

Constitutional Law and Public Administration in India

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Citizenship – II

The concluding and important part in the topic of citizenship is public administration and the law on citizenship. While we say there are rights that citizens have, then there is a distinction of who a foreigner or an alien is. The duty and obligations of the foreigners in India may be governed under the Foreigners Act of 1946 or the Registration of Foreigners Act of 1949. Foreigners in India will not be treated equally because only citizens have the right to be treated equally. And hence, foreigners may be treated unequally, which means that they may be treated slightly differently from how Indians or Indian citizens are considered. But does it mean that foreigners have no rights at all in India or under the Constitution of India? First of all, a foreigner is one who is not a citizen of this country, but still continues to reside in this country for various reasons and purposes.

He could be a foreigner who travels to India on a tourist visa and decides to overstay or he is probably travelling in India. He is here on business or research, or on a diplomatic mission or any other person. But generally, they are not citizens, who are holding Indian citizenship. The Constitution of India very clearly says that foreigners will not have fundamental rights of certain kinds and categories. The fundamental rights mentioned in Article 19 are solely available to Indian citizens. These are freedoms that citizens alone will have. In Article 19, only citizens have the freedom of speech and expression, freedom of movement and the freedom to do trade, occupation, and business.

So, citizens have these extra freedoms that foreigners may not have, and every other constitution tries to make that distinction. Second, every sovereign nation can deny foreigners certain kinds of freedoms or rights, as democratic sovereign states, they must follow the principles of natural justice. And basic human rights have to be granted even for foreign nationals. And that is where the UDHR principle of 1948 becomes very relevant and important.

It talks about universal declaration of human rights as an integral part of the democratic process. And these are not just rights given by the Constitution, but they are universal rights of human beings. This is an international law and international law usually guides most

national law. Sometimes what national law cannot provide international law can provide. You have to understand that while UDHR has not been ratified by India expressly, to a larger extent, the Supreme Court and the High Court have recognized UDHR as the principle to govern rights, which are not necessarily just fundamental, but which are very basic rights, which even non-citizens should be entitled to. And hence, non-citizens cannot be deprived of the basic liberty and equality. Foreign nationals can access the judicial system and the democratic process in this country. But this is not an absolute right, and it cannot be compared to the rights of the citizens. Articles 22, 20 and 21 under the Constitution are rights that are used in the exercise of detention or arrest. These are rights in terms of where liberty is being taken away.

Some of these fundamental rights can be suspended during an emergency. But we can assume that those rights that are provided, the right against self-incrimination, the right of an accused during arrest, shall be fundamental rights available to non-citizens or foreigners as well, because the Constitution uses the word citizen only in Article 19. Therefore, it can be concluded that foreigners have been given protection under the Constitution, they have been recognized with certain kinds of rights. And they are entities that are recognized in the Constitution of India and hence, public administration has a duty and an obligation to not only recognize these rights of the foreigners, but also respect it, adhere to it and see that these rights are not infringed. So, foreigners are treated humanely, and foreigners have access to the justice delivery system in this nation.

To a larger extent foreigners have a positive right under the Constitution of India, though they are not having all the absolute rights, or all the rights that a citizen has, which is considered fair. It is important to consider public administration vis-a-vis a citizenship concept. Some questions that arise in this regard are, why is citizen and administration so very important and what is the linkage between citizenship and public administration or Is public administration entirely functionally interconnected to the concept of citizenship. It is noteworthy that public administration is generally established to serve citizenship.

The purpose of public administration, of those kinds of entitlements that are useful to the public, is what public administration can be normally defined. It is necessary to look into how the administration and administrators administer public property, public rights, and how they adhere to public duties. What kind of facilities and benefits citizens are entitled to and how they can be transferred functionally to the public is very importantly connected with these two words called citizenship and public administration. So, every administration must take decisions in this democratic setup for the benefit of the citizens or the larger public as it were. It is the citizens who can make the choice of the kind of public administration that they want. Citizens have this right and if there is growth of citizenship, if there is growth of people rights, if there is growth of the economic capacity of the citizens, there is growth of public administration.

Thus, these two are connected, and concepts under the constitution have a core relative. The purpose of public administration or the establishment of public administration is citizen centric and citizen oriented. Citizens always have expectations and foremost they do not want the public administration to be like an alien administration. That can be highlighted through an example. Alien administration is something that is foreign, distant, and not representing a section of the same society or community. Not being responsible for the apathy of citizens or the problems that citizens often face is an alien public administration. The ideology of public administration today has moved, from being merely a regulator to being a welfare providing public administration. Initially public administration was only kind of a license raj and merely trying to regulate, be the police state or be the state which has power but not responsible power.

Right now, public administration in India has a very positive role and the positive role is to provide a lot of civic, basic amenities to citizens trying to take care of their welfare and trying to be more responsible for their well-being. And hence, in this context, if there is a gap between what is expected by the citizens and what is delivered by the public administration, naturally it will result in a lot of grievances. It is very common to have these grievances in society between, what should the public administration do and what it should not do; what it has done, and has it done to the satisfaction of the citizens. Citizens are like consumers and public administration is like a manufacturer.

One can always argue that there is nothing like absolute consumer satisfaction, or absolute citizen satisfaction. However, citizen satisfaction is paramount in terms of evaluation of the functioning of public administration. Do most of the citizens accept the role of public administration, accept the functioning of the public administration and the final implementation of public policies as it were? Very importantly public administration must be trustworthy and must be interacting with the citizens.

Public administration must communicate, it must be transparent, and it has to share information. Because the whole institution of public administration is funded by citizens who pay tax. The whole concept of the institution of public administration arises from the people and it is created by the people and it is of the people because public administration is just a reflection of each individual in the society. Hence, citizen grievances against administration have to be reduced. But unfortunately, as India is growing in terms of the LPG era, India is becoming a more literate, legally literate nation, more Indians are migrating to the cities, and are well off.

It is noticeable that unfortunately, some of these citizen grievances are not reduced, but they have increased. There is a growing discontent among citizens about the way public administration is being done in this country. And hence, the focal point of discussion of politicians and administrators and even judges should be to how and to what extent this kind of grievances can be reduced, how can these grievances be addressed amicably and

how can to a larger extent the citizens satisfaction index if it were so be improved. This becomes the responsibility of the politicians, administrators and jurists who occupy the post of public administrators. One of the most important components of public administration is public awareness.

It is important for public administration to reach out and state how and where it is moving in what direction it is framing public policy. And hence, the spread of education or literacy or information becomes a very critical factor in the social awakening of people towards administration. And hence, the more open the ideology of the public administration is, the more transparent it is, the more democratic it would actually constitute to be. And hence, today the concept of public administration is not closed door administration. It is not saying that the right of admission is reserved.

Public administration is or ought to be more open, more transparent. And that is the process of channel of addressing grievances of citizens. It is only right for citizens to have grievances of public administration because they feel affected, they feel aggrieved by the public policies that are made from public administration from time to time. While public administration must do public good, what it all must also do is that it must ensure that there is no infringement of the concerns, the rights of people in the human process. Public administration owes this duty to the concept of citizenship. Citizenship is precisely for the same reason. The citizen belongs to this nation and looks to the public administration and expects the public administration of this nation to tell it that he can call, recall and vote for it. And that is what the democratic citizenship is conceptualized against. There are a lot of factors that result in grievances between citizens and public administration and with many examples.

Hence, it is the important duty of public administration to set up institutions for redressal of grievances. That is where the strengthening of the status of a citizen improves. He must ensure that his grievances are redressed in a timely, speedy, and judicious manner. And he wants to make the government and institution especially responsible for the exercise of their public powers. So, the redressal of grievance, today, happens through a lot of these quasi-judicial bodies that have been created from time to time. For example, how does public administration improve accountability? How does public administration improve the informational gap? How does the public administration pass on the vital information of public policy to the citizen? One of the mechanisms of doing that is through what is known as the Right to Information Act of 2005. The RTI Act improved public administration to some extent in India. It was the need of the hour and it was important that citizens can get information from government and public authorities as a matter of right. Earlier, before 2005, it was given as a matter of discretion from the government and the citizens have the right to know how the government functions, where the money is being spent. To a larger extent, the Right to Information Act also in one sense wanted to check corruption in public office and public administration.

Citizens have a lot of grievances on corruption. In a country like India, corruption can be a major problem of public life and public administration. And hence, to address all these kinds of grievances, the Parliament enacted a very important legislation called the Right to Information Act of 2005. And to that extent, the information started passing on. Citizens can demand it, citizens can ask for it and the government is duty bound to deliver the same. Also, if the information is delayed or denied, the RTI Act created the Information Commissions, both at the Central Information Commission and the State Information Commission as a quasi-judicial body to redress the grievance between public administration and the citizens who have the right to seek that kind of information.

Under Section 3 of the Right to Information Act, only citizens have the right to information. Foreigners do not have this right. That is very critical and important. Citizens have a clear definition or understanding, they can seek this right to information because it is a kind of grievance, it is a kind of a leverage of rights between the government, which is a public administration government to that of the citizen who has the right to it. So, RTI is only for citizens, and it is only for their grievances.

There is a form that will address those kinds of grievances in it as well. And hence, through the enactment of RTI one would assume, post 2005, a major objective of promoting citizen satisfaction has been achieved. That is just one of the processes of public law that has looked at granting citizenship, that kind of an interesting, progressive right. To a larger extent, moving away from the British colonial legacy of saying that there can be secrets of the government, that was a major path breaking movement in this country. Also, one should understand that there are expected norms of behaviour in a society. And very often than not, these norms are breached by fellow citizens. And it is the duty of the public administration to protect everyone's interest in society. Everyone has the right to express himself or herself. And those kinds of norms in society have to be dealt with as strictly as possible. The norms of behaviour in a society between a fellow citizen to another citizen can be addressed.

The police or any other system of governance have to come into action. But such norms of behaviour are expected even towards foreigners. So, an Indian must respect the rights of the foreigners. That is the basic behavioural part that is expected of citizenship and of citizens in this country. And the bureaucracy of public administration must specially protect foreigners because they feel even in this state or in this country and sometimes, they are here as tourists. In the incident of Holi during which, a young you tube vlogger was forcefully molested by putting colours. She was refusing to take those colours, but a young man unfortunately forced himself on her. And such kinds of action against foreigners are also something that comes within the domain of public administration. A public administration must owe an equal responsibility to protect the rights, liberties of foreigners on land as well. And hence,

it is important that foreigners when they are in India may also have convenience of public administration.

Some of the instances of foreigners who may have challenges of public administration could be the denial of the visa, extension of visa or extension of permits to do business in this country, invest in this country etc. Foreigners also should be provided with the platform to retrace their grievances as or if not more than equal to what citizens are expected to have. That kind of alienation of foreigners in any nation only makes that nation not accessible to foreigners. A country's worth, a country's development is tested by the means and mechanisms of how much the public administration treats the rights of citizens as equal to the rights of foreigners. Hence, any show of arrogance, irritation, lack of proper response or procrastination or delay only tarnishes the image of public administration, not only in the eyes of citizens, but also in the eyes of foreigners.

Today public administration, when it has a more positive role or a welfare role, there are so many things of public administration that affect the lives of citizens and foreigners. For example, health services, which are emergency health services, a foreigner may meet with a road accident, so can an Indian meet with a road accident. How does the public administration then respond to such kind of emergency health services required by persons in India. It is a critical factor of the image of public administration. The support, the kind of assistance that is required from public administration, is very critical, because the public administration has a lot of resources at its disposal.

Public administration controls the government machinery, and it is supposed to be held accountable for the same. In certain kinds of matters, citizens and foreigners must be treated equally. Neither of these parties must be allowed to get frustrated, dissatisfied or be unhappy with the kind of public administration that is there in the country. Accountability of public administration is so important. If that kind of accountability, sensitivity or response to public administration is not in place, then the result of it will be discontentment among the people.

Wide disparity between the performance of the administration and the expectation of the citizen brings a gap which may result in conditions of operation, conditions of wrongful action, infringement of rights, disinterested society, a disorganized society, or a high rate of crime. At some point in time, there is so much of a point of no return that the organized state will totally become a moot nation. So, the process of administration must be just and deal with corruption. The standards of honesty and integrity towards citizens and their interest must be of the highest rank and order.

If there is faith that citizens should have, and the kind of account the citizen should be able to get, public administration will go a long way in making a society a much better place to live in. An average citizen expects certain average things from a public administration. It

is not extraordinary that the public administration cannot deliver. It is the citizens who created the constitution, the public administration, and we the people.

What does the citizen expect from public administration? The first thing that he may expect is a proper attitude from the officials in the public administration. He does not expect public officers to have arrogance in the way they speak and act towards citizens' concerns. Two, in India, they expect things to happen as soon as possible without delay or without any waiting period. So, the time of delivery of public policies in public administration must be fairly at a quick pace.

Also, citizens expect no favouritism. It is important that public administration should be fair and favouritism unfortunately which is such a major thing sometimes has been ruled out. Finally, corruption must be reduced, which is a big task nowadays. But just taking away middlemen, brokers is sufficient to a larger extent to deal with corruption sometimes. And finally, what citizens expect from public administration is that the resources in public administration should be so fairly and equitably distributed so that there is no gap between the rich and the poor or no discrimination between the rich and the poor, especially that the rich can access public administration easily and the poor cannot access public administration easily is done away with.

Simple factors can actually be a tendency that can be overplayed in public administration and that tendency needs to be curbed and a failure to recognize a poor citizen's right, is the failure of the public administration precisely. Taking care of the weakest in the society, taking care of the most vulnerable in the society, like in a house, the most attention that is deserved are elderly citizens and young children who are the weakest per se, and they are the ones who require the maximum assistance.

Public administration is also about that. They have to identify the most vulnerable community, pre-citizens and people who require the first attention. They deserve the first call of public administration and the same should be followed. The interaction in citizenship and public administration is very critical to mount the defense of social harmony and social peace. Because once this gap between citizens' expectations and public administration increases, the result is unfortunately going to be social unrest, social violence, and social tension. Finally, at some point of time, it may also result in civil war, if necessitated in some jurisdictions.

Administrative reforms as it had happened in terms of two reports that have been submitted in India. The Administrative Commission does deal with the expectations of the public, the need of the public vis-a-vis an unresponsive administration. The establishment of the Central Vigilance Commission, the Lokpal and the Lokayukta, to some extent deal with the administrative process of corruption. But these are not sufficient agencies that can make the public administration responsible.

It is important to conclude on the fact of nationality versus citizenship. Very often they are used quite interchangeably and synonymously in India. When it is said you are an Indian national, you are a whole Indian citizen. Nationality is more pediatric, it is more nation-centric, nationality is more international law centre, citizenship is domestic, it is within the citizen versus state, nationality is between the state, it is citizen vis-a-vis international. While you can use this word interchangeably, the Supreme Court very clearly wanted to clear the distinction between these two.

Citizenship is only granted to natural persons who are natural individuals. Citizenship is not granted to corporations, legal personalities, and legal entities. Whereas, a company registered in India can be considered to hold Indian nationality. Natural persons who hold citizenship enjoy civil and political rights. Nationality entitles you to a status that will determine rights of entities in international law. So, that is the distinction because mostly international treaties refer to nationalities, they talk about what member nations do to their own nationals. That is the basis of distinction in terms of clarity of what we still mean. But vis-a-vis natural persons within the constitution as we the people, the concept is citizenship.