

THE CONSTITUTIONAL FOUNDATIONS, SARDAR PATEL AND THE ROLE OF THE CIVIL SERVICES IN INDIA

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Introduction

I would like to begin my article by stating at the very outset that the Constitutional foundations of the civil services in India owes a great deal to the vision of Sardar Vallabhbhai Patel and his perception of what a future public servant's mandate should look like in democratic India after independence. I will commence with a few reflective assertions on the world's largest and longest written constitutional text, the iconic 395 articles and 8 schedules of the Indian constitution. As the fundamental law of the land, it has now been transformed to 448 articles grouped into 25 parts, with 12 schedules and five appendices. This transformed Constitution is my point of reference and should be every civil servant's point of reference as they take the oath to serve the nation and its people. I look at the overarching values as stated in the Constitution and then revisit the civil service rules which are constitutionally embedded largely due to the efforts of Sardar Patel. These articles can be invoked by all civil servants to operationalise laws pertaining to the constitutional values of liberty, equality, fraternity and justice.

Assertions

My first assertion: If we revisit the constitutional moment once again, we will have to read the potentially transformatory values of liberty, equality, fraternity and justice embedded in the text not only as a set of universal cosmopolitan abstract values but as specific guides to action in executing and implementing their tasks as civil servants on the ground, in every substantive sense wherever they might be at work in India.

Assertion Two: The operational part of the constitutional text are the evolutionary and procedural features of a democratic political order which

despite its 75 per cent being a continuing legacy of the 1935 Government of India Act, still brought in some seminal features. e.g. a new legal contract between the State and the citizen for the first time by guaranteed civil and political rights to citizens. The “State” in the constitution meant the political executive, of which the permanent part is the bureaucracy which will be the only organ of the state to be operationalising the laws which would mean being in constant touch with the citizens.

Assertion Three: The overriding concerns then and now have not changed much, and therefore a democratic Constitution can only promise and enact procedural laws, a transformatory substantivist democracy with more enabling citizen entitlements can follow later with increased “state capacity” to deliver to citizens.

Assertion Four: The hundred amendments together with the entire body of constitutional jurisprudence actually makes the Indian Constitution unique and stand alone in the history of democratic constitutionalism in the developing world.

Let me reiterate a few facts only for emphasis. Written constitutions are meant to create a seminal beginning in a nation’s history, constitutions are also texts in which a community of people inscribe the script of their professed collective destiny at a particular point of time. They write down who they think they are, what they want to be, and the principles that will guide their future destiny. This was also the case with the Indian Constitution. Despite being one of the poorest ex-colonies at that point of time, 1947 to be precise, India had the audacious courage to adopt a procedural democracy with none of its prerequisites ever having grown in Indian soil or found in its immediate history. The Preamble reflects the universal first principles espoused during the French Revolution: Liberty, Equality, Fraternity and Justice. But at the moment of inception, none of these values claimed in the Preamble were anything more than a pledge of a state-to- be and a nation-in-progress. The people and the nation, on whose behalf our constitution speaks were not yet a political community, or a unified nation, the state and the government that it authorises were not yet stable entities, the principles that it articulated were abstracts, not backed by precedents in political practice. As Prime Minister Nehru’s famous words on the night of 14 August 1947 made clear, the only temporal state in which the nation could be spoken of was the future and the vision associated with it. It was a moment, when, as he said, we step out from the old to the new, when an age ends and when the future beckons us. Caste, community and associated entrenched inequalities have a tenacity to live on in the patterns of the everyday life of Indians, a reality even today. A break with the past without a radical social revolution could not have happened, therefore the values and principles were destined to remain aspirational goals till they became embedded social practices.

The Indian constitution was a unique aspirational document enacted at a time when no other post-colonial state was making the exercise at that point of history. It remains to this day the world's longest constitution with over a hundred amendments and a basic structure that is unamendable. Here was a document which granted universal adult franchise in a country that was overwhelmingly illiterate, where, the conditionality of acquiring citizenship made no reference to race, caste, religion, or creed, which committed the state to being secular in a terrain that was by any standards deeply religious, which eliminated as a matter of law, every form of prescribed social hierarchy in the face of a virtually total absence of such rights in the actual Indian society. This was a constitution which in its Preamble committed the state to the most voluminous conception of Justice, Liberty, Equality and Fraternity, first time promised to citizens of any post-colonial state in world history.

Therefore, what needs repeated emphasis is the fact that India was the first Third world country to experiment with a democratic model of governance knowing full well that it is the best model of governance in theory but the most difficult model in practice. India's Constitution was the framework through which the world's largest and one of its most contentious democracies was brought into being. The Constitution survived because of its amendability and of the several multilayered narratives within, which left a lot to the imagination of the courts to interpret and reinterpret. It is a norm setter, it is used by both judges and citizens to invoke constitutional values and has constitutionalised so much of Indian life, making it a truly people's constitution. The Constitution will survive in future only because of its aspirational character, its ability to bend to generational change and its incessant efforts to incorporate ideological flexibility with governance continuity over several decades and through several societal transitions with innate resilience.

Constitutional Provisions

In a modern democratic polity, civil services are an inevitable ingredient of the governmental apparatus. It is, in fact, the non-political and non-elected functionaries who are responsible for carrying on the administration under the direct control of the elected representatives of the people and in accordance with rules and principles.

The fact remains that at the time of independence, we inherited a well-organised framework of All India Services. In addition, there was a network of central, provincial and subordinate services. There were nearly 1000 officers in the ICS, roughly half of them were Indians. Owing to the state of affairs prevailing in the country as well as to avoid the creation of any void in the Services, the Interim Government under Nehru promised those who were inclined to continue in the service "the same terms as to scale of pay, leave, pension rights and safeguards in matters of discipline" as those who joined after

1947. A resolution to this effect was incorporated in the Indian Independence Act, 1947 and finally in the Constitution of India (Article 314 which was repealed in 1972 by the Constitution (28th Amendment) Act.

Sardar Patel's consistent support for the rights and privileges for civil servants was clearly reflected in his speeches in the Constituent Assembly. While strongly defending the constitutional safeguards for the civil services, Sardar Patel even threatened to resign if such guarantees were not incorporated in the Constitution (Art 309 - 15).¹

Although matters concerning Government services could be normally regulated by laws and the power to lay down detailed rules for recruitment and conditions of service of the Union and State employees was left to the respective legislatures (vide entry 70 of List I and entry 41 of List II), the Constitution-makers deemed it most prudent to assure the services by providing some constitutional guarantees and safeguards in the matter of recruitment, security of tenure, the procedure for disciplinary action on the clear and specific insistence of Sardar Patel. In this connection, the Constitution also provided for the setting up of an Independent Public Service Commission. The provisions for the Union and State Services applied to the whole of India except the State of Jammu & Kashmir (article 308) which has now been revoked.

Article 309 provided for the regulation of recruitment and conditions of service of Union and State Government services by appropriate Legislatures subject to the provisions of the Constitution. Until any such laws were enacted, the services were to be regulated by rules made by the President or the Governor as the case may be.

Article 310 laid down the principle that every Government employee in a defence service or a civil service-held his office during the pleasure of the President or the Governor. It was, however, possible to provide in special cases by contract to pay compensation for early termination of service. Besides, there were special constitutional safeguards in case of certain high functionaries like the judges of the Supreme Court and High Courts, the Chief Election Commissioner, Comptroller and Auditor-General, members of the Public Service Commissions, etc. who could not be removed from their offices except in the manner laid down in relevant articles (124, 217, 317, 324, etc.). Separate provisions were made for regulating the recruitment and conditions of service of certain categories of public servants, e.g. officers and staff of Legislature Secretariats (article 98 and 187), employees of the Supreme Court and the High Courts (article 146 and 299) and persons serving the Indian Audit and Accounts Department (article 148). Article 309 did not apply to them.

Article 311 sought to place certain limitations on the exercise of the pleasure principle in respect of civil servants. Thus, no civil servants could be dismissed or removed by an authority subordinate to the appointing authority and no

civil servant could be dismissed or removed or reduced in rank except after an enquiry informing him of the charges against him and giving him a reasonable opportunity of being heard in respect of those charges. The protection was not available to defence employees and even in the case of civil employees, it did not apply if the penalty was any other than dismissal, removal, or reduction in rank. The article, however, made no distinction between a person holding a temporary post and one holding a permanent post.

It was been held that the protection extended by article 311 is only procedural in nature and not substantive. No remedy may lie if all procedural requirements have been meticulously fulfilled. In the main these requirements are (a) that specific charges must be framed against a civil servant proposed to be proceeded against, (b) the charges must be formally conveyed, (c) he must be provided a reasonable opportunity of answering the charges, (d) he must be given an opportunity of defending himself by cross-examining the witnesses and adducing all evidence on which he relies and (e) the decision in the matter must be based on the facts and materials placed before the enquiring authority and no materials should be relied upon without the civil servant concerned having an opportunity to examine and explain them. The basic principle is that the enquiry must follow the rules of natural justice.

Article 311, it has been held, would not be attracted if there are no penal consequences like the loss of salary, allowances, or pension accompanying the action against him. Whatever the words used, if these amount to removal or dismissal, the article would apply, if the services are terminated in accordance with the terms of the contract or on superannuation or by way of compulsory retirement as per the procedure for the same, article 311 would not provide any protection. In case of reduction of rank also, the test is whether and what penal consequences are involved. A person holding a post in a substantive capacity cannot be brought down to a lower post without following the article 311 procedures of enquiry. The Supreme Court has, however, held that the Government before deciding to retire a Government employee compulsorily from service, have to consider his entire record including the latest reports.

The enquiry contemplated in article 311 may, however, be dispensed with in certain cases like (a) when a person has been convicted on criminal charges (b) where the appropriate authority records in writing reasons for the enquiry not being practicable (c) when the President or the Governor as the case may be is satisfied that in the interest of the security of the State it is not expedient to hold such an enquiry.

The Constitution of India, which requires that a reasonable opportunity should be given to the civil servant to deny the charges made against him/her. It is only after the civil servant has been given that opportunity, and if the enquiry finds him/her guilty, a penalty can be imposed on him/her.

But the matter does not end there. There are legal provisions for appeal, revision and review. It is only after the civil servant exhausts all these legal remedies available to him that he is allowed to suffer the penalty. The civil servant also has the right to challenge the legality of the order before the Administrative Tribunal, get an interim stay, and then, appeal against the main order. After he exhausts this remedy, the civil servant has the option of exercising the High Court or the Supreme Court for relief.

No other constitution in the world contains the kind of protection and guarantee that Article 311 provides. Sardar Vallabhbhai Patel, the then Home Minister, argued before the Constituent Assembly for providing protection to civil servants to render impartial and honest advice to the political executive without fear.²

Two All India services Indian Administrative Service and Indian Police Service-are mentioned in the Constitution itself. Article 312 lies down that if Rajya Sabha passes a resolution by a two-thirds majority to the effect that it is necessary or expedient in the national interest to create one or more All India services, including All India Judicial Service, Parliament may by law provide for such services. Parliament has under this article enacted the All India Services in addition to the IAS and the IPS which had been already created in 1948. Article 312 also empowers Parliament to regulate the recruitment and conditions of service of persons appointed to All India services.

Article 315 lies down that there shall be a Public Service Commission for the Union and a Public Service Commission for each state. Two or more states may opt for a Joint Commission. The Public Service Commissions are envisaged as independent constitutional institutions not subject to governmental or political interference or controlled and charged with the responsibility of recruitment and management of public services.

The Constitution (Forty-Second Amendment) Act, 1976 inserted a new part-Part XIVA-and articles 323A and 323B to empower Parliament and State Legislatures to set up by law administrative tribunals for the adjudication of disputes and complaints in all service matters relating to recruitment and conditions of service of public employees. All these articles were piloted and then, passed under the broad guidance and initiative of Sardar Vallabhai Patel.³

Sardar Patel and the “Steel Frame”

Sardar Patel had a key role in the creation of the All India Services which he described as the country’s “Steel Frame”. In his address as the country’s first Home Minister to the first post-independent batch of IAS probationers on 21 April 1947, he asked them to be guided by the spirit of public service in day-to-day administration. He also urged them to maintain utmost impartiality and incorruptibility in administration. “A civil servant cannot afford to, and

must not, take part in politics. Nor must he involve himself in communal wrangles. To depart from the path of rectitude in either of these respects is to debase public service and to lower its dignity”, he cautioned them in his speech wherein he laid out the principles of Surajya or good governance for the civil servants.⁴

This day, commemorated as Civil Services Day, signalled a transformation in the civil services in India established by the British. Patel put it succinctly “Your predecessors were brought up in the traditions in which they... kept themselves aloof from the common run of the people. It will be your bounden duty to treat the common men in India as your own”. Sardar Patel outlined four cardinal requirements of the civil service in his speech “empathy, efficiency, impartiality and incorruptibility”. Since then there have been notable successes in 75 years and the Indian developmental story owes a great deal to the passion, competence and commitment of our civil servants. In my view, there are some guiding principles that form the bedrock of the higher civil services in the country and it is critical to ensure that these essential values are not allowed to wither away.

Sardar Patel had been one of the first to realise in post-independent India, the pivotal role that civil services play in administering a country, not merely maintaining law and order, but implementing laws and public policies and running public institutions. He, more than any other contemporary of his, was aware of the need for an efficient competent and stable administrative structure as a backbone for a well-governed polity. The present-day all-India administrative services owe their origin to the man’s wisdom and thus he is regarded as the Father of modern All India Services.

In fact, in repeated speeches in post-independent India, Sardar Patel reiterated all the Weberian values as essential behavioral ingredients of a sound and stable permanent executive (bureaucracy) which should constitute the foundational public institution for maintaining stability in the future Indian polity. He emphasised the values of political impartiality, incorruptibility discipline, work by rules, integrity and cultivation of an esprit de corps and pride in public service as cardinal mandates for civil servants.

Patel’s association with civil servants extends long before he took over as the Home Minister of the interim Indian government from 1947-1950. Before he moved into the freedom struggle, Patel was a successful lawyer in Ahmedabad who often dealt with British civil servants on issues concerning law and order in the city.

However, his interactions with the British ICS increased when he was elected to the Ahmedabad municipality. He had to frequently coordinate with British ICS officers to perform his mandate in the urban local body. Even after he quit his post and joined the Indian freedom movement he continued

to maintain contact with British civil servants and their Indian subordinates, perceptively watching how the administrators worked in diverse conditions.

Sardar's varied experiences in administration enabled him to realise the true importance of Indian civil servants who had worked with great loyalty and professionalism under the British rulers. He could foresee that after Independence when the British officers would quit, there would be an "administrative gap" as we did not have enough experienced and efficient civil servants to administer a vast country like India. Leaders of the Indian National Congress who had invested all their acumen in political activism knew little about the technicalities of administration. India needed able competent and experienced administrators once the British left. Despite staunch opposition from other freedom fighters who doubted the loyalty of the ICS, Patel began building a team of efficient and competent officers who would boost and sustain the nation's administrative competencies after independence.

Sardar Patel was a nation-building visionary who regarded the civil service as an invaluable partner in the task of governance in post-Independent India. He always advised public servants to function fearlessly, autonomously and with professional neutrality in their relationship with the ministers in all their multiple tasks. He warned the ministers not to choose self-seeking civil servants who anticipated the wishes of their ministers and gave their advice merely to please them. Sardar Patel stood for the constitutional safeguards and guarantees for the civil service. He ensured the latter full protection necessary for its fearless functioning. All these make Sardar Patel the true architect of our All-India services.

The Sardar succeeded in incorporating Article 312 in the constitution thus endowing all India services with a constitutional berth. Article 312 is worth reproducing: *Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All India Services common to the Union and the States, and subject to the other provisions of this chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.*

The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article. Patel's relevance today is proved also by the fact that his name is invoked every time the nation is faced with a constitutional or political crisis.⁵ The political parties compete with each other in owning him as their icon. Important leaders both at the Union and State levels, try to emulate his style and build their profile closest to their perception of his image.⁶

Role of the Civil Services Today

Now I will dwell briefly on to the changes that India has experienced in its economic, political and social structure since independence which has affected the role of the civil services in many ways. The most dramatic change came with the new economic policy in 1991, which signaled the end of the license raj, a rollback of the State in economic activities, and the adoption of policies to create a favorable environment for private sector participation. The new economic policy, which ushered in an impressive regime of deregulation, liberalisation, and competition, meant a considerable reduction in the discretionary powers of civil servants and emphasised management of the economy through market-driven approaches. In other words, the civil services were now required to play a new role, that of being the facilitator of entrepreneurship. This meant new definitions of the professional obligations of civil servants, which are very different from the command and control methods traditionally used in the period from 1950-1990, which is today called the period of the expansion of the Indian Administrative state at the commanding heights of the economy.

The new regime of deregulation, liberalisation, and privatisation also asked for the involvement of the private sector and civil society organisations in the management of a variety of government activities. Increasingly, private sector organisations and NGOs came to be associated with public service delivery functions, which used to be managed by the civil services earlier. For the civil services, this means a change of their work profile, loss of importance and the breakdown of the traditional relationship of command and control with subordinates. Civil servants are now asked to be facilitators, they have to create a favorable environment for the entry of players from the non-governmental sector for the delivery of public service functions. It also means that civil servants could no longer expect to give orders to these players, but had to accept them as partners in development.

The 73rd and 74th amendments to the Constitution also changed the role of the civil service in a significant way. These amendments transferred the exercise of financial and administrative power to the elected members of local bodies such as the Village Panchayats, the Intermediate and the District local bodies in rural areas, and municipalities and corporations in urban areas. Prior to these amendments, the administration of these local bodies were in the hands of civil servants. With these amendments establishing a governance system in which locally elected representatives planned, managed, and monitored development programmes in the local bodies, the role of civil servants changed from that of implementors to facilitators. On the whole, the role of the civil services has diversified since the time the country became independent. It has been a mix of regulatory, developmental, and facilitative functions in the last fifty years.

It is also necessary to enact a civil service law that would describe the core principles, values, and characteristics which create its culture and ethos. Such

a law would also provide a clear and unified framework within which the civil services can carry out its responsibilities. In that case, the civil service law would become an unambiguous statement, to those within the civil services, and to the people of India, of what is expected of the bureaucracy. This will achieve two important objectives. First, it will help incorporate issues and set doubts at rest. Second, it will also help in garnering general, wide-ranging support for the need to make changes in the formal framework of the civil services. These are key requirements for nations competing in the twenty-first century. A Code of Conduct is a set of rules and regulations that outline the standards, responsibilities, proper practices for, an individual, party, or organisation. The conduct for civil servants specifies the clear principles as to what the government expects from its employees. The second ARC in its 10th Report pertaining to values and ethics of civil servants recommended drafting a bill on ethics to give a code of ethics a statutory basis in the form of The Civil Services Bill. According to Second ARC, civil servants should be guided by the following values:

- Adherence to the highest standards of integrity and conduct.
- Impartiality and non-partisanship.
- Objectivity.
- Dedication to public service.
- Empathy and compassion towards the weaker sections.

All of these were the values Sardar Patel stressed and emphasised as civil service mandates as long as he lived. In India, we do not have a positive statement of values that can guide the conduct of civil servants except constitutional values. What we have instead is a set of rules, which lies down what civil servants should not do. What we need is a legal declaration of values and a code of conduct reflecting public expectations of the relationship between the civil services and the government, the legislature and the members of the public with specific reference to political impartiality, maintenance of the highest ethical standards, accountability for actions, and responsibilities to the government of the day.

In fact, our task now should be to build a public service which India needs in the twenty-first century. We are already engaged in the task of building an internationally competitive India which, through increased productivity, will allow Indians to enjoy improved standards of living, gainful employment and better access to public services and improve their global rankings in human development. A key to this transformation is to transform our civil services. Besides sweeping changes that are taking place in the global economy make it necessary for us to build competent civil services. In a globalised world, countries compete in the global marketplace, and the quality of administration

is reflected in these battles. It has made it necessary for countries to improve their competitiveness across the board.

What should the civil services of twenty-first-century India look like? It should be a civil service that is valued by the political executive and is an excellent source of expert, objective policy advice.⁷ It should attract the best talent from every segment of society. Civil servants should be honest, objective, impartial, accountable, result-oriented and transparent in their dealings. It should be a civil service in which officers are proud of, and passionate about their work, committed to doing what they have to do with the pace and professional skills that Indian citizens need and expect in the twenty-first century. Finally, the civil services should be able to command the tallest confidence and respect of the public it serves, as tall as the patron saint and father of the All India Services, Sardar Vallabhbhai Patel.⁸

ENDNOTES

1. ‘Discussion in Constituent Assembly on role of Indian Administrative Service’ (<http://164.100.47.194/Loksabha/Debates/cadebatefiles/C10101949.html>). parliament of India. Retrieved 26 January 2010.
2. “Sardar Patel’s great contribution was the Indian Administrative Service” (<https://economictimes.indiatimes.com/news/politics-and-nation/sardar-patels-great-contribution-was-the-indian-administrative/articleshow/61356227.cms>). The Economic Times. New Delhi. 31 October 2018. OCLC 61311680 (<https://www.worldcat.org/oclc/61311680>). retrieved 21 January 2018.
3. “One Who Forged India’s Steel Frame” (<http://www.boloji.com/index.cfm?md=Content&sd=Articles&ArticleID=15210>). H.N. Bali. Retrieved 15 November 2016.
4. Venkaiah M. Naidu (31 October 2017). “The great unifier” (<http://indianexpress.com/article/opinion/columns/sardar-vallabhbhai-patel-birth-anniversary-india-narendra-modi-bjp-4914433/>). The Indian Express. OCLC70274541 (<https://www.worldcat.org/oclc/70274541>). Retrieved 21 January 2018.
5. A.G. Noorani, (2 July 2017). “Save the integrity of the civil service” (<http://www.deccanchronicle.com/opinion/op-ed/020717/save-the-integrity-of-the-civil-service.html>). Deccan Chronicle. Retrieved 4 September 2017.
6. Pran Nath Chopra, Vallabhbhai Patel (1999). The collected works of Sardar Vallabhbhai Patel, Volume 15. Konark Publishers. pp. 195, 290.
7. All these qualities were first emphasised by Sardar Patel and the nation today honours his views by celebrating Rashtriya Ekta Divas on his birthday every year. ANI (31 October 2016). “Nation observes Rashtriya Ekta Diwas on birth anniversary of Sardar Vallabhbhai Patel” (https://www.business-standard.com/article/news-ani/nation-observes-rashtriya-ekta-diwas-on-birth-anniversary-of-sardar-vallabhbhai-patel-116103100039_1.html). business Standard India.
8. The world’s tallest statue “The Statue of Unity” is located in India in honour of Sardar Vallabhbhai Patel. “India unveils world’s tallest statue” (<https://www.bbc.com/news/world-asia-india-46028342>). BBC News. 31 October 2018. Retrieved 31 October 2018.