

The Conduct of Public Official – A Critical Examination under the Regime for Governance established by the Constitution of India

Ashok Kumar Singh¹

Abstract

This article is concerned with the conduct of a '**Public Official**' who is an Officer belonging to the '**Executive Branch**' of the Government, be it the '**Union Government**' or a '**State Government**'. It has very often been observed that some of the '**Public Officials**' appointed by the Government in connection with its affairs arrogate to themselves such powers and/or privileges and/or functions that have either:-

- 1.No source anywhere, whether in the **Constitution of India**² (hereinafter referred to as the **Constitution**) or in any law made thereunder; or
2. Been conferred upon or entrusted to some others, whether by the **Constitution** or by a law made thereunder.

While such '**Public Officials**' are appointed to render various such services to the people at large as mandated by them to the Government while voting it to power, it is needless to mention that the said services are also required to be rendered to them in such manner as mandated by the **Constitution** and the relevant laws made thereunder. This proposition pervades throughout the

¹ Assistant Chief Engineer, Public Works Department, Government of West Bengal, singhashok991@gmail.com

² The Constitution of India – <https://legislative.gov.in/constitution-of-india>

Constitution as the concept of the ‘**Rule of Law**’, which has been mandated by the **Constitution** to be the essence of governance. Since such instances of the kind as aforesaid operate, on the one hand, to the prejudice and/or inconvenience of the persons affected and run, on the other, contrary to the purposes for which they have been appointed, these are the antithesis of the concept of ‘**Rule of Law**’. Therefore, this article, as apparent from its title, aims to examine the conduct of ‘**Public Official**’ in light of the ‘**Regime for Governance**’ established by the **Constitution** and, in conclusion, delineate certain broad principles for their guidance while exercising such powers and discharging such functions as respectively conferred upon and entrusted to them by the **Constitution** and various laws made thereunder so that the constitutional mandate of ‘**Rule of Law**’ may be complied with and proper service to the people at large may be caused to be rendered in the real sense of the term.

Examination of the Conduct of Public Official

For the sake of better appreciation of the material facets of such examination as referred to in the preceding heading, the examination has hereafter been conducted by discussing the relevant facts connected therewith and/or incidental thereto under the following sub-headings:-

Definition of ‘Public Official’

Article 53(1) of the **Constitution** provides, ‘*The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with Constitution*’.

Similarly, **Article 154(1)** of the **Constitution** provides, ‘*The executive power of the State shall be*

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with Constitution'.

It may be noted here that the word 'Officers', as used in **Article 53(1)** and **Article 154(1)**, has neither been defined in the **Constitution** nor in the **General Clauses Act, 1897**³, which has been mandated by **Article 367(1)** to be applied for interpretation of the **Constitution**. Therefore, let us look up the word 'Officer' in the 'Legal Dictionary for ascertaining its meaning.

According to **Black's Law Dictionary (Eighth Edition)**⁴, which is a widely used 'Legal Dictionary, the word:-

1. 'Officer' means:-

- i. 'A person who holds an office of trust, authority, or command'. In public affairs, the term esp. refers to a person holding public office under a national, state, or local government to exercise some specific function. In corporate law, the term refers esp. to a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as CEO, president, secretary, or treasurer.
- ii. In Military law, officer is someone who holds a commission in the armed services, or a military post higher than that of the lowest ranks; a person who has a command in the armed forces.

2. 'Official' means:-

- i. *One who holds or is invested with a public office; a person elected or appointed to carry*

³ The General Clauses Act, 1897 – https://www.indiacode.nic.in/handle/123456789/2328?sam_handle=123456789/1362

⁴ Black's Law Dictionary (Eighth Edition) – By Bryan A. Garner, Editor-in-Chief

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

out some portion of government's sovereign powers.

- ii. One authorized to act for a corporation or organization, esp. in a subordinate capacity.
 - iii. Official principal.
3. *'Public Office' means a position whose occupant has the legal authority to exercise a government's sovereign power for a fixed period.*
 4. *'Public Official' means the same as defined as 'Official'.*

On comparison of the various terms defined in the 'Legal Dictionary' (please refer to the 'italicized and underlined portions above), the word 'Officer' as used in **Article 53(1)** and **Article 154(1)** of the **Constitution**, may reasonably be defined to mean "A 'Public Official' i.e. a person appointed, whether by the due process of election or selection, to hold a 'Public Office' under a National or State Government to exercise such sovereign powers and discharge such sovereign functions as respectively conferred upon and entrusted to him by that Government".

However, in this article, the term 'Public Official' signifies 'any of such Officers, whether subordinate to the **President** or the **Governor**, as referred to in **Article 53(1)** and **Article 154(1)** of the **Constitution**'.

Fundamental Concept of the Constitution

To appreciate the issue at hand in its proper perspective, it is necessary to understand certain elementary facts, which together constitute such a fundamental concept that forms the

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

cornerstone of the **Constitution**. Let us first have a look at the following authoritative judgments of the Hon'ble Supreme Court of India:-

1. In **A. K. Gopalan vs The State of Madras**⁵, Mr. Justice Patanjali Sashtri observed,:- *“There can be no doubt that the people of India have, in the exercise of their sovereign will as expressed in the Preamble, adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality, and in delegating to the legislature, the executive and the judiciary their respective powers in the Constitution, reserved to themselves certain fundamental rights, so called, I apprehend, because they have been retained by the people and made paramount to the delegated powers, as in the American model ... This has been translated into positive law in Part III of the Indian Constitution, and I agree that in construing these provisions the high purpose and spirit of the Preamble as well as the constitutional significance of a Declaration of Fundamental Rights should be borne in mind.”*

2. In **I. C. Golaknath & Others vs State of Punjab & Another**⁶, the Hon'ble Supreme Court of India observed,:-

*“..... The objective sought to be achieved by the Constitution is declared in sonorous terms in its **Preamble** ... It contains in a nutshell, its ideals, and its aspirations. The preamble is not a platitude but the mode of its realization is worked out in detail in the Constitution. The*

⁵ 1950 AIR 27

⁶ AIR 1955 SC 549

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

Constitution brings into existence different constitutional entities, namely, the Union, the States, and the Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive, and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them. Some powers overlap and some are superseded during emergencies. The mode of resolution of conflicts and conditions for supersession are also prescribed. In short, the scope of the power and the manner of its exercise are regulated by law. No authority created under the Constitution is supreme; the Constitution is supreme, and all the authorities function under the supreme law of the land. The rule of law under the Constitution has a glorious content.

3. Kesavananda Bharati v. State of Kerala⁷

This was a landmark case in defining the concept of the basic structure doctrine. The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the "basic structure of the Constitution could not be abrogated even by a constitutional amendment." According to the ruling, the parliament can only alter the constitution, not rewrite it. The ability to amend is not the ability to destroy. This is the legal basis in India for the judiciary to overturn any amendment approved by Parliament that contradicts the core structure of the Constitution.

4. Evolution of Basic Structure Doctrine: Indra Nehru Gandhi v. Raj Narain AIR 1975 SC2299

was the case wherein the belief in the doctrine was upheld and established. In this instance, the

⁷ AIR 1973 SC 1461

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

appellant had appealed the Allahabad High Court's ruling declaring the Prime Ministerial election of the appellant to be unconstitutional. The 39th Amendment, which stated that no court has jurisdiction over the Prime Minister's election challenges, was passed into law and placed into effect while the Supreme Court's appeal was still underway. In its ruling, the Hon'ble Supreme Court cited the Kesavananda Bharati case as support for its assertion that democracy is a fundamental component of the Constitution. The bench included the Rule of Law and the authority of Judicial Review in the list of fundamental components.

5. The Supreme Court clarified the concept and established that the power of amendment under Article 368 is limited and that it cannot be exercised in an absolute manner in the case of **Minerva Mills Ltd. v. Union of India AIR 1980 SC 1789**, which is when the basic structure first emerged. A restricted ability to change the Constitution was undoubtedly a component of its fundamental design. Furthermore, the basic framework also includes the harmony and balance between fundamental rights and guiding principles; anything that upsets this equilibrium is ipso facto a violation of the doctrine.

6. In **Central Inland Water Transport Corporation Ltd. & Another Etc. Vs Brojo Nath Ganguly & Another⁸**, the Hon'ble Supreme Court of India observed:-

“.....Our Constitution is federal in structure. Clause (1) of Article 1 of the Constitution provides that "India, that is Bharat, shall be a Union of States" and clause (2) of that Article provides that "The States and the territories thereof shall be as specified in the First Schedule". The word "States" used in Article 1 thus refers to the federating units, India itself being a State

⁸ 1986 AIR 1571

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

consisting of these units.”

7. In **Government of Andhra Pradesh & Others Vs Smt. P. Laxmi Devi**⁹, the Hon’ble Supreme Court of India observed:-

“86. It must be understood that while a statute is made by the people's elected representatives, the Constitution too is a document that has been created by the people (as is evident from the Preamble). The Courts are guardians of the rights and liberties of the citizens, and they will be failing in their responsibility if they abdicate this solemn duty towards the citizens. For this, they may sometimes have to declare the act of the executive or legislature as unconstitutional.”

8. In **State of West Bengal & Others vs The Committee for Protection of Democratic Rights, West Bengal & Others**¹⁰, a **Constitution Bench** of the Hon’ble Supreme Court of India observed,;-

“The Constitution of India expressly confers the power of judicial review on this Court and the High Courts under Article 32 and 226 respectively.”It was also observed:- “It may not be out of place to mention that in so far as this Court is concerned, apart from Articles 32 and 142 which empower this Court to issue such directions, as may be necessary for doing complete justice in any cause or matter, Article 144 of the Constitution also mandates all authorities, civil or judicial in the territory of India, to act in aid of the orders passed by this Court.”

⁹ AIR 2008 SC 1640

¹⁰ 2010) 3 SCC 571

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

Now, if the '**Preamble**' to the **Constitution** together with other provisions contained in the body thereof is read in conjunction with the above authoritative judgments of the Hon'ble Supreme Court of India, it can, by necessary implication, be very safely inferred that:-

1. The '**Sovereignty**' [which term can, in a political sense, be broadly defined to mean '*Internal Supremacy coupled with External Independence*'] vests in the '**People of India**'.
2. The '**People of India**' have, in the exercise of their '**Sovereign Will**' and '**Constituent Power**',:-
 - i. **ADOPTED** the draft **Constitution** on **26th November 1949** because they found it to be suitable for enactment into their fundamental law;
 - ii. **ENACTED** the **Constitution** into their '**Suprema Lex**' i.e. the fundamental law of the land effective from **26th January 1950**; and
 - iii. **GAVE TO THEMSELVES** the **Constitution** so that they could be governed by and under it, that is to say, the golden goals declared by them in the **Preamble** could be realized in their commonest interest by the machinery created and through the procedure and means enacted by them in the body of the **Constitution**.
3. In exercise of their '**Sovereign Will**' and '**Constituent Power**', the '**People of India**' have, by enacting the **Constitution**:-
 - i. Brought into existence different constitutional entities, namely, '**the Union**' in the name of '**India, that is Bharat**' as referred to in **Article 1(1)** and '**the States**' and '**the Union Territories**' in such names as respectively assigned to them under the First Schedule.
 - ii. Assigned '**India**' with the character of '**Sovereign Socialist Secular Democratic**

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

- Republic**’ declaring it to be a **‘Union of States**, thereby assigning **‘the States**’ with the character of **‘Federating Units**’ thereof.
- iii. Devised a federal structure for governance with **‘the Union**’ at the ‘Central Level’ and **‘the States**’ at the ‘Regional Level’.
- iv. Created three major instruments of power, namely, **‘the Legislature**’, **‘the Executive**’ and **‘the Judiciary**’ for governance and demarcated their respective jurisdiction with the mandate to exercise their respective powers without overstepping the prescribed limits so that each could function within the sphere allotted to it.
- v. Made the **‘Rule of Law**’ the quintessence of the **Constitution**, thereby declaring it to be the essence of governance meaning that each instrument of power, whether **‘the Legislature**’ or **‘the Executive**’ or **‘the Judiciary**’, created for governance and every functionary thereunder, whether elected or selected, shall operate under the aegis of the **Constitution** and discharge its function or exercise its power in strict consistence with the **Constitution** and the laws made thereunder.
- vi. Conferred:-
- a. **‘The Legislature**’ with the exclusive power of legislation;
 - b. **‘The Executive**’ with the multifarious powers and functions such as framing policies, schemes, etc., administering the law, making delegated legislation, etc.; and
 - c. **‘The Judiciary**’ with the exclusive power of adjudication of disputes by application of the law.
- vii. Appointed the **‘Higher Judiciary**’, namely, **‘the Supreme Court**’ under **Article 32** and

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

‘the **High Courts**’ under **Article 226**, as the ‘Sentinel’ of the rights and liberties of the citizens on the one hand and ‘the Interpreter’ of the **Constitution** and all laws made thereunder on the other, thereby investing them with the exclusive power of Judicial Review to determine the legality of the actions, whether taken by ‘**the Legislature**’ or by ‘**the Executive**’ and strike them out or declare them void in the event of their being found to be unconstitutional or otherwise illegal.

- viii. Appointed ‘the **Supreme Court**’ at the top of ‘**the Judiciary**’ as ‘the Final Arbiter’ of the **Constitution** and all laws made thereunder, thereby not only investing it with the exclusive power of declaring laws, on the one hand, which shall be binding on all courts and authorities in India in terms of **Article 141** and of a passing decree or making an order, on the other, which shall be enforceable throughout India in terms of **Article 142**, for doing complete justice in any cause or matter but also mandating all authorities, civil or judicial in the territory of India, in terms of **Article 144** to act in aid of the orders passed by it. Thus, this is the ‘**Fundamental Concept**’ of the **Constitution** in the backdrop of which, we will examine the conduct of the ‘**Public Official**’ in course of the exercise of his powers and discharge of his functions.

Analysis of the Material Facts and Examination of the Conduct of ‘Public Official’:

Since every ‘State Government’ has its own ‘Executive Branch’ almost similar to that of the ‘Union Government’, it is unnecessary to carry out the analysis of the material facts connected

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

with the 'Executive Branch' of both the 'Union Government' as well as the 'State Government' to conduct the desired examination. Therefore, for the sake of convenience, the material facts connected with the '**Executive Branch**' of the '**Government of the State of West Bengal**' are being taken up for carrying out the desired analysis and conducting the desired examination.

At the very outset, it may be noted that **Article 154(1)** of the **Constitution** vests the executive power of the State in the Governor and empowers him to exercise the same either directly or through *officers subordinate to him* following the Constitution. As already discussed under the sub-heading '**Definition of Public Official**', the term '*Public Officials*' has been used in this article to signify the expression '*Officers subordinate to him*' appearing under **Article 154(1)**.

Hence, the term '**Public Official**' signifies any '**Officer subordinate to the Governor**'. Now, it may be noted that in **Common Cause, A Registered Society Vs Union of India & Others**¹¹, the Hon'ble Supreme Court of India observed,:-

"The functions of the Govt. are carried out in the name of the President by Ministers appointed by him on the advice of the Prime Minister. The Executive consists of:-

- (a) *Prime Minister and Ministers who are members of the Cabinet;*
- (b) *Ministers who are not of Cabinet rank;*
- (c) *The Civil Service."*

With due respect, we may add the '**President of India**', '**Attorney General for India**',

¹¹ 1999) 6 SCC 667

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

‘**Solicitor General of India**, and other Law Officers of India to the above list because they also belong to the ‘**Executive Branch**’ of the ‘**Union Government**’.

Given the foregoing facts, we may very safely infer that the ‘**Executive Branch**’ of the ‘**Government of the State of West Bengal**’ consists of:-

1. The **Governor** appointed by the **President of India** in terms of **Article 155** of the **Constitution**; and
2. The following ‘**Public Officials**’:-
 - (a) The **Chief Minister** appointed by the **Governor** in terms of **Article 164** of the **Constitution** after the due process of ‘**Election**’ in terms of **Article 170** of the **Constitution** and other relevant laws made thereunder;
 - (b) The **Ministers**, who are members of the Cabinet, appointed by the **Governor** at the advice of the **Chief Minister** in terms of **Article 164** of the **Constitution** after the due process of ‘**Election**’ in terms of **Article 170** of the **Constitution** and other relevant laws made thereunder;
 - (c) The **Ministers**, who are not of Cabinet rank, appointed by the **Governor** at the advice of the **Chief Minister** in terms of **Article 164** of the **Constitution** after the due process of ‘**Election**’ in terms of **Article 170** of the **Constitution** and other relevant laws made thereunder;
 - (d) The **Members** belonging to the **Indian Administrative Service** appointed, in connection with the affairs of the **State of West Bengal**, by or under the authority of the **President of India** after the due process of ‘**Selection**’ in terms of the **All**

India Services Act, 1951¹² duly enacted by the **Parliament** in the exercise of the power conferred by **Article 312** of the **Constitution** and the **Rules/Regulations** made under the said Act;

- (e) The **Members** belonging to the **West Bengal Civil Service** appointed by or under the authority of the **Governor** after the due process of ‘**Selection**’ in terms of the relevant **Recruitment Rules** made by the **Government of West Bengal** under the **Proviso** to **Article 309** of the **Constitution**;
- (f) The **Members** belonging to the **Constituted Service and Posts of West Bengal** other than the **West Bengal Civil Service** appointed by or under the authority of the **Governor** after the due process of ‘**Selection**’ in terms of the relevant **Recruitment Rules** made by the **Government of West Bengal** under the **Proviso** to **Article 309** of the **Constitution**; and
- (g) The **Advocate General of the State of West Bengal** appointed by the **Governor** in terms of **Article 165** of the **Constitution** and other subordinate Law Officers appointed under the authority of the **Governor** in terms of the relevant **Rules** made by the **Government of West Bengal**.

It may now be mentioned here that the **Governor of West Bengal** has, by promulgating the **West Bengal Rules of Business**¹³ in the exercise of the power conferred by **Article 166(3)** of

¹² The All India Services Act, 1951 - https://www.indiacode.nic.in/handle/123456789/1363?sam_handle=123456789/1362

¹³ The West Bengal Rules of Business – http://www.wbpwd.gov.in/rules_of_business

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

the **Constitution**,:-

1. Created different Departments of the Government and allocated to each of them the respective item of Governmental Business with the mandate to the Secretary to carry out the transaction thereof in the capacity of the Head of Department by and under the authority of the concerned Minister – in – Charge as the Governmental Head in the Department; and
2. Laid down the procedure for the convenient transaction of the Governmental Business, thereby conferring the respective powers upon, demarcating respective jurisdictions amongst, and entrusting the respective duties and responsibilities to the ‘**Public Officials**’.

Since the **West Bengal Rules of Business** allocates among the Ministers the Governmental Business demarcating their respective jurisdictions, powers, and functions and also lays down the procedure for disposal of Governmental Business by the individual Departments as well as the Cabinet (i.e. the Committee of the Council of Ministers headed by the Chief Minister), it can be termed as the ‘**Mini Constitution**’ for the ‘**Executive Branch**’ of the **Government of West Bengal**. *These rules are mandatory and hence the compliance thereof by the ‘**Public Officials**’ cannot be dispensed with because their actions are, in the event of non – compliance, liable to be invalidated by the competent Court of Law. Please see **paragraph 63** of the judgment of the Hon’ble Supreme Court of India in **M/s. M. R. F. Ltd Vs Manohar Parrikar & Others**¹⁴.*

It may further be mentioned here that for the transaction of specific items of Governmental Business in respective Departments, the Government of West Bengal has promulgated various Rules. A few such Rules are as follows:-

¹⁴ (2010) 11 SCC 374

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

1. In the exercise of the power conferred by **Article 166(3)** of the **Constitution**,:-
 - i. The **West Bengal Financial Rules**¹⁵ have been made for conducting financial transactions relating to the State Exchequer;
 - ii. The **Delegation of Financial Power Rules, 1977**¹⁶ have been made for delegating the general financial power to various authorities for incurring expenditure from the State Exchequer in connection with the discharge of Governmental Functions entrusted to them.
2. In the exercise of the power conferred by **Article 283(2)** of the **Constitution**, the **West Bengal Treasury Rules, 2005**¹⁷ have been made for regulating the procedure of withdrawal from and deposit into the State Exchequer all money.
3. In terms of the provisions of **Article 162** of the **Constitution**,:-
 - i. The **Public Works Department Code 22**¹⁸ has been made for regulating the procedure of execution of Public Works entrusted to the **Public Works Department**.
 - ii. The **Irrigation and Waterways Department Code**¹⁹ has been made for regulating the procedure of execution of Public Works entrusted to the **Irrigation and Waterways Department**.

¹⁵ The West Bengal Financial Rules – <https://wbxpress.com/west-bengal-financial-rules/>

¹⁶ The Delegation of Financial Power Rules, 1977 – <https://wbxpress.com/delegation-of-financial-powers-rules1977/>

¹⁷ The West Bengal Treasury Rules, 2005 – <https://wbxpress.com/west-bengal-treasury-rules/>

¹⁸ The Public Works Department Code – As published by the Public Works Department of the Government of West Bengal

¹⁹ The Irrigation and Waterways Department Code – As published by Irrigation and Waterways Department of Government of West Bengal

- iii. The **West Bengal Secretariat Manual**²⁰ has been made for regulating the procedure for the disposal of works in the Secretariat and other offices.

It may also be mentioned here that the aforesaid rules require every '**Public Official**' to exercise his respective powers and discharge his respective functions strictly in such manner and following such procedure as laid down under the relevant provisions thereof.

It may now be noted here that the **Government of India** has, in the exercise of the power conferred by **Section 3(1)** of the **All India Services Act, 1951**, promulgated:-

1. The **All India Services (Conduct) Rules, 1968**²¹ for regulating the '**Conduct**', inter alia, of the **Members** of the **Indian Administrative Services**; and
2. The **All India Services (Discipline and Appeal) Rules, 1969**²² for regulating the '**Disciplinary Matters**', inter alia, of the **Members** of the **Indian Administrative Services**.

Similarly, the Government of West Bengal has also, in exercise of power conferred by the Proviso to Article 309 of the Constitution, promulgated:- The West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980²³ for regulating the '**Conduct**', inter alia, of the **Members** of the West Bengal Civil Service and other Constituted Service and Posts of West Bengal.

1. The West Bengal Services (Classification, Control and Appeal) Rules, 1971²⁴ for

²⁰ The West Bengal Secretariat Manual – <https://wbxpress.com/west-bengal-secretariat-manual/>

²¹ The All India Services (Conduct) Rules, 1968 – <https://dopt.gov.in/vol1>

²² The All India Services (Discipline and Appeal) Rules, 1969 – <https://dopt.gov.in/vol1>

²³ <https://wbxpress.com/west-bengal-service-duties-rights-and-obligations-rules/>

²⁴ <https://wbxpress.com/west-bengal-services-classification-control-and-appeal-rules/>

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

regulating the 'Disciplinary Matters', inter alia, of the Members of the West Bengal Civil Service and other Constituted Service and Posts of West Bengal.

Needless to mention, the rules regulating the 'Conduct', whether of the **Members of the Indian Administrative Services** or other **Members of the West Bengal Civil Service** and other **Constituted Service and Posts of West Bengal**, require every 'Public Official' to discharge his duties 'faithfully' and the rules regulating the 'Disciplinary Matters' prescribe punishment for 'misconduct' on his part in course of discharge of his duties. Thus, it becomes evident that if a 'Public Official' discharges his duties (i.e. exercises his powers and/or discharges his functions) in any manner otherwise than those provided in the aforesaid rules, he is said to discharge his duties 'unfaithfully', which is the antithesis of the relevant rules regulating the 'Conduct' of 'Public Official', thereby committing 'misconduct' and consequently rendering himself liable for punishment under the relevant rules regulating the 'Disciplinary Matters' of 'Public Official'. Please see the judgment of the Hon'ble Supreme Court of India in *S. Govinda Menon Vs The Union of India & Another*²⁵.

We may cite the following examples for better elucidation of the instances of 'misconduct' on the part of 'Public Officials':-

1. **Rule 29(2)(a)** of the **West Bengal Rules of Business** mandates that the proposals for the grant of pardons, reprieves, respites, or remissions of punishment or the

²⁵ 1967 AIR 1274

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

suspension, remission, or commutation of a sentence in pursuance of **Article 161** of the **Constitution** shall be submitted to the Governor by the Chief Minister before issuance of orders. Thus, if the Chief Minister authorizes the issuance of an order by the Secretary of Home Department in the name of the Governor for such grant of pardons, reprieves, respites or remissions of punishment or for the suspension, remission, or commutation of a sentence as aforesaid without obtaining the previous concurrence of the Governor, he is said to commit '**misconduct**', thereby rendering his action together with the order so authorized liable to invalidation by the Court of competent jurisdiction.

2. **Rule 29(1)(d)** of the **West Bengal Rules of Business** mandates that the proposals for the dismissal, removal, or compulsory retirement of any Group – A or Group – B Officer shall be submitted to the Chief Minister before the issuance of orders. Thus, if the Minister – in – Charge of a Department authorizes the issuance of an order by the Secretary of that Department in the name of the Governor for dismissal, removal, or compulsory retirement of any Group – A or Group – B Officer belonging to that Department without obtaining the previous concurrence of the Chief Minister, he is said to commit '**misconduct**', thereby rendering his action together with the order so authorized liable to invalidation by the Court of competent jurisdiction.
3. **Rule 183** of the **West Bengal Financial Rules** mandates that no authority lower than the Officer – in – Charge of a Subdivision can accept any tender or make a contract for public works on behalf of the Governor of West Bengal. Thus, if a '**Public**

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

Official' lower in rank than the Officer-in-Charge of a Subdivision accepts any tender or makes a contract for public works on behalf of the Governor, he is said to commit '**misconduct**', thereby not only rendering himself liable to punishment but also the contract liable to invalidation by the Court of competent jurisdiction triggering his further liabilities towards the affected Contractor.

4. **Rule 3 of the Delegation of Financial Power Rules, 1977** mandates that no department shall, without the previous consultation with the Finance Department, authorize any order which, inter alia, relates to the number of grading or cadres of the post or the emoluments or other conditions of service or posts, etc. Thus, if the Secretary of a Department (i.e. a '**Public Official**') creates a new post in his Department and gives a fresh appointment to any person to that post without obtaining the previous concurrence of the Finance Department, he is said to commit '**misconduct**', thereby not only rendering himself liable to punishment but also the post so created liable to abolition by the State Government and the appointment order so issued liable to invalidation by the Court of competent jurisdiction triggering his further liabilities towards the affected person.

As apparent from the above discussion, it is noteworthy that while the Chief Minister or a Minister runs the risk of invalidation of his action by the Court of competent jurisdiction in the event of '**misconduct**' on his part, any other '**Public Official**' runs the following multi-fold risk on this score, namely:-

1. Infliction of punishment by his Disciplinary Authority in terms of the rules

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

regulating ‘**Disciplinary Matters**’ of ‘**Public Officials**’; and

2. Invalidation of his action by the Court of competent jurisdiction, together with the incurrence of further liabilities towards the affected person, depending upon the matter.

Hence, a ‘**Public Official**’, other than the Chief Minister and Minister is likely to suffer ‘multiple liabilities’ in the event of ‘misconduct’ on his part.

Conclusion

It may be noticed that every such authority, be it the **Governor** or ‘**Public Official**’, as referred to under the sub-heading ‘**Analysis of the Material Facts and Examination of the Conduct of Public Official**’ traces its origin to the **Constitution**. It may also be noticed that every such rule, whether for regulating the transaction of Governmental Business in individual Departments and by the Cabinet or for regulating the conduct of or inflicting punishment on the ‘**Public Official**’ in the event of misconduct on his part, as referred to under the sub-heading ‘**Analysis of the Material Facts and Examination of the Conduct of Public Official**’ has been made by drawing power from or in terms of some or other provisions of the **Constitution**. This is precisely why it is said that not only the three organs of the State but also all functionaries thereunder draw their powers and authority from the **Constitution** and all laws made by them emanate from the **Constitution**. Therefore, the **Constitution** is the ‘*Suprema Lex*’ i.e. the fundamental law of the land, and every organ of the State as well as every functionary thereunder owes allegiance to the **Constitution**. However, the hierarchy of legal norms in our country is as follows:-

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

- (i) **The Constitution;**
- (ii) **Statutory Law**, which may be any **Statute** either made by **Parliament** or by the **State Legislature;**
- (iii) **Delegated Legislation**, which may be in the form of either Rules or Regulations, whether made under the **Constitution** or made under any **Statute**, etc.;
- (iv) **Executive Orders** neither made under the **Constitution** nor made under any **Statute**.

Please see **Government of Andhra Pradesh & Others vs Smt. P. Laxmi Devi**²⁶ on the above score. Given the above facts and the discussion made under the preceding headings, we may now cull out the following broad principles for the guidance of the ‘**Public Officials**’ so that the constitutional mandate of ‘**Rule of Law**’ may be complied with and proper services to the people at large may be rendered in the real sense of the term:-

1. It should always be remembered that if a law in a higher layer of the aforementioned hierarchy contradicts a law in a lower layer, the former will take precedence. Similarly, a provision in delegated legislation will be illegitimate if it contradicts a provision in a Statute, and an executive order that contradicts the delegated legislation will be invalid.
2. It should always be remembered that no one, howsoever high or low in our country, is above law under the ‘**Regime for Governance**’ established by the **Constitution**. Thus, no ‘**Public Official**’ should arrogate to himself any such powers and/or privileges and/or functions which are not backed by any legal sanction, else he may

²⁶ AIR 2008 SC 1640

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

personally be subjected to civil or criminal liabilities therefor. Please refer to **M/s Manuelsons Hotels Private Limited Vs State of Kerala & Others²⁷** and **Parkash Singh Badal and Another Vs State of Punjab & Others²⁸**.

3. Since the actions taken by the '**Public Officials**' in the exercise of Governmental powers and discharge of Governmental functions respectively conferred upon and entrusted to them assume the color of State action, they must be based on the principle of reasonableness and rationality, which is legally as well as philosophically, an essential element of equality or non – arbitrariness protected by **Article 14** of the **Constitution**. In other words, their actions must not be guided by any extraneous or irrelevant considerations but based on some rational and relevant principle. Please see **Ramana Dayaram Shetty vs The International Airport Authority of India and Others²⁹** and **Secretary, Jaipur Development Authority, Jaipur Vs Daulat Mal Jain³⁰**.
4. Every '**Public Official**' should discharge his duties with such a sense of responsibility that his actions conspicuously exhibit due compliance with the concept of 'the **Rule of Law**' enshrined in the **Constitution**. Please refer **Sukh Dutt Ratra & Another Vs State of Himachal Pradesh & Others³¹**.
5. If a thing has been prescribed by the **Constitution** or any **Statute** or any **Statutory**

²⁷ (2016) 6 SCC 766

²⁸ (2007) 1 SCC 1

²⁹ 1979 AIR 1628

³⁰ (1997) 1 SCC 35

³¹ Civil Appeal No.: 2273 of 2022 arising out of S.L.P. (C) Diary No.: 13202 of 2020

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

Rule to be done in a particular manner, every '**Public Official**' entrusted with the performance of the said thing should do it in the prescribed manner only, and not in any other manner whatsoever, even if it may appear to him that doing the thing otherwise may serve the popular cause. Please see **B. N. Nagarajan and Others vs State of Mysore and Others**³² and **Government of NCT of Delhi Vs Union of India & Another**³³.

6. Every '**Public Official**', especially one who holds high office such as an Officer belonging to the **Indian Administrative Service**, should always bear in mind that he has been appointed to discharge his duties in the public interest and for the public good only. Therefore, he should always have a constant endeavour to keep himself above his considerations and avoid a clash of egos with others in discharge of his duties so that any detriment to public interest could be kept at bay. Please refer to the **State of Assam Vs C.K. Das, I.A.S., and Others**³⁴.
7. Every '**Public Official**' responsible for taking decisions should act with due sense of responsibility, and not in a callous and highhanded manner, and take appropriate decisions by applying his mind so that frivolous and unjust litigation by Government may be avoided. Please see **Urban Improvement Trust, Bikaner Vs Mohan Lal**³⁵.
8. It should be borne in mind of every '**Public Official**', who has been conferred with

³² AIR 1966 SC 1942

³³ (2018) 8 SCC 501

³⁴ 1996 AIR 430

³⁵ 2010 (1) SCC 512

KnowLaw

KnowLaw Journal on Socio-Legal and Contemporary Research

A Publication of KnowLaw

Volume 02

KnowLaw

the power to decide and determine to the prejudice of any person, that he has, in such matters, an additional constitutional duty to act judicially. Thus, while deciding the matter, he is bound to apply the '**Rules of Natural Justice**' unless specifically barred by any law validly made on his behalf. Please see **Scheduled Caste and Weaker Section Welfare Association Vs State of Karnataka and Others**³⁶.

³⁶ 1991 AIR 1117