

CAN CIVIL SERVANTS EXPRESS THEIR VIEWS ON LAW, GOVERNANCE?

Relevant for: Indian Polity | Topic: Provisions related to UPSC, State PSCs and Civil Services in India, and their Role in Democracy

People stage a protest against the remission of sentence granted to the convicts of the Bilkis Bano case by the Gujarat government, at Bandra, in Mumbai. | Photo Credit: PTI

On [India's 75th Independence Day](#), the [Gujarat government released 11 men](#) convicted on charges of gang-raping Bilkis Bano, who was 21 years old and five months pregnant at that time, and murdering seven members of her family, including her three-year-old daughter, during the 2002 riots. The convicts, once released, were felicitated with garlands and sweets. Two days later, [Ms. Bano issued a statement](#) saying, "the trauma of the past 20 years washed over me again." Soon thereafter, a senior IAS officer, [Smita Sabharwal from Telangana, tweeted](#) from her personal account in support of Ms. Bano and questioned the Gujarat government's decision, sparking off a row over whether she was in breach of the Central Civil Services (Conduct) Rules of 1964 and reviving the debate on the freedom of civil servants to express their personal views on matters of law and governance. In an interview moderated by **Sonam Saigal, Justice B.N. Srikrishna** and **K. Sujatha Rao** discuss the issue. Edited excerpts:

B.N. Srikrishna: The citizens of this country have the fundamental right of free speech guaranteed to them under the Constitution, which is subject to reasonable restrictions in the interest of securing the state's sovereignty, international relations, health, morality, etc. She has the right to tweet. But when you undertake a government service, you subject yourself to certain disciplinary rules. That prevents a government servant from becoming a member of a political organisation, or any organisation of such a nature, or expressing herself freely with regard to anything that has to do with the governance of the country.

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This rule is of the British era. There is no doubt that the British were very, very strict and didn't want their officers to be talking about how bad the governance was. But in a democracy, the right to criticise the government is a fundamental right and nobody can muzzle that. Unfortunately, I didn't have an opportunity to express myself by sitting on the bench either in Bombay or in Kerala or in the Supreme Court, but I would have said this very loudly and without hesitation.

There is a recent judgment of then Tripura High Court Chief Justice Akil Kureshi, one of the best judges I have come across, who did not get enough due because of obvious reasons. He said something very interesting in a (2020) judgment (*Lipika Paul v. The State Of Tripura*), "As a Government servant the petitioner is not devoid of her right of free speech, a fundamental right which can be curtailed only by a valid law." She (the petitioner) was entitled to hold her own beliefs and express them in the manner she desired, subject to not crossing the borders laid down in the Conduct Rules which were applicable in Tripura. A fundamental right cannot be curtailed except by a valid law made by a legislature. In 2018, the Kerala High Court had said, "One cannot be prevented from expressing his views merely because he is an employee. In a democratic society, every institution is governed by democratic norms. Healthy criticism is a better way to govern a public institution." I think the trend is that judges are taking the view that IAS officers have a right to express themselves in a legitimate and decent manner.

Today, things are very bad. I must confess, if I were to stand in a public square and say I don't like the face of the Prime Minister, somebody might raid me, arrest me, throw me in jail without giving me any reason. Now that is something that all of us should oppose as citizens.

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Sujatha Rao: There are two views in this case. Most colleagues, particularly those who are serving in the government, would take exception and not be very supportive — because the general belief is that as IAS officers, we should not talk against government actions or government policies in public fora. And if at all we feel very strongly about something that is being done or acted upon, we can at best, if it is such a serious situation, approach the associations.

The [Bilkis case](#) was a travesty of justice. It crossed all borders of fairness and humanism. The gang rape and the murder of the child were horrific. Despite that, you find the convicts are not even in jail for life. A committee was constituted so casually and a 1992 [remission] policy was invoked even though there are new laws. And the committee had five members of the ruling party. They just released them and there was a celebration about it — it's a mockery [of justice].

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In such a situation, Smita tweeted as a woman. There was anger. Why she added the words 'civil servant' is because the dharma of the civil servant is to uphold constitutional principles in letter and in spirit, and the rule of law. In this case, both the spirit of the Constitution and the rule of law were being subverted. This could be a very dangerous precedent, as we saw recently [when] the Andhra Pradesh government released eight murder convicts (on remission, despite them not completing the mandatory 14 years in jail). If murderers are going to be released by executive action, what is the point of having courts? Wind up the courts and let just the collector, the ruling party, decide who should be in jail and who should not be in jail. For some actions if civil servants, whether retired or in service, speak up, that would have some kind of a deterrent [effect] on the arbitrary abuse of bureaucratic power.

B.N. Srikrishna: The courts are now veering towards the view that this rule is too stringent and cannot be applied in this manner. I agree that once you take up government service, you surrender and allow some restrictions on your fundamental rights. You are to operate within bounds. The rule says you cannot criticise a policy judgment. This is a very vague expression and needs to be carefully scrutinised. Releasing criminals who had committed heinous crimes prematurely, without application of mind... is that a policy? I hope that someday the Supreme Court will sit down and thrash out these issues carefully.

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Sujatha Rao: No, I don't think the rules violate Article 19. It is a rule, it's not the law. It's not in the Constitution. Freedom of speech is given in the Constitution, but these are Conduct Rules and they are imposed because there has to be some discipline in an organisation for that organisation to function. There is a process of decision-making. Right from below, the matter is examined, the pros and cons are taken up, the bureaucracy is given an opportunity to examine all the aspects, write their notes of objection or support, and finally it reaches the political executive. When a policy is decided, it has to be obeyed and complied with by the bureaucracy.

B.N. Srikrishna: Whether she had written an op-ed in *The Hindu* or tweeted or posted about it on Facebook, the bounds are the same, the bounds don't change the game, the rules of the game remain the same. Ultimately, it's your fundamental right which has to be reasonably

restricted. The reasonableness of the restriction is not in the medium, it is in the manner in which you're restricted, the purpose for which your right is restricted and the method by which it is restricted, namely, by legislation made in accordance with the Supreme Court in the *Puttaswamy* case (which holds that the right to privacy is protected as a fundamental right under the Constitution) in connection with data protection law. I think it is time that this country encourages its democratic principles.

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Sujatha Rao: No, she (Ms. Sabharwal) has no authority to express her opinion behind closed doors. What authority does she have? This is happening in Gujarat. She is not a stakeholder in the decision-making process. These rules were made way back during the British time. The scene has changed today. We have social media and there are no laws that say that because I am serving the government, I cannot use Twitter. If I can tweet about my holidays, I can also share my views with my followers saying, 'I'm very pained by what's happened today.' She has not given a speech about it; it is just a private communication on Twitter. She chose to express her own anguish.

B.N. Srikrishna: Unfortunately, government officers are given only one way of encouragement: say good things in the media. Do they have the liberty as of today to say what is bad? The only problem I see is, if you are going to implement a policy, let's understand one thing: in democracy, everybody has a right to express his or her opinion, a right to object, a right to dissent. The same thing could be said for an IAS officer; he or she may have a right to dissent. Once a resolution has been adopted, it's your job to implement it. If you don't implement it, you are not being true to yourself. That is the problem that arises. That is a very, very thin line, and also a question of how to balance the two interests.

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Sujatha Rao: Creating more transparency about policies through social media is the duty of a government officer. This has to be taken on a case-by-case basis. I have supported Smita only because it was the Bilkis case. We need to make a differentiation between what is something that's going to hurt society, hurt the Constitution, and the rule of law. This is not a government policy (decision to release convicts on remission). This is an action, which is ordained by the Supreme Court, executed by the government of Gujarat, and the (question is over the) manner in which it has been done. This was an exception.

B.N. Srikrishna: Yes, somebody could challenge it as offending constitutional fundamental rights; then the Supreme Court would be forced to come down and say either it is good, or it is bad, and give good reasons for that.

K. Sujatha Rao is a retired IAS officer; B.N. Srikrishna is a retired justice of the Supreme Court

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