This thereby raised a debate on whether the civil servants can share their own opinions on issues of the functioning of law and state. Because, the Indian constitution promises every citizen of India the right of freedom to expression of ideas and views, however, they are subjected to reasonable restrictions[17]. But, whether the expression of comments which in this case that was highly criticised on the social media will also come under the ambit of reasonable restrictions is a debatable discussion.

Because, at the end of the day it is a democratic country and the right to criticise the government is important and cannot be restricted. There are few judicial precedents that address this issue. In the case of *Lipika Paul v. The State of Tripura*[18] - The court ruled that a civil servant retains her right to free speech, which may only be limited by a valid law. Yet, this may be subject to the civil servants not breaking the boundaries set out within the Conduct Rules. In a Kerala High Court Decision, the court held that one cannot be barred from expressing his opinions simply because someone is an employee. As a society that is democratic, standards of democracy apply to all institutions. The Bench ruled that the constraints on freedom of expression outlined in Article 19(2)[19] are 'exhaustive', and that freedom of expression and speech in any grounds shouldn't be curtailed or restricted on any other grounds.

Justice Nagarathna emphasised in her separate opinion that certain types of expression, such as hate speech, clearly violate the principles of equality & fraternity entrenched in the Constitution's preamble. Therefore, it also includes the duty of every citizen via Article 51A[20] of the Constitution to perform certain vital duties. Therefore, as public officials' statements have comparatively a greater impact on the society, they owe even more great duty and responsibility to the state. However, does not the improper functioning of judiciary or a criticism on the

[16] (2024) INSC 24
[17] The Constitution of India, art. 19(2)
[18] (2020) 1 SCT 688
[19] The Constitution of India, art. 19(2)
[20] The Constitution of India, art. 51A

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judgment which should be known by all i.e. regarding flawed decision of the rape accused will be also be a duty on the civil servants? Don't the civil servants and the state work for the wellbeing, harmony and protection of the citizens? are the questions which stand out of the arguments of the judgments.

3.2. Article 19 v Rule 9 of CCS (Conduct) Rules, 1964

It was a gang-rape case of Bilkis Bano, who was 21 years old & 5 months pregnant at the time, as well as murdering of 7 people from her family which also included a 3-year-old daughter during the 2002 riots. However, the 11 convicted accused were released on the 75th year of independence and this was also celebrated with sweets and garlands[21]. This judgement and incident were thereby tweeted by Ms. Smita Sabharwal an IAS officer of Telangana and this sparked a row over whether it is violation of the Central Civil Services (Conduct) Rules of 1964 renewing the discussion over civil servants' freedom to share personal views on legal and governance issues.

"As a woman and a civil servant, I sit in disbelief, on reading the news on the #BilkisBanoCase. We cannot snuff out her Right to breathe free without fear, again and call ourselves a free nation. #JusticeForBilkisBano"

Ms. Smita has the right to Tweet. However, when working for the government, they must follow specific disciplinary regulations which is in this case the conduct rules. That forbids a government servant from joining a political organisation or any other organisation of that sort, or from openly expressing herself on issues concerning the country's governance. This rule dates from the era of the British. It's likely that the British were quite rigorous and did not want their officers discussing how poor governance was[22]. Yet, in India being a democratic country the right to criticise the working and functioning of the government is fundamental, and no one can restrict it. Most importantly, healthy criticism is a more effective method to run a public organisation. This case was a mockery of justice and it transcended all boundaries of fairness and humanity. The gang rape and murder of the child were horrendous. Despite this, the offenders were not even serving life sentences.

[21] (2024) INSC 24
[22] Rajshri Shrivastava, "Analysing the Rights of Civil Servants vis-a-vis the Doctrine of Pleasure in India" 3 *Indian JL & Legal Rsch.* 1 (2021).

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A committee was formed hastily, so a 1992 [remission] policy was cited despite the fact that new laws had been enacted. In addition, the committee included five members from the ruling party. In such circumstances, Smita included the words 'civil servant' since the dharma of a civil servant is actually to maintain constitutional values in letter and spirit and rule of law. Here, neither the spirit of the Constitution nor the rule of law was safeguarded. This might set an extremely hazardous precedent. The courts are currently moving towards the conclusion that this rule is overly strict and cannot be implemented in this manner. Even though when an individual enters government employment, they surrender and accept some limitations on their fundamental rights. It must definitely operate inside certain parameters and the rule states that the officers cannot criticise a policy judgement. This is an extremely ambiguous expression that has to be carefully examined. At the end of the day, it is a policy to release convicts who committed horrible crimes prematurely and without applying their minds. So, whether this would fall under the ambit of the rule itself is a debatable topic.

These restrictions were established during the British era and the situation has altered today. We have social media, and there are no regulations stating that since they work for the government, they are prohibited from using Twitter. If they are tweeting about their vacation, then they can also express their feelings to their followers by stating, I'm extremely saddened by what occurred today. She has not delivered a speech about it; it is simply a private conversation on Twitter. She decided to convey her own grief. Many government personnel and politicians are now urged to use social media to interact with the general public about government initiatives. Isn't it time to 'un-gag' civil servants from remarking on such decisions? This has to be handled on a case-by-case basis and we need to differentiate between what would harm society, the Constitution, or the rule of law. In this case, it is not an official government policy (the decision to release criminals on remission). This is a Supreme Court-ordered action carried out by the Gujarat government, and the question is about how it was done. This was the exception[23]

Chapter 4: Comparative Analysis with France

4.1. Freedom of speech and Expression for civil servants in India and France

Unlike India, France civil servants enjoy more rights and freedom than that of India. They maintain a balance between impartiality and loyalty to the state and government. Some

[23] Bishwanath Singh, "Political Rights of Civil Servants in India" 11.2 *Indian Journal of Public Administration* 236-247 (1965).

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of the relevant provisions that cover the balance are covered under *Code de la Function Pub Lique* which translates to Public Service Code. ***Article L123-1*** of the code covers the duty of discretion to the civil servants i.e. the devoir de reserve which gives the civil servants to express their opinion on the matters of state however, this rule also includes that they must perform it with caution. In ***Law No. 83-634 of July 13, 1983 on the Rights and Obligations of Civil Servants***[24] which is originally known as 83-634 du 13 Juillet 1983 portant droits et obligations des fonctionnaires is the law that acts as a foundation to the code also that states the freedom to express their opinions and it also covers the fact of avoiding comments that would lead to discredit the public service. Civil servants in France have the highest level of civic rights of any other country.

They are able to join any political organisation. They possess the right to strike. However, these rights have broad and far-reaching implications. Civil servants in India, the United Kingdom, and the United States do not enjoy the same privileges. In parliamentary democracy, civil servants are meant to be in their element and impartial, and the minister is responsible for their commissions and omissions. As a result, in India, they are barred from seeking redress in a court of law or through the press for any of their official activities that have been subjected to negative criticism or defamation. However, in France, civil servants have the right to bring lawsuits in court against administrative decisions that have an adverse effect on the overall welfare of the civil services, as well as violations of personnel management regulations and standards.

Public personnel in Australia and France have the right to join trade unions. In India, Canada, Germany, and England, public officials' freedom to association is subject to various constraints. They are entitled to strike under Article 231 of the Rights of Public Servants in France. In India, non-industrial state officials are prohibited the ability to strike the legislation. In France, government officials are given their freedom of opinion. This is because the right to free expression, as guaranteed by the Declaration of Human and Civil Rights, applies to all people, including government personnel[25].

This implies that unlike India they cannot be discriminated against based on their political, philosophical, religious, or trade union beliefs. This idea means that the civil servants are provided a variety of privileges that allow them to express their thoughts outside of their duties. For example, Under the French constitution people can join trade unions and political

[24] ***Law No. 83-634 of July 13, 1983 on the Rights and Obligations of Civil Servants***, available at: https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068812/ (last visited on 28.08.2024)
[25] Declaration of Human and Civil Rights citation,1789

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organisations, sign petitions, compete for election, and so on. They additionally possess the right to strike, with a few exceptions and also have the right to express their ideas about the governance. This basic right, protected by the Constitution, is applicable to all people, including the civil servants.

Chapter 5: Findings, suggestions and Conclusion

5.1. Findings

The research paper analysed the fundamental rights of civil servants and the Rule 9 of the conduct rules,1964 where certain precedents relevant to the matter was discussed. Because, at the end of the day it is a democratic country and the right to criticise the government is important and cannot be restricted. There are few judicial precedents that address this issue. In the case of *Lipika Paul v. The State of Tripura*[26] - The court ruled that a civil servant retains her right to free speech, which may only be limited by a valid law. Yet, this may be subject to the civil servants not breaking the boundaries set out within the Conduct Rules.

In a Kerala High Court Decision, the court held that one cannot be barred from expressing his opinions simply because someone is an employee. As a society that is democratic, standards of democracy apply to all institutions. The Bench ruled that the constraints on freedom of expression outlined in Article 19(2) are 'exhaustive', and that freedom of expression and speech in any grounds shouldn't be curtailed or restricted on any other grounds[27]. Justice Nagarathna emphasised in her separate opinion that certain types of expression, such as hate speech, clearly violate the principles of equality & fraternity entrenched in the Constitution's preamble.

5.2. Suggestions:

The main objective of the research paper is to understand the Rule 9 of Code Rules of 1964 and the violation of fundamental rights of the civil servants. The case of Bikinis Bano was discussed where an IAS officer of Telangana tweeted on the release of the convicted accused. Where, Ms. Smita has the right to Tweet. However, when working for the government, they must follow specific disciplinary regulations which is in this case the conduct rules. That forbids a government servant from joining a political organisation or any other organisation of that sort, or from openly expressing herself on issues concerning the country's governance. This

[26] (2020) 1 SCT 688
[27] The Constitution of India, art. 19(2)

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rule dates from the era of the British. It's likely that the British were quite rigorous and did not want their officers discussing how poor governance was. Yet, in India being a democratic country the right to criticise the working and functioning of the government is fundamental, and no one can restrict it.

Most importantly, healthy criticism is a more effective method to run a public organisation. This case was a mockery of justice and it transcended all boundaries of fairness and humanity. These restrictions were established during the British era and the situation has altered today. We have social media, and there are no regulations stating that since they work for the government, they are prohibited from using Twitter. If they are tweeting about their vacation, then they can also express their feelings to their followers by stating, I'm extremely saddened by what occurred today. She has not delivered a speech about it; it is simply a private conversation on Twitter. She decided to convey her own grief. Many government personnel and politicians are now urged to use social media to interact with the general public about government initiatives. Isn't it time to 'un-gag' civil servants from remarking on such decisions?

Under the French law for the civil servants, ***Law No. 83-634 of July 13, 1983 on the Rights and Obligations of Civil Servants*** which is originally known as 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires is the law that acts as a foundation to the code also that states the freedom to express their opinions and it also covers the fact of avoiding comments that would lead to discredit the public service. That is, they provide freedom to express ideas about the state and the governance with certain limitation. However, in India, restrictions are imposed on the civil servants to not express their views or ideas on the governance with certain things that can be accepted. The method that is followed in France can also be adopted in India, in order to avoid the violation of fundamental rights on one hand and prevention of overuse of power to demean the state.

The main objective of the research paper is to analyse the Rule 9 of the Civil Servants Conduct Rules and the Freedom of expression under Indian Constitution. Thereby the research paper analyses this stand via the Bilkis Bano case, where an IAS officer who tweeted regarding the release of 11 convicted rape accused was subject to the conduct rule 9. Here, she has the right to tweet since the citizens of India have the fundamental right to free speech and expression under Article 19 guaranteed by the Indian Constitution, subject to reasonable restrictions in the interest of preserving the sovereignty of the state, international relations, health, morality, and so on.

However, there's an argument that the civil servant works for the government, he or she must follow specific disciplinary procedures. That forbids a government official from joining

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a political group or any other organisation of that sort, or from openly expressing herself on issues concerning the country's administration. But, when it is traced back to history, this restriction comes from the British era, and there is no question that the British were highly severe and didn't want their officers to criticise the higher authorities or the governance. But now, it is democratic state and everybody has the right to criticise the working of the government and the governance and this is a fundamental right.

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