

Conflict of Interest Issues in Parliament

Background Note for the Conference on Effective Legislatures

Elected representatives in a democracy derive their authority from the electorate. Therefore, the authority should be exercised in the best interest of the people or in ‘public interest’.¹ In their private capacity, Members of Parliament (MPs) may have other occupations such as being business-owners, lawyers, farmers, or educationists. They can use these diverse experiences to enhance their oversight capabilities and make more informed decisions. However, there is a possibility of an MP’s personal interest improperly influencing the exercise of his public duties. The abuse of public office for personal gain is termed as conflict of interest.²

The following questions are relevant to address the issue of conflict of interest for legislators. What are the situations under which interests may be in conflict? What should be the disclosure and recusal rules to avoid such conflicts? What are the enforcement and penalty mechanisms?

In this paper, we summarise the broad mechanisms used to address the issue of conflict of interest among legislators in different countries. We then discuss the Constitutional provisions in India, and mechanisms for tackling this issue among MPs. Similar issues may be faced by judges and civil servants – we also examine the rules for these groups.

Mechanisms for Addressing Conflict of Interest^{2,3}

In order to minimise possible misuse of public office, various broad levels of regulations are used.

- **Declaration:** Legislators may be required to disclose interests where they hold pecuniary interests (income from employment, shareholding, and directorship) and non-pecuniary interests (membership of an interest group).
- **Recusal:** In some cases, the legislator may be asked not to participate in the discussion or vote on a topic where there may be a conflict of interest.
- **Incompatibility:** Legislators may be prohibited from holding government jobs or some types of private jobs. There may also be some restriction related to post-tenure employment.
- **Regulation of Gifts and Travel:** There may be restrictions on the value and source of gifts that an elected official may receive.

Table 1: Comparison of conflict of interest policies in select countries

Country	Policy
USA	Code of Conduct gives detailed guidelines such as prohibition of gifts, conflict of interest, and intermingling of a member’s personal and campaign funds. Members cannot occupy certain posts simultaneously. They are required to file annual disclosure statements and are banned from lobbying for a year after their tenure is over.
UK	Members must declare all relevant past and potential interest before debating an issue in Parliament or a committee. Members are required to register their pecuniary interest. They cannot be employed in certain posts during tenure (such as armed forces, police, and clergy).
Australia	The federal Parliament has a Ministerial Code (some states have Codes of Conduct for MPs). There are provision for registers of pecuniary interest, lobbyist registers and codes governing the post-separation employment of Ministers. In case of improper conduct of a severe kind, the Prime Minister may refer the matter to an independent authority for investigation.
Canada	Ministers must follow the Conflict of Interest and Post-Employment Code that outlines ethical standards and private and public interests. It prohibits use of information obtained officially for personal gain. All Members are barred from voting on matters in which they have pecuniary interest. There is a lobbyist registration system. Ministers cannot engage in an outside profession or actively in business. It restricts members from simultaneously holding certain posts. There are some post-tenure employment restrictions. An Ethics Commissioner may conduct an inquiry into breaches of code.

Sources: *A Survey of Codes of Conduct in Australian and Selected Overseas Parliaments*, Australian Parliamentary Library, December 2009; “Legislative Ethics: A Comparative Analysis,” Legislative Research Series, National Democratic Institute for International Affairs, 1999; PRS

Conflict of Interest Norms for MPs in India

The Constitution of India recognises that there can be a conflict of interest between the executive and legislature. It therefore provides for disqualifying legislators if they hold any office of profit in the central or state government other than the ones exempted by law (see Appendix 1).⁴ Conflicts of interest that arise out of an MP's private interest are regulated by the Code of Conduct for Ministers; Code of Conduct for Members of the Rajya Sabha, Rules of Procedure and Conduct of Business in the Lok Sabha and Rajya Sabha and Handbook for Members. Both Houses have an Ethics Committee to oversee the ethical conduct of MPs.¹ Table 2 lists the various mechanisms available to both Houses of Parliament.

Table 2: Governance of conflict of interest in the Lok Sabha and Rajya Sabha

Type	Lok Sabha (LS)	Rajya Sabha (RS)	Remarks
Declaration of Interest	Every MP shall declare assets and liabilities to the Speaker. ⁵ Non-declaration may be treated as a breach of privilege. ⁶ Similar declaration is required of a Minister. ⁷	Every MP shall declare assets and liabilities to the Chairman. ⁵ Non-declaration may be treated as a breach of privilege. ⁸ Similar declaration is required of a Minister. ⁷	LS: MPs file only assets and liabilities, not interests. ⁹ RS: MPs must notify changes once a year. ⁹ All Ministers filed their assets and liabilities for 2008-09. ¹⁰
	MPs are prohibited from influencing a Minister or government official in cases where they have financial interest or recommending their relatives for contracts. ¹¹	In case of conflict between private and public interest both financial and otherwise, an MP should not jeopardise public interest. No confidential information should be revealed for private gain. ¹²	LS: Ethics Committee may take up complaints of unethical behaviour. ¹³ In 2005, 10 MPs, alleged to have taken money to ask questions, were expelled. ¹ RS: Ethics Committee can recommend that an MP be censured, reprimanded, or suspended for a specific period. ¹⁴
	An MP has to declare any personal, pecuniary or direct interest in a matter before participating in House proceedings. ¹¹ In a division, an MP's vote can be challenged on above mentioned grounds. The Speaker has the right to decide. ¹⁵	RS has to maintain a 'Register of Members' Interests'. ¹⁶ MP has to declare five pecuniary interests: remunerative directorship, remunerated activity, majority shareholding, paid consultancy and professional engagement. ¹⁷	LS: No such declaration was made in 5 years with relation to the Committees. ¹⁸ No MP challenged a vote on these grounds in 5 years. ¹⁹ RS: As of July 2010, 197 out of 250 members had filed their interests. The register is not public; EC is considering the issue. ²⁰
	An MP may object to another MP joining a Parliamentary Committee on grounds that he has personal, pecuniary or direct interest. Till the Speaker's decision, the MP cannot vote in the committee. If the Speaker decides against the MP, he shall quit as a member of the committee. ¹⁵	Before participating in a debate, an MP has to declare any personal or pecuniary interest in a matter under consideration by RS or a Committee, even if it is not declared. ²¹ In case of a division, an MP's vote can be challenged on the above grounds. ²¹	LS: No such objection was made in the past five years. ²² RS: Shri Parimal Nathwani declared his interest in natural gas in a Calling Attention discussion in 2009. ²³ In 2005, Dr Karan Singh declared his interest in his starred question regarding tourism. ²³ No objection was made in the past 5 years in case of a division. ²³
Incompatibility Provisions	A Minister cannot have connections with any business in which he has an interest in his ministerial capacity or if the business provides services to the government. ⁷ Prior permission is required if a Minister's relative is employed by a foreign government or commercial concern. ⁷	A Minister cannot have connections with any business in which he has interest in his ministerial capacity. Prior approval is required if a minister's relative is employed by a foreign government or commercial concern. ⁷	The EC may take up complaints of unethical behaviour.
Regulation of gifts	An MP cannot accept foreign contributions and needs prior permission to accept foreign hospitality. ²⁴ A Minister should not accept contributions or gifts from people he deals with officially. He may receive gifts from foreign dignitaries of a symbolic nature. ⁷	An MP cannot accept foreign contributions and needs prior permission to accept foreign hospitality. ²⁴ A Minister should not accept contribution (political or charitable) or a valuable gift. He may receive gifts from foreign dignitaries of a symbolic nature. ⁷	The EC may take up complaints of unethical behaviour.
		An MP should not take gifts that hamper performance of his duties. He should not accept any fee for a vote given, a Bill introduced or putting a question. ¹⁷	In 2005, the Ethics Committee recommended that one MP be expelled for taking cash for putting questions. ²⁵

Sources: Code of Conduct for Ministers, Code of Conduct for Members of the RS, Rules of Procedure and Conduct of Business in the LS and RS, Handbook for Members, Responses through RTI and PRS.

Conflict of Interest Norms for Judiciary and Civil Service

There are conflict of interest norms for judges and civil servants. Supreme Court and High Court Judges take an oath to perform the duties of office without fear or favour and their conduct is regulated by case law and non-binding resolutions. The civil service is governed by various laws and Service Rules. There are variations across states. Table 3 provides a summary of the mechanisms used for the Judiciary and the Central Civil Services.

Table 3: Some Conflict of Interest Rules in Other Branches of Government

Types	Judges	Civil Servants
Declarations of Interests and Recusal	Prohibits hearing a matter in which family or friend is concerned, or a matter of a company in which the judge holds shares unless he has disclosed his interest and no objection was raised.	Officers should recuse themselves from a contract award in which a dependent is employed. Permission required if dependents of officers wish to accept employment with private firms with which the officers have official dealings. Application for share allotment when involved in decision-making for a public offering of a Public Sector Enterprise is prohibited.
Asset and Interest Disclosure	High Court and Supreme Court judges disclose their assets and liabilities to the public, but on a voluntary basis. However, some specific courts, such as the Delhi High Court, have full court resolutions that call for posting assets on the Internet.	Civil servants must report assets and liabilities when first appointed and provide updates on transactions above a certain amount. These are not made public and so far have not been accessible under the RTI Act. However, some states are working to make some information public. Disclosures are not audited, but are open to scrutiny from the CBI and CVC.
Regulation of Gifts	The 1997 Restatement asserts that a judge "should not accept contributions or otherwise actively associate himself with the raising of any fund for any purpose."	Officials shall be penalised for accepting gifts while discharging duty with imprisonment and fines. The Rules prevent lavish or frequent hospitality from any individual or firm an officer has official dealings with.
Incompatibility Provisions	Restrictions against active legal practice after leaving a judicial office are a long-standing custom. The 1997 Restatement says that a judge should not speculate in shares or stocks, or engage in a trade or business.	Officers should not speculate in any stock, share or other investments; participate directly or indirectly in business or trade; among other measures. Civil servants are barred from taking up "commercial employment" for a year after retirement.

Sources: Full Court Resolution of Delhi High Court, Aug 28, 2009; Vivek Reddy "Conflicting Signals from the Supreme Court" *Bar and Bench* Nov 7, 2009; "Ethics in Governance," 2nd ARC, Fourth Report, 2007; The Restatement of Values of Judicial Life, Supreme Court, May 7, 1997; Central Civil Services (Conduct) Rules; Rule 26, All India Service (Death-cum-Retirement Benefits) Rules, 1958; Rule 10, CCS (Pension) Rules, 1972; PRS.

Notes

1. "Ethics in Governance," Fourth Report of the Second Administrative Reforms Commission, January 2007.
2. "A Parliament that is Accountable," Chapter 5 in *Parliament and Democracy in the Twenty First Century: A Guide to Good Practice*, David Beetham, Inter Parliamentary Union, 2006.
3. "Legislative Ethics: A Comparative Analysis," Legislative Research Series, Paper 4, National Democratic Institute for International Affairs, 1999.
4. Articles 102 and 191 of the Constitution of India.
5. The Representation of the People (Third Amendment) Act, 2002.
6. The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004.
7. Code of Conduct for Ministers (Both Union and State), Ministry of Home Affairs, Govt of India.
8. The Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004.
9. Response to RTI Request, Lok Sabha Secretariat, July 5, 2010 [No. 1 (445)/IC/10].
10. Lok Sabha, Unstarred Question no. 6329, Answered on May 4, 2010.
11. Handbook for Members of the Lok Sabha.
12. Code of Conduct for Members of Rajya Sabha, 2005.
13. Ethic Committee, Lok Sabha, Established on May 16, 2000 (see <http://india.gov.in/knowindia/parliamentary.php>).
14. Chapter XXIV, Rules of Procedure and Conduct of Business in Rajya Sabha.
15. Rule 371, Chapter XXVII, Rules of Procedure and Conduct of Business in Lok Sabha.
16. Rule 293, Rules of Rules of Procedure and Conduct of Business in Rajya Sabha.
17. Handbook for Members of Rajya Sabha.
18. Response to RTI Request, Lok Sabha Secretariat, July 7, 2010 [No. 1 (443)/IC/10].
19. Response to RTI Request, Lok Sabha Secretariat, July 5, 2010 [No. 1 (442)/IC/10].
20. Response to RTI Request, Rajya Sabha Secretariat, July 12, 2010 [No RS/2(122)/2010].
21. Rule 294, Rules of Rules of Procedure and Conduct of Business in Rajya Sabha.
22. Response to RTI Request, Lok Sabha Secretariat, July 5, 2010 [No. 1 (444)/IC/10].
23. Response to RTI Request, Rajya Sabha Secretariat, June 28, 2010 [No RS/2(68)/2010].
24. The Foreign Contributions (Regulation) Act, 1976.
25. Seventh Report of the Committee on Ethics (Chairperson: Dr Karan Singh), Dec 23, 2005.

Appendix 1

Office of Profit

As part of its report on “Ethics in Governance”, the Second Administrative Reforms Commission examined the issue of Office of Profit and made certain recommendations.

Recommendations of ARC

- Although the Constitution declares that an MP shall be disqualified if he holds an Office of Profit, it does not define the term. It however allows certain offices to be exempted through legislation. Therefore, under the Parliament (Prevention of Disqualification) Act, 1959, a large number of posts have been exempted from disqualification. The law should clearly define Office of Profit based on 3 principles: (a) exempt all offices in purely advisory bodies, (b) include all offices which involve executive decision making and control of public funds; (c) if by virtue of being a Minister, is also a member of an organisation such as the Planning Commission which is vital for day to day functioning of the government, it shall not be considered as office of profit.
- Schemes such as MPLADS and MLALADS should be abolished to avoid conflict of interest between legislature and executive.
- MPs and MLAs should be declared as ‘public authorities’ under the Right to Information Act, except when they are discharging legislative functions.

A Joint Parliamentary Committee to Examine the Constitutional and Legal Position Relating to Office of Profit was set up in 2006. It made some recommendations in its report submitted in 2008.

Recommendations of JPC

- A precise definition of Office of Profit is necessary based on the broad principle of separation of powers of the legislature and executive.
- The practice of giving blanket exemption to Ministers to hold Office of Profit should be continued.

Table 4: Some Key judgments of the Supreme Court on Office of Profit

Case	Court	Judgment
Maulana Abdul Shakur vs. Rikhab Chand (1958)	Supreme Court	Mohatmin (Manager) of the Madrasa Durgah Khwaja Sahib Akbari is not an office of profit because the office is not under the control of the government nor is his salary paid out of the revenues of the government.
Ashok Kumar Bhattacharyya Vs. Ajoy Biswas (1985)	Supreme Court	Accountant-in-charge of the Agartala Municipality is not an office of profit because municipality is a separate and distinct legal entity. The State Government does not exercise any control over officers like accountant in charge. The measure and nature of control exercised by the government over the employee must be judged based on the need to avoid any conflict between his personal interests and of the government.
Bhagwati Prasad Dixit Ghoshal v. Rajeev Gandhi (1986)	Supreme Court	A Member of Parliament drawing salary cannot be said to hold an office of profit.
Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and another (1992)	Supreme Court	A teacher in a primary school run by the Integrated Tribal Development Agency does not hold an office of profit. It stated that the mere control of the government over the authority having the power to appoint, dismiss, or control the working of the officer employed does not disqualify that officer from standing for election as a member of the Legislature.
Shibu Soren v. Dayanand Sahay & Ors (2001)	Supreme Court	Chairman of Interim Jharkhand Area Autonomous Council is an office of profit because mere use of the word 'honorarium' cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient.
Smt Jaya Bachchan v. Union of India and Ors. (2006)	Supreme Court	Chairperson of the Film Development Council is an office of profit under the Government since it is capable of yielding a profit or pecuniary gain. Payment of honorarium in addition to compensatory allowances, rent free accommodation and chauffeur driven car at state expense are in the nature of remuneration constitute profit.

Sources: Joint Parliamentary Committee to Examine the Constitutional and Legal Position Relating to Office of Profit, 2008; PRS

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