

## Ethics, parliamentary conduct and the Indian MP

The Lok Sabha Ethics Committee's proceedings against the All India Trinamool Congress Member of Parliament (MP) from West Bengal, Mahua Moitra, have resulted in much public debate. A senior MP from the Bharatiya Janata Party, Nishikant Dubey, lodged a complaint with the Speaker alleging that Ms. Moitra had received money from a businessman for putting questions up in Parliament with a view to promoting the person's business interests. The Speaker in turn referred the complaint to the Ethics Committee for examination and a report.

### Expulsion and instances

It must be clarified at this point that if an MP takes money for putting questions up in Parliament, they will be guilty of breach of privilege and contempt of the House. Such complaints are invariably referred to the Committee of Privileges for investigation. This committee, after a proper investigation, submits its findings in a report along with the recommendation for action against the MP in question. If a case involving illegal gratification for conducting parliamentary work is proven, the MP may even be expelled from the House. There have been such instances in the Lok Sabha where MPs were expelled from the House on this ground.

In the first case, in 1951, H.G. Mudgal, an MP of the Provisional Parliament, was found guilty of promoting the interests of a business association in return for financial benefits by putting questions up, and moving amendments to a Bill which affected the interests of that business association. A special committee of the House found that his conduct was derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect of its members. But he resigned before he was expelled by the House (the action recommended was his expulsion). In 2005, a sting operation by a private channel showed 10 Members of the Lok Sabha accepting money for putting questions up in Parliament. Again, a special committee was appointed which found them guilty of conduct unbecoming of a member and recommended their expulsion which was accepted by the House. All the MPs were expelled. Thus, complaints of MPs accepting money for parliamentary work are referred to the privileges committee or special committees appointed by the House for that purpose. However, Ms. Moitra's case has been referred to the Ethics committee although the allegation is about illegal gratification for doing parliamentary work.

The Ethics Committee of the Lok Sabha is a relatively new committee which was set up in 2000, with a mandate to examine every complaint that related to the unethical conduct of MPs referred to it and to recommend action. It



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was also tasked with formulating a code of conduct for MPs.

### What is unethical is undefined

An interesting aspect of this committee is that the term 'unethical conduct' has not been defined anywhere. It is left entirely to the committee to examine a particular act of conduct and decide whether it is unethical or not. A couple of cases decided in the past certainly point to the type of conduct which can be called unethical. In one instance, an MP took his close female companion along with him on a parliamentary tour, personating her as his wife. The committee found the MP guilty of unethical conduct and its recommendation was that he was to be suspended from 30 sittings of the House. He was also barred from taking any companion or his spouse on any official tour till the end of tenure of that Lok Sabha. Thus, the moral vagaries of MPs definitely come under scrutiny of the ethics committee.

But there are also other cases of misconduct which were either examined by the ethics committee or special committees. For example, an MP misused the car parking label issued by Parliament. The case was referred to the Ethics Committee which, after examination of the case, closed it as the MP owned up to his mistake and apologised. In another case, an MP took along a woman and a boy on a foreign tour using the passports of his wife and son. This was treated as a serious case as it involved the violation of the Passports Act. This case was referred to a special inquiry committee which held him guilty of grave misconduct as well as contempt of the committee and recommended his expulsion. It must be noted here that more serious cases involving serious misconduct are dealt with by either the Committee of Privileges or special committees, and not by the ethics committee.

In Ms. Moitra's case, if the complaint is about her having accepted illegal gratification, then the case becomes a case of breach of privilege and cannot be dealt with by the ethics committee. Since a public servant accepting a bribe is a criminal offence, it is normally investigated by the criminal investigative agencies of the government. Parliamentary committees do not deal with criminal investigation. They decide on the basis of evidence whether the conduct of the MP is a breach of privilege or contempt of the House and punish them accordingly. But the punishment by the House relates to his functioning in the House. Otherwise, he will be liable to be punished for the criminal offence, as in the law. It may be remembered that the 10 MPs who were expelled from the Lok Sabha are still facing trial under the Prevention of Corruption Act.

A parliamentary probe is not the same as a judicial probe. A judicial body probes a matter as

in the statutes and Rules, and is conducted by judicially trained persons. Parliamentary committees consist of Members of Parliament who are not experts. Since Parliament has the power to scrutinise the executive, which is accountable to it, it possesses investigative power also. It also has the power to punish those including its own members in order to protect its honour and dignity.

But the methods followed by Parliament in investigating a matter are different from those of the judiciary. Parliament does the investigative work through its committees which function under the Rules of the House. The usual methods are examination of the written documents placed before the committee by the complainant and the witnesses, oral examination of all the relevant witnesses, deposition of experts, if deemed necessary, sifting of the whole volume of evidence placed before the committee, and arriving at findings on the basis of the evidence. If the committee examines a complaint against a member of the House, he can appear before it through an advocate and also cross-examine the complainant and other witnesses on permission by the chair. Findings are arrived at after the analysis of all the evidence made available to the committee. In the ultimate analysis, the committee takes a view on the basis of common sense. The findings of the committee of Parliament can be said to be on the basis of preponderance of probabilities. The rules of evidence under the Evidence Act are not applicable to a probe by a parliamentary committee. The question of the relevance of the evidence of a person or a document is finally decided by the Speaker only, and not according to the Evidence Act.

### Online submission of questions

The issue of MPs sharing their password and login details with another person has come into focus now. In reality, MPs do not have the time to sit down and write out questions. So, they are said to be sharing the password with personal assistants, which can be called a practical necessity. Moreover, the Lok Sabha does not seem to have framed any rules to regulate the online submission of questions. Further, an MP is free to engage any person to do his parliamentary work. He also does not have any obligation to disclose the sources from where he gets information to do his parliamentary work. Article 105 of the Constitution gives them the freedom to say "anything" in the House. This right should be deemed to be extended to the tapping of any source for information for putting questions up or framing Bills or resolutions to be placed in Parliament. Therefore, an investigation into the sources of information of an MP may not have legal sanction. Otherwise, Parliament has the power to discipline its members.

A parliamentary probe against a Member of Parliament is not the same as a judicial probe

## Stocktaking climate finance — a case of circles in red ink

Climate finance has a crucial role in retaining the trust of the developing countries in future climate change negotiations. The issues relating to climate finance are likely to be prominent in the Conference of the Parties (COP 28) meeting (November 30-December 12), in Dubai, in the context of *Climate Change 2023: Synthesis Report* providing the main scientific input to the global stocktake at COP. The report which says that the current temperature increase at 1.1° Celsius is responsible for frequent hazardous weather will feed into the global stocktake. Thus, the developed countries and climate vulnerable countries are likely to demand a ramping up of mitigation action by the developing countries – which is likely to be countered with the demand that the developed countries have not been able to meet the mark of a mobilisation of \$100 billion climate finance. The sum is inadequate in terms of the challenges faced by the developing countries in switching over to a low carbon development path and climate resilient development. Providing finance to developing countries is the operationalisation of the anchor sheet principle of the Common but Differentiated Responsibilities and Respective Capabilities.

### Estimating adequate climate finance

The developed countries are required in mandatory terms to provide financial resources to developing country parties. Under Article 9 of the Paris Agreement on Climate Change, it is also mandatory for the developed countries to provide in their Biennial Update Reports (BUR), information relating to the financial resources which they have provided and, also, the projected levels of public financial resources to be provided to developing country parties. At the Copenhagen Change Conference in 2009, the developed countries made the commitment to mobilise \$100 billion per year by 2020. Further, the developed countries are required, in accordance with the decision accompanying the



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The developed world needs to mirror the moves seen in 2009-10 to save the global financial system – by displaying strong political will and urgency, once again, to safeguard the atmosphere

Paris Agreement, to collectively mobilise \$100 billion through 2025, before a new collective quantified goal (NCQG) 'from a floor of \$100 billion per year is to be set at the end of 2024'. At the 26th United Nations Climate Change conference in Glasgow in 2021, the developed countries noted, with deep regret, of being able to mobilise only a total of \$79.6 billion.

The Paris Agreement is based on the self-determined efforts of all the parties inscribed in the nationally determined contributions (NDCs), which contain the mitigation efforts to be made by a party for the next five years. Entire NDCs put together project a picture of overshooting the 1.5° C temperature goal. Going by the needs of countries in the Global South expressed in their NDCs, the amount quantified for the first time touches close to \$6 trillion until 2030. For India, its third BUR says that its financial needs derived from its NDCs for adaptation and mitigation purposes for 2015-30 are \$206 billion and \$834 billion, respectively. Most of the financial needs are required in transitioning towards low-carbon, cleaner energy systems from traditional systems, which will not be funded by the designated financial mechanisms of the United Nations Framework Convention on Climate Change (UNFCCC). Additionally, India has reiterated its demand for a just transition at COP27 as '3.6 million people in 159 districts in India are entrenched in the fossil fuel economy through direct or indirect jobs related to the coal mining and power sector'. They will have to be supported with suitable economic opportunities and livelihoods.

### Unclear burden sharing formula

The developed countries are mandatorily required to provide financial resources to developing country parties, but there is no agreed approach among developed countries to share the burden of this goal. One analysis suggests that the United States provided just 5% of its fair share in 2020. Without any mandatory

formula for collecting money, it is difficult to predict how the said money or the NCQG for climate finance will be mobilised. Neither the UNFCCC nor the Paris Agreement mention the criterion for mobilisation. Instead, the mobilisation is done with the help of a replenishment process.

The Global Environment Facility, a UNFCCC-designated funding agency providing grant and concessional loan to developing countries, is replenished every four years. A similar approach has been borrowed into the Green Climate Fund (GCF) by the developed countries to mobilise finance. The GCF, set up to administer a portion of the \$100 billion for developing country parties to switch over to low-emissions and climate resilient development path, had its second replenishment on October 5, 2023. In the second pledging conference, only 25 countries out of 37 developed countries met in Bonn, pledging to contribute \$9.3 billion in new contributions. Interestingly, the GCF includes voluntary contributions by nine developing countries. More contributions in the GCF serve the purpose of counting international public climate finance more easily as it has been subject of debate as to what counts as international public climate finance.

### Replicate this action

Strong political will, perceived urgency and enlightened self-interest of the elite Global North were writ large in the case of a perceived collapse of global public good (global financial stability) in 2009-10 when the G-20 governments quickly responded to the global financial crisis, getting \$1.1 trillion in a few weeks to support the International Monetary Fund and multilateral development banks to save the global financial system. Unfortunately, these factors are missing when it comes to the necessary climate finance transfers from developed to developing countries to safeguard another global common – the atmosphere.