

2018
MINISTRY OF HOME AFFAIRS

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A draft Code to regulate the relationship between Members of Parliament and of State Legislatures and the Administration.

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Introduction.

Members of Parliament and Members of State Legislatures occupy in our democratic set-up a very important place as accredited representatives of the people. They have important functions to perform under the Constitution and they may occasionally find it necessary to obtain information from or address suggestions to the Ministries of the Government or to the State Governments or seek interviews with officers in connection with their parliamentary and allied public duties, otherwise than through putting questions or participating in debates in the Legislatures. In this connection, certain well recognised principles and conventions to govern the relations between Members of Legislatures and Government servants have already been laid down at the Centre and in most of the States. However, on a review of the position, it has been found necessary to reiterate, and to spell out in some detail, the principles and practices that should govern the mutual relations of Members of Legislatures and Government servants.

Code for the Government servants.

2. The two basic principles to be borne in mind are (i) that Government servants should show courtesy and consideration to Members of Legislatures and (ii) that while they should consider carefully or listen patiently to what the Members of Legislatures may have to say, they should always act according to their own best judgment.

3. It should be the endeavour of every officer to help Members of Legislatures to the extent possible in the discharge of their important functions under the Constitution. In cases, however, when an officer is unable to accede to the request or suggestion of a Member, the reasons for the officer's inability

to do so should be courteously explained to them.

4. It is realised that the district and sub-divisional officers have very heavy public duties and responsibilities and if they are to function effectively they should be permitted to plan out their day's work with some care and adhere to the plan. An officer should feel free to set apart some hour when he can refuse to meet visitors without being considered guilty of discourtesy, lack of consideration and the like. But he should set apart two to three hours every day when anybody can see him, and within these hours, and also during other office hours in which he is able to meet visitors, he must give priority to Members of Legislatures except when a visitor has come by previous appointment and a Member of Legislature has come without an appointment. In such a case, he should see the Member of Legislature immediately after he has met the visitor who had come by previous appointment. Any deviation from appointments made with a Member of a Legislature - or indeed to any other person must promptly be explained to the Member concerned so that the least possible inconvenience is caused to him, and a fresh appointment should be fixed in consultation with him.

5. When a Member of Legislature comes to see him, an officer should rise in his seat to receive the Member and to see him off. Small gestures have symbolic value and officers should, therefore, be meticulously correct and courteous in their dealings with Members of Legislatures.

6. Similarly seating arrangements at public functions should receive very careful attention at all times and no room should be given for any misunderstanding on this score. The position of Members of Parliament has been clearly brought out in the Warrant of Precedence approved by the President. M.Ps. appear at Article 3. above officers of the rank of full General or equivalent, Secretaries to the Government of India, etc. The instructions appended to the Warrant of Precedence also lay down that when Members of Parliament are invited en bloc to major State functions,

the enclosure reserved for them should be next to the Governors, Chief Justice, Speaker of the Lok Sabha, Ambassadors, etc. A further provision in the instructions is that the Members of State Legislatures who, owing to their presence in Delhi, happen to be invited to State functions, should be assigned rank just after Members of Parliament. To avoid inconvenience to M.Ps. and M.L.As. who might come late, the block of seats meant for them should be kept reserved till the end of the function and should not be occupied by other persons, even though they may be vacant. The seats provided for them should be at least as comfortable and as prominently placed as those for officials. At State functions arranged by the State Government, the seating arrangements for M.Ps. and M.L.As should be made in accordance with the position assigned to them in the Warrant of Precedence approved by the Governor.

7. Letters received from Members of Legislatures should be acknowledged promptly. All such letters should receive careful consideration and should be responded to at an appropriate level and expeditiously. Officers should furnish to Members of Legislatures, when asked for, such information or statistics or relating to matters of local importance as are readily available and are not confidential, or when the information is not such that its disclosure would be likely to lead to a controversy embarrassing to Government. In doubtful cases, instructions should be taken from a higher authority before refusing the request.

8. It is desirable that a letter addressed to a Minister should be replied to by the Minister himself. Where, however, this is not convenient or practicable or the reply called for is of a routine nature, it may issue under the signature of a senior officer of the Ministry/Department, preferably the Secretary.

9. While the official dealings of Government servants with Members of Legislatures have to be regulated as stated in the previous paragraphs, it is necessary to invite the attention of Government servants to what is expected of them in their individual

capacity in respect of their own grievances in the matter of conditions of service. The Government Servants Conduct Rules bar any attempt to bring any political or outside influence to bear upon any superior authority to further the interests of individual Government servants. Therefore, a Government servant is not expected to approach a Member of Legislature for sponsoring his individual case.

Code for Members of Legislatures.

10. It is equally necessary for Members of Legislatures to follow certain conventions in their communications to Ministers and Officers of Government in connection with their parliamentary duties. At the Centre, it has been the practice for the Minister for Parliamentary Affairs to draw the attention of the Members of the Parliament to these conventions, which are broadly as follows:-

- (i) Members should ask for information only about matters of public or national interest in which they get themselves interested in the discharge of their public duties as Members of Parliament.
- (ii) Information should not be gathered to further private interests or for use in court litigation or for giving other undue advantages to individuals against others. As already stated, the Government Servants Conduct Rules strictly bar any attempt to bring any political or outside influence to bear upon any superior authority to further the interests of individual Government servants. Therefore, normally a Government servant approaching a Member of Legislature for sponsoring his individual case runs the risk of disciplinary action. Letters received from Members of Legislatures are dealt with utmost consideration, but if Government continue to take action on cases of individuals sponsored by Members of Legislatures, they may be adopting a discriminatory course placing others who may not be fortunate enough to have such support in a position of disadvantage. In the event of any attempt on the part any Government servant to solicit their good offices to further his individual interest in Government service, the Members of Legislatures may, therefore, do well to warn him of likely consequences of his having overstepped the bounds of the Government Servants Conduct Rules.
- (iii) In all matters of routine nature, written requests may be addressed to the Secretary of the Ministry/Department concerned irrespective of whether information was required on the subject dealt with in the Ministry/Department or in any of its attached or subordinate offices. In no case should letters be addressed by name or designation to any other officers of the Ministry/Department or its attached or subordinate offices.

- (iv) For more important matters, Members may address the Minister or the Deputy Minister concerned. In regard to matters pertaining to fraud, corruption, bribery, mal-administration, nepotism, etc. in administration, letters should be addressed only to the Ministers or Deputy Ministers and copies endorsed to the Minister for Parliamentary Affairs.

11. It is obviously not desirable that requests should be made for intervention of officers in investigation of criminal cases, for issue of fire arms licences and for grant of permits and licences to particular individuals. Nor should requests be made regarding recruitment of a particular person, or promotion or transfer of individual Government servants, or for a particular order in a disciplinary case. A number of public issued or grievances do, however, arise in the Departments and Members of Legislatures are undoubtedly entitled to take interest in administration and to see that there is no mal-administration or abuse of power or discretion. But in such cases, they should normally approach the Minister concerned rather than the local officers. Or at the most they may bring cases of injustice and the like in individual cases to the notice of the district officer or other similar officers with the request that they should look into the matter. They ought not to press or even ask for a particular decision. In such cases, the officer should listen to all points of view with patience, but he must obviously take a decision according to his own best judgment. And when he does so, it would not be fair to accuse him of partisanship or even of insensitivity to the views of an accredited representative of the people.

12. Members of Legislatures may like to bear in mind the conventions and principles outlined about in the course of their dealings with the administration both at the Centre and in the States so that a healthy and useful relationship between the Government and the Members of Legislatures may be built up.

Some material in reference to the subject of the
Code of Conduct for Members of Parliament.

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U.K.

I. Statutory Provisions

Disqualification on holding certain offices

The House of Commons (Disqualification) Act, 1957, lays down certain political and non-political offices holding of which disqualifies a Member from the membership of the House.

(Vide Appendix II May's Parliamentary Practice).

II. Rules of Procedure of the Legislatures

Prohibited to Vote when holding a pecuniary interest.

By Standing Order (Private Bills) 98, Lords are exempted from serving on the Committee on any Private Bill wherein they have any personal pecuniary interest.

"In the Commons it is a Rule that no Member who has direct pecuniary interest in a question shall be allowed to vote upon it but in order to operate as a disqualification this interest must be immediate and personal and not merely of general or a remote character".

(Vide May's Parliamentary Practice,
pp. 439-443)

III. Conventions of the Legislature

Corruption in the execution of their office as Members.

The acceptance by any Member of either House of a bribe to influence him in his conduct as a Member or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter, or thing submitted or intended to be submitted to the House or any Committee thereof is a breach of privilege.

(Vide May's Parliamentary Practice
p.115)

Acceptance of fees by Members for professional services
connected with proceedings in Parliament.

The House of Commons has not only confined itself to the

US Code No.281 similarly provides that if a Member receives or agrees to receive any compensation for any services rendered or to be rendered by him he shall be incapable of holding that office.

Penalty for corrupt practices

US Code No.201 prohibits offer of a bribe by any one (including Members of Congress) and prescribes certain penalty for the offence.

US Code No.214 prohibits all persons (including Members of Congress) from offering to procure appointive public offices and prescribes penalty for the offence.

US Code No.431 prohibits contracts by Members of Congress and prescribes a penalty for the offence.

II. Rules of procedure of the Legislatures

Prevented from voting in the case of a pecuniary interest

Rule 8 of the Rules of the House of Representatives prohibits voting by Members who have a direct personal or pecuniary interest.

(Vide Jefferson's Manual 1961, pp.318)

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III. Conventions of the Legislatures

No information available.

IV. Voluntary prescriptions

No information available.

CANADA

1. Statutory Provisions

It is not known whether the Canadian Parliament has passed any legislation governing the conduct of Members but being a Commonwealth country the practices followed in the House of Commons, U.K. are generally followed in Canada also.

II. Rules of procedure of the Legislatures

Prevented from voting when holding a pecuniary interest

Standing Order 5 of the House of Commons, Canada prescribes that no Member will be entitled to vote upon any question in which he has direct pecuniary interest and the vote of Members so interested is disallowed.

Bribe a Crime

Standing Order 79 of the House of Commons makes offer to bribe by or to a Member a high crime.

Serious view of corrupt practices by Members

Standing Order 80 of the House of Commons provides "If it shall appear that any person has been elected and returned a member of the House or has endeavoured so to be, by bribery or any other corrupt practices, the House will proceed with the utmost severity against all such persons as shall have been carefully concerned in such briber or other corrupt practices.

III. Conventions of the Legislatures

No information available.

IV. Voluntary prescriptions

No information available.

AUSTRALIA

I. Statutory Provisions

Disqualification on holding an office of profit

It is not known whether the Australian Parliament has passed any legislation governing the conduct of Members but being a Commonwealth country the practices followed in the House of Commons, Australia are generally followed in Australia also.

II. Rules of procedure of the Legislatures

Prevented from voting when holding a pecuniary interest

Standing Order 193 of the House of Representatives of Australia provides that no Member shall be entitled to vote in any division upon a question [not being a matter of public policy in which he has a direct pecuniary interest not held in Common with the rest of the subject of the Crown.

(Vide Standing Orders of the House of Representatives, Australia, 1950 edition).

III. Conventions of the Legislatures

No information available.

IV. Voluntary prescriptions

No information available.

UNION OF SOUTH AFRICA

I. Statutory Provisions

No information available.

II. Rules of procedure of the Legislatures

Prohibition against voting in case of pecuniary interest

Standing Order 125 of the House of Assembly prohibits voting or taking part in discussion by any Member who has a direct pecuniary interest in the matter.

(Vide Standing Orders of the House of Assembly, Union of South Africa 1957 edition).

III. Conventions of the Legislatures

No information available.

IV. Voluntary prescriptions

No information available.

NEW ZEALAND

I. Statutory Provisions

Disqualification on holding an office of profit

It is not known whether the New Zealand Parliament has passed any legislation governing the conduct of Members but being a Commonwealth country the practices followed in the House of Commons, New Zealand are generally followed in New Zealand.

II. Rules of procedure of the Legislatures

Prevented from engaging in the management of private bill in case of a pecuniary interest

Standing Order 391 of the House of Representatives makes it contrary to the law and usage of Parliament that any member of the House should be permitted to engage either by himself or any partner in the management of private bills before the House for pecuniary interest.

Prevented from advocating measures in the
House for pecuniary interest

Standing Order 392 further declares it contrary to the usage and derogatory to the dignity of the House that any Member should bring forward, promote or advocate in the House any proceedings or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.

(Vide Standing Orders of the House
of Representatives New Zealand 1951).

III. Conventions of the Legislatures

Bribery or Corruption by Members to be exposed

In 1934 the Speaker of the House of Representatives of New Zealand observed thus: "It is not only the right but the duty of a Member who can show that there has been anything in the nature of bribery or corruption on the part of other Members to bring that member before the House in the proper constitutional ways, but he must not make the veiled suggestion during the course of the Debate.

(Vide New Zealand House of Representatives, Speakers Rulings, 1954).

IV. Voluntary prescriptions

No information available.

INDIA

I. Statutory Provisions

Disqualification on holding an office of profit

The Parliament (Prevention of Disqualification) Act, 1959, prescribes certain offices holding of which disqualifies a member. A Joint Committee on Offices of Profit from time to time determines which shall be an office of profit.

II. Rules of procedure of the Legislatures

Right of vote questioned in case of a pecuniary
or personal interest

Rule 371 of the Rules of the Procedure and Conduct of Business in Lok Sabha prescribe that

"If the vote of a member in a division in the House is challenged on the ground of personal,

pecuniary or direct interest in the matter to be decided, the Speaker may, if he considers necessary, call upon the member making the challenge to state precisely the ground of his objection and the member whose vote has been challenged to state his case and shall decide whether the vote of the member should be disallowed or not and his decision shall be final."

III. Conventions of the Legislatures

In the Indian Parliament Members are expected (although it cannot be called a well established convention) not to act in the manner which is derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its members.

In June, 1951, a motion was adopted by the Parliament to appoint a Committee on the Conduct of a Member viz. Shri H.G. Mudgal. Since then there has not been any case where the Conduct of a Member by Smt. G. Durgabai, who was a Member of the Committee, is reproduced below, for the information of the Members :

- (i) Information given to Members in confidence or by virtue of their being Members of Committee of Parliament should not be divulged to anyone nor used by them directly or indirectly in the profession in which they are engaged, such as, in their capacity as editors or correspondents of newspapers or proprietors of business firms and so on.
- (ii) A member should not try to secure business from Government for a firm, company or organisation with which he is directly or indirectly concerned.
- (iii) A member should not give certificates which are not based on facts.
- (iv) A member should not make profit out of a Government residence allotted to him by sub-letting the premises.
- (v) A member should not unduly influence the Government Officials or the Ministers in a case in which he is interested financially either directly or indirectly.
- (vi) A Member should not receive hospitality of any kind for any work that he desires or proposes to do from a person or organisation on whose behalf the work is to be done by him.
- (vii) A Member should not in his capacity as a lawyer or a legal adviser or a counsel or a solicitor appear before a Minister or an executive officer exercising quasi-judicial powers.

- (viii) A Member should not proceed to take action on behalf of his constituents on some insufficient or baseless facts.
- (ix) A Member should not permit himself to be used as a ready supporter of anybody's grievances or complaints.
- (x) A Member should not endorse incorrect certificates on bills claiming amounts due to him.
- (xi) A Member should not elicit information from Government in an unauthorised manner by inducing a subordinate to give information which in the course of his normal functions he should not do, not encourage any such person to speak to him against his senior officials on matters of public importance and policy.
- (xii) A Member should not write recommendatory letters or speak to Govt. officials for employment or business contacts for any of his relations or other persons in whom he is directly or indirectly interested.

(Vide para 57 Lok Sabha Bulletin
Part II dated 17th May, 1952).

Recent Case Laws on Conduct of Members
in U.K.

In 1947, the House of Commons, Committee of Privilege held one Mr. Allaghen, guilty of misconduct for accepting payment for disclosure to press information about matter to be proceeded within Parliament.

p.46, Privileges Digest
Vol. IV, April-June, 1960

In 1948, the House of Commons Committee of Privileges, held another Member Mr. Walkden, guilty of misconduct for a similar offence.

p.47, Privileges Digest,
Vol. IV, April-June, 1960.

In 1958, a question of privilege arose because one Mr. Strauss, Member of the House of Commons had written certain private letters to the Pay Master General. The House in that case decided that the letter of the Member was not a proceedings in Parliament.

Privileges Digest, Vol. II,
No.4, Oct.-Dec., 1958.

There have been 2 more cases affecting the conduct of Member of Parliament although those cases did not raise a privilege issue:

- a) Alleged offer of a bribe to a member by a stranger in order to induce him to take up a question with a Minister (Henderson Case, 1945). The Privileges Committee recommended that no breach of privileges had been committed.

Privileges Digest, IV(4)
p.96

- b) Letter by a constituent to a member, allegedly offering to pay out of pocket expenses to him for his visit (National Marketing Company Case, 1943). The Privileges Committee recommended that no breach of privilege had been committed.

Privilege Digest, V(1),
13-14.

Case law on conduct of members in
India (Madhya Pradesh)

In 1963, a member of the Madhya Pradesh Vidhan Sabha wrote to a government official seeking information and disclosed it prematurely to outsiders. The case was referred to the Privileges Committee which held that the Member's Conduct did not conform to the well established principles.

Privilege Digest
Vol. VII
July 63 p.9-10

Annexure - II

Kennedy's Special Message to the Congress
on Conflict-of-Interest Legislation and on
Problems of Ethics in Government (April 27, 1961)

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"Ultimately high ethical standards can be maintained only if the leaders of government provide a personal example of dedication to the public service - and exercise their leadership to develop in all government employees in increasing sensitivity to the ethical and moral conditions imposed by public service. Their own conduct must be above reproach. And they must go beyond the imposition of general regulations to deal with individual problems as they arise - offering informal advice and personal consideration". (Public Papers, pp. 333-34.)