



## **Perspectives on the Participation of Civil/Public Servants in Partisan Politics in Nigeria: A Call for Rethinking and Revision of the Public Service Rules**

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### **Abstract**

Towards the 2023 general elections in Nigeria, the debate on the validity and application of the principle of absolute political neutrality of civil servants resurfaced. This principle requires civil servants to abstain from political activities including campaigning and joining political parties. The Federal Civil Service Commission and the Attorney General of the Federation contend that the Public Service Rules prohibit civil servants from political activities. However, the Nigeria Labour Congress and other labour unions disagree and argue that the Public Service Rules contravene the constitution and violate civil servants' fundamental rights to freely associate and belong to a political party. This study interrogates the legality and desirability of the principle of absolute political neutrality in the Nigerian Civil Service. It draws upon the extant statutory framework, relevant jurisprudence, scholarly literature and contemporary practices in other jurisdictions. The finding of this study shows that the Public Service Rules as presently constituted violate constitutional provisions and civil servants' rights to hold and join political parties of their choice. The central argument is that constitutionalism principles in Nigeria and practices in other jurisdictions increasingly invalidate an approach that anchored civil servant loyalty and effectiveness on the principle of absolute political neutrality. The study concludes by recommending that in line with practices in the United Kingdom and Canada, the Civil Service Rules should be revised to permit differentiated prohibitions. This will permit civil servants that hold non-sensitive positions to hold political opinions and join political parties of their respective choice.

**Keywords:** Political neutrality; civil service; impartiality; political rights and constitutional supremacy.

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## Introduction

The civil service bequeathed to Nigeria by the British colonial heritage has a Westminster administrative tradition that is also known as the Whitehall administrative model. The tenets of this inherited administrative model include, among others, absolute political neutrality, permanency and anonymity of the civil service in implementing the elected government's policies. (Rhodes et al., 2009). One of the key tenets of the Westminster administrative model is the application of the traditional model of political neutrality to the civil service. The civil service is independent, anonymous and non-partisan in political activities. This model cuts across the Commonwealth including Nigeria, India, Canada, the United Kingdom, etc. It maintains that civil servants are politically neutral, and anonymous. The civil service provides impartial services to the government (Hood & Lodge, 2006). Admirably, it has been said that:

. . . the British civil servant is famous, for the zeal and ability with which he carries out the policy of the government in power, whatever it may be, and for the success with which he represses his personal feelings and opinions inside and (where necessary) outside the conduct of official business...(Dale, 1941, p. 46)

The traditional perspective is that the civil service must independently provide policy advice and implement government policies and should be apolitical (Dobel, 1990). The civil service should not only be neutral but should be perceived as non-partisan by the government, citizens and stakeholders.

### *Defining Political Neutrality*

The concept of political neutrality of civil servants in modern governance means a display of impartial and non-partisan position in performance and attitude (Tjokrowinoto, 1987). Civil servants must maintain political neutrality in implementing government policies to build a relationship based on trust between the government, the citizens and stakeholders (Nuridin & Ramses, 2008) in the fulfillment of state obligations. The concept of neutrality can be used interchangeably with apolitical and political non-partisanship. Its traditional or absolute model mandates that civil servants should not engage in partisan political activities, must not be registered members of political parties, must not campaign for any political party, must not express political views at work, must not publicly criticize government policies, must not manifest political preferences in public, must not seek elected position and must not form



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political parties, must not discriminate in the performance of their duties based on political reasons, must not employ or promote subordinates and colleagues based on political opinions and political consideration. (Itrich-Drabarek, 2015)

However, some scholars have challenged the principles embedded in the traditional model of absolute political neutrality in public service, particularly in relation to the senior hierarchy of the public service (Levitana, 1942). Levitana argued that absolute political neutrality is not beneficial to the civil service, he contends that the search for “absolute political neutrality is a quest for the impossible...like all citizens, civil servants must reserve the right to protest against policies which they consider detrimental to the public good even at the expense of resigning from public service” (Levitan, 1942, p. 323). Mohapatra(1965) also shares the sentiments expressed by Levitan, when he argued that the concept of political neutrality in its traditional form that mandates political non-partisanship of the civil servant as imperative of his loyalty to the government infringes on the political rights of the civil servant and has the potential to turn the civil servant into some kind of lifeless non-emotional automated robots. He called for revision and modification of the principles of political non-partisanship of the civil servant (Mohapatra, 1965).

Several decades after, (Dobel1990) in support of Mohapatra’s criticism of the traditional model of political neutrality stresses that the public service core values of “accountability and public integrity should be conceived of, not in rigid and closed terms, but as dynamic and accountable. All public discretion is exercised by real human beings and made possible by personal integrity” (Dobel, 1990, p. 364). In contemporary times, it is now generally agreed that civil servants are entitled, like other Nigerians, to the freedom of speech, expression and freedom to hold political opinions in their private lives and outside of the workplace. It is however significant that those civil servants are politically non-partisan and must maintain neutrality in the workplace. Maintaining the balance can be quite challenging. Civil servants are required to develop and implement government policies irrespective of their political opinions and lineages. Political neutrality is fundamental in managing potential conflict and in the impartial implementation of government policies.



The philosophy underpinning the prohibition of civil servants from joining partisan politics and maintaining political neutrality is based on the perspective that civil servants must maintain the trust and loyalty of the government, political neutrality also permits the civil servants to serve successive governments and maintains merit-based, professional and effective civil service. In addition, political neutrality strengthens public confidence in the civil service at all times. Political neutrality in the civil service in the context of non-partisan politics is considered a fundamental pre-condition for effective and efficient service delivery. It is a pre-condition for ensuring merit-based, fair and impartial decision-making and treatment of citizens irrespective of their political opinions and lineages. (Innovations and Reforms Center, 2021). The Supreme Court of Nigeria seems to lend its support for this perspective when the court stressed, *obiter*, in *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa* (2003) LPELR-24927(SC) that the restriction of political activities of civil servants perhaps may be justified “to ensure the objectivity of officers entrusted with the implementation of government programmes, continuity of administration and to foster a public confidence in and a healthy public perception of the public service” Ayoola, J.S.C in *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa* (2003) LPELR-24927(SC) p.43.

In the interrogation of the validity, essence and desirability or otherwise of the application of the traditional model of political neutrality in the Nigerian civil service, this paper is divided into five segments. The first segment is introductory. The second segment explores the functions of the civil service and the negative consequences that departure from the non-partisan principle may occasion. The third segment analyses the legal framework and jurisprudence on the participation of civil servants in partisan political activities. The fourth segment is a comparative analysis of Canada and the United Kingdom with lessons to learn from the jurisdictions. The fifth segment concludes with a recommendation for a revision of the Nigerian Public Service Rules.

### **Functions of the Civil Service**

The Nigerian civil service performs a range and variety of functions, including administration, planning and execution of government policies. Civil servants are the face of the government because they implement government policies and interact with the people through the delivery of



government services. They perform executive, technical, administrative and clerical services. They help in the formation of policies, drafting of laws and regulations, collection of taxes and revenues, providing guidance and directions to the political office holders and helping in the preparation of budgets. There are also the lower cadres that include clerical staff, gardeners, drivers, cooks etc. The top echelon consists of vastly experienced brilliant and brightest Nigerian graduates, while the middle level consists of fresh graduates and some that have risen through the ranks to the top. They also act as regulators and keepers of government records. They are employed by the government and regulated by relevant statutory provisions and rules, including the Public Service Rules.

Across the globe, there are principles, conventions and standards that underpin the delivery of effective service by the civil service. These principles include the principles of non-discrimination, transparency, political neutrality, transparency and accountability, knowledge and merit-based civil service and equal access to all citizens and stakeholders. A decision on the promotion or employment of a colleague or subordinate must not be based on political affiliations but on a fair, open and transparent evaluation of a candidate's competence, qualifications, experience and skills to effectively perform his/her work, and shall aim at selecting the best available candidate.

A civil servant must not use his office for partisan politics or base his performance and service delivery on political opinion, must not abuse his position based on his political opinion and bias or use his office resources to campaign for or against a political party. The case of *Minister of Internal Affairs and Others v. Shugaba Abdulrahman Darman* (1982) 3NCLLR915 reflects the injustice and absurdity that may taint the judgment and performance of public servants that permit their political affiliations to influence the performance of their duties. In this case, Immigration officers who are public servants arrested Shugaba, a politician that belonged to the opposition party. Shugaba was purportedly deported from Nigeria to Chad by the opposition-led Federal government. Shugaba challenged the purported deportation in court and the court declared the deportation was ultra vires, illegal and void and that same constituted a violation of the fundamental rights, personal liberty, privacy and freedom of movement of Shugaba because a Nigerian citizen cannot be deported from Nigeria.



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Also, in the *Director of State Security Service & Anor. v. Olisa Agbakoba* (1999) 3 NWLR (Pt. 595) 314 Olisa Agbakoba, a human rights lawyer and government critic was arrested by the officers of the State Security Service at the International airport. His passport was impounded without any justification and was prevented from boarding the flight to attend an international conference, the Supreme Court of Nigeria held that the power of the State Security Service is limited to the prevention and detention of any crime against the internal security of Nigeria as stipulated by Section 2 of the National Security Agencies Act and the seizure and impounding of Olisa's passport was, illegal and amounted to a violation of his right of freedom of movement guaranteed under the provisions of Section 38 Subsection (1) of the Constitution.

Prohibiting civil servants from engaging in political activities facilitates a relationship of trust and loyalty between the government, the civil servants and the service users. It gives a platform for the government to serve the public without bias or favour by treating all citizens equally regardless of political affiliations or ideology, race, sex or religion. See Section 42 of the Nigerian Constitution. Civil servants are not required to be in absolute agreement with government policies or decisions but must follow the lawful directions and implement the policies of those elected to public offices in the general elections and perform their duties and responsibilities with commitment and due diligence (Westmoreland, 2011)

### **Legislative Framework on the Participation of Civil Servants in Partisan Politics in Nigeria**

Section 169 of the Constitution of the Federal Republic of Nigeria 1999, CFRN (as amended) establishes the Federal Civil Service. It states that there shall be a civil service of the Federation. See *FCSC v. Laoye* (1989) 2 NWLR (pt 106) p. 652; *Adedeji v. Police Service Commission* (1967) All NLR 72 SC. Section 207 of the Constitution equally provides for the establishment and maintenance of a Civil Service for each state of the Federation.



### **The Public Service Rule 2008 Edition**

The Public Service Rule 2008, PSR is a significant instrument that makes provisions for the conditions of service, rights duties and privileges of all public servants in Nigeria. Rule 01010 1 of the PSR emphasizes that the PSR applies to all employees of the Federal Government including its ministries, departments, agencies and parastatals except where the provisions of the PSR are in conflict with specific terms in their respective written contract of employment, and such specific terms must have been approved by the Federal Government. According to President Yar' Adua, the primary objective of the PSR is to ensure that civil servants comply with ethical issues of 'transparency, accountability, justice, equity, due process, and the rule of law. All these are very paramount to the conduct of Government' (Yar' Adua, 2008, p.1). The extent to which the PSR assures compliance with justice, equity and the rule of law in relation to the embracement of the traditional model of political neutrality is interrogated below. The relevant sections are set out and examined below:

Rules 030421 of the PSR prevents all staff, whether on duty or leave of absence, from engaging in any speech, publication, broadcast, or engagement of a political nature without the express permission of the Permanent Secretary or Head of Extra-Ministerial Office, speak in public, express any opinion, grant interview or broadcast on any matter which may reasonably be regarded as of a political nature; in granting any permission the Permanent Secretary or Head of Extra-Ministerial Office must have regards for the interest of the government. Civil servants are also prohibited from publicly criticizing the government or any of its officers.

Rules 030422 of the PSR prohibits civil servants from holding any office, whether paid or not, or offer himself/herself or nominate anyone else as a candidate for any elective public office in any political organization without the express permission of the Government, indicate publicly his support of or opposition to any party, candidate or policy, and engage in canvassing in support of political candidates. Rules 030423 of the PSR mandate any civil servant that engages in partisan political activities or intends to seek elective public office resign his appointment.

There is no doubt that the provisions of the PSR highlighted above are in gross violation of the constitutional provisions of Section 39 (1) of the 1999 Constitution of the Federal Republic of



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Nigeria which says that “ every person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference”, and subsection(2)which says: “without prejudice to the generality of subsection(1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions.”. It is also inherently evident that these PSR provisions cannot be reasonably justified in a democratic society under Section 45 of the Constitution, See also *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa (2003) LPELR-24927(SC)*.

In addition, Section 40 of the 1999 Nigerian Constitution states that ‘every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to a political party, trade union or any other association for the protection of his interests. Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.”

Pursuant to the proviso of Section 40, Section 228 of the Constitution 1999 and Part III of the Electoral Act 2001 enacted by the National Assembly and section 24(1) of the Act that provided that INEC shall have the power to register political parties and regulate their activities from time to time, INEC issued guidelines dated 18<sup>th</sup> of May, 2003 for political associations wishing to transform into political parties. Paragraph 5 (b) of the guidelines stipulates that a person shall not be eligible to be registered as a member of a political party if such person is in the civil service of the Federation or of a State. The above guidelines were challenged as unconstitutional, null and void by some political parties at the Federal High Court. The Federal High Court refused to grant the reliefs but the Court of Appeal granted same. On appeal to the apex court, the Supreme Court held that INEC powers under reference and particularly in the proviso to Section 40 of the Constitution can only be validly exercised in the prescription of the conditions that may help INEC to facilitate the registration of political parties and for administrative, procedural and evidential purposes but does not include the imposition of substantive conditions on the candidates or the parties, otherwise such additional and substantive conditions would be void. INEC rules and regulations cannot operate to obviate the provisions of the constitution. INEC





cannot legislate inconsistently with the provisions of Sections 222 and 223 of the Constitution, *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa (2003) LPELR-24927(SC)*, Honourable Justice Ayoola JSC in affirming the decision of the Court of Appeal held that:

There is nothing reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health in prohibiting a member of the public service or civil service ... from eligibility to be registered as a member of a political party. The submission that the restriction is a valid derogation from section 40 by virtue of section 45 (1)(a) of the Constitution was erroneous.

This judgment clears the way for the notion that civil servants can be registered members of political parties of their choice. However, the Head of Civil Service of the Federation (HoS) DrFolasadeYemi-Esan towards the 2023 general election reminded the civil servants by a circular dated May 5, 2022 reference HCSF/479/11/19 that the Public Service Rules, (PSR) prohibit civil servants from engaging in partisan politics. Equally, the Attorney General of the Federation and Minister of Justice, AbubakarMalami in a letter dated 26 November 2018 with reference Ref. No.SGF/PS/HCSF/210/11 had earlier noted that civil servants are not expected to engage in partisan politics stressing that the Supreme Court has not nullified the provisions of Rules 030422 and 030423 of the Public Service Rules (2008 Edition) which prohibits civil servants from partisan politics.

However, in *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa (2003) LPELR-24927(SC)* Muhammadu LawalUwais, J.S.C. held that:

the Civil (Public) Service Rules are not legislation per se as provided by the Constitution nor subsidiary legislation, as they are not made under any enabling Act or Law. These limitations are emphasized by Rule 01001 of the Rules which provides in respect of some categories of public office holders that... these [PSR] Rules apply only to the extent that they are not inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria in so far as their conditions of service and any other law applicable to these officers are concerned." The provisions of Section 40 of the 1999 Constitution are clear. Their import is to allow "every person," including public office holders and civil servants, the freedom to assemble freely and associate with other persons to form or belong to any political party, or trade union or any association for the protection of his interests. The section has made no exception and there is nothing limiting its



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application to civil servants or public officers. It is important to mention that the provisions of the Civil (Public) Service Rules have not been challenged in this case and therefore their validity is not an issue for determination by this court. Reference to the restriction had been made merely in passing (Uwai, 2003, P. 49)

The Supreme Court did not nullify the offending provisions of the PSR majorly because the determination of its validity or otherwise was not before the Court. However, in its obiter, the court stressed that the restriction of political activities of civil servants perhaps may be justified “to ensure the objectivity of officers entrusted with the implementation of government programmes, continuity of administration and to foster a public confidence in and a healthy public perception of the public service” Emmanuel Olayinka Ayoola, J.S.C in *Independent National Electoral Commission v. Alhaji Abdulkadir Balarabe Musa* (2003) LPELR-24927(SC)p.43

It is noted that Rules 030422 and 030423 of the PSR are only a rule of the Civil Service, while Section 40 of the 1999 Constitution is a constitutional provision. By virtue of the provision of Section 1(3) of the CFRN 1999 Constitution, the doctrine of Constitutional supremacy stipulates that if any law is inconsistent with the provision of the 1999 Constitution, the Constitution shall prevail and the other law shall to the extent of the inconsistency be void. *First Bank of Nigeria Plc. v. T.S.A. Industries Limited*(2010) LPELR-1283(SC).

## **Lessons from Canada and United Kingdom**

### *Canada*

Canada shares with Nigeria the British heritage of political neutrality of the civil servants. However, human rights advocacy and the intervention of the Canadian Supreme Court have necessitated the Public Service Commission, PSC to revise the long-established principles on the prohibition of partisan politics in its civil service. PSC had to find the appropriate balance between the concept of traditional model of political neutrality and the protection of the civil and political rights of public servants (Juillet & Rasmussen, 2008). In a landmark case, *Osborne v. Canada (Treasury Board)*, [1991] 2 S.C.R. 69, 49–50. Justice William in a dissenting opinion held:

The Public Service Employment Act (PSEA) could distinguish between various levels of employees, but, in my view, the case against partisan activities is a



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strong one. Once allegiances are known, the principles of neutrality, impartiality and integrity are endangered. There is a danger within the service that those seeking appointments and promotions will feel some incentive to cut their cloth to the known partisan interests of those who have influence over appointments and promotions. Visible partisanship by civil servants displays a lack of neutrality and a betrayal of that convention of neutrality. The public perception of neutrality is thus severely impaired, if not destroyed I must say that to permit overt partisan political activity is to come perilously close to abandoning the principle of neutrality

In *Fraser v. P.S.S.R.B.*, [1985] 2 S.C.R. 455, par. 30, the Supreme Court in making a pronouncement on the difficult balance between the right of a civil servant to freedom of expression and the freedom to critique government policy on significant issues without hindrances and his obligations to maintain neutrality and be a loyal civil servant as a public employee, held that while it is important to maintain neutrality and loyalty as a public servant, it will be unfair to make civil servants silent members of society and deprive them of their fundamental right of free speech by barring them from criticizing the government. However, it is incumbent on civil servants to ensure that any criticism they offer does not impair their professional ability to perform their jobs as loyal public employees and in relation to *Fraser*, the court held that the constant, extensive and vitriolic nature of his criticism of government policies has impaired his ability to perform his duties.

The reform to the principles of neutrality in Canada eventually came in the case of *Osborne v. Canada (Treasury Board)*, [1991] 2 S.C.R. 69, 38–39. In this case, a group of public servants challenged the legality of the principle of neutrality that makes it unlawful for them to be involved in partisan politics. In nullifying the blanket application of the principles of neutrality, the Supreme Court tried to strike a balance between the freedom of expression and political thoughts and the restraint on such freedoms and liberties to maintain the loyalty and integrity of the civil service to the government. The Supreme Court ruled that the blanket application of the principle of neutrality and non-partisan went far beyond what is needed to preserve the loyalty, integrity and effective delivery of public service. The Supreme Court applied the principles of proportionality and differentiated prohibitions and the court held that “a great number of public servants who in modern government are employed in carrying out clerical, technical or industrial duties that are completely divorced from the exercise of any discretion that could be in any



manner affected by political considerations,” the court stated that “the need for impartiality and indeed the appearance thereof does not remain constant throughout the civil service hierarchy.”

### *United Kingdom*

In the United Kingdom, the Home Civil Service, popularly known as the civil service is traditionally politically neutral and non-partisan (James Christopher, 1960). It implements government policies impartially. The general rules governing civil servants’ participation in national political activities are set out in the Civil Service Management Code and departmental staff hand books. Members of the Senior Civil service are prohibited from belonging to a political party whereas Middle-ranking and junior officials can join political parties, express political views and campaign for political parties like anyone else in the United Kingdom but must be politically neutral in the exercise of their duties (Bradley & Ewing, 2005). They must however act with some discretion, not refer to their employment as civil servants and seek departmental approvals before contesting elections. For the purposes of determining the political neutrality of the civil servants the Civil Service is divided into three groups: “the “politically free” – industrial and non-office grades; the “politically restricted” – members of the Senior Civil Service, civil servants in Grades 6 and 7 (or equivalent) and members of the Fast Stream Development Programme; civil servants outside the “politically free” and “politically restricted” groups” (Civil Service Management Code,” 2016)

Under the Civil service code 2006 now updated and set out in Part 1 of the Constitutional Reform and Governance Act 2010, all civil servants must be politically neutral and must effectively perform their duties to the best of their ability regardless of their political persuasions. Civil servants are also required to act impartially and not be persuaded by political considerations or personal political views. They must ensure they retain government trust and confidence at all times. The civil service’s traditional core values of integrity, objectivity, impartiality and honesty form the substratum of the code. All civil servants are however prohibited from standing for election to the UK Parliament (House of Commons Disqualification Act 1975). Any interested civil servant must resign from the Civil Service before standing for election. Such individuals are required to resign from the Civil Service once they have been formally adopted as prospective parliamentary candidates.



## Conclusion

It has been shown above that it is the global practice for the civil service to adopt and imbibe the principles of political neutrality. It has also been shown that the principle of political neutrality in its traditional or absolute form is no longer tenable in a constitutional democracy. Nigeria practices constitutional democracy. As discussed above, Section 39 of the Nigerian guarantees the freedom of expression and Section 40 of the constitution guarantees the freedom of political thoughts and association. These constitutional provisions have received judicial affirmation from the Supreme Court of Nigeria. The discourse above also shows that the Nigerian Public Service Rules still prescribes the traditional model of political neutrality and the Head of Service and the Attorney General and Minister of Justice of the federation are prepared to enforce same. The PSR provisions on political neutrality cannot be justified, though the PSR has not been nullified by the Supreme Court but same cannot be reasonably justified in the face of its violations of Sections 39 and 40 of the constitution of Nigeria. The PSR needs to be revised in accordance with best global practices.

The current practice in Canada and UK is to apply the principle of political neutrality in compliance with constitutional provisions that guarantee civil servants the right to express their views and the right to hold political opinions and join political parties of their choice. One way of assuring this, is to apply the principle of political neutrality in the form of differentiated layering of prohibitions, depending on the cadre of civil servants. First, it is beyond doubt that there are different cadres of civil servants with different levels of exposure to government policies and implementations. It will be unreasonable to have a blanket ban on the engagement in political activities by all cadres of staff. A lower-level officer is not in the same way exposed to government policies and exercise of discretionary powers as a top-level civil servant. Hence, based on the above discourse, lessons that are drawn from Canada and U.K and findings, this paper recommends as follows:

- I. The political activities of top-level civil servants should be restricted if they occupy or perform sensitive government functions bordering on policy formulation and strategic thinking. This will enable them to maintain their impartiality at all times.



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- II. The middle-level staff should be required to seek approval from their respective heads of units, rather than from the permanent secretary with whom they may not have reasonable access.
- III. The lower-level staff should be free to join and participate in the activities of a political party of their respective choice without any hindrance or restraint.

In sum, it is obvious from the discourse above that the PSR extant provisions of the traditional model of political neutrality have become obsolete and an affront to highlighted constitutional provisions. It is time to revise these provisions in conformity with global standards, constitutional democracy and the practice of constitutionalism. Understanding democracy is a commitment to and embracing the underlying principles of inclusiveness and fundamental rights that each individual is entitled to his personal space, freedom of expression and freedom to hold divergent political opinions and belong to a political party of his choice.

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