

# TIB report: Result of Parliament's failure to police itself

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A report by Transparency International Bangladesh (TIB), titled "Parliament Watch," has been creating a great deal of commotion both in and outside the Parliament. Our Hon'ble Prime Minister has discovered a conspiracy behind the report to destroy democracy and transfer power to unelected persons. The Speaker has found it contemptuous. The information and civil aviation ministers have rejected the report. Some senior parliamentarians have not only rejected it, but have also recommended convening the Parliamentary Standing Committee on Privileges and summoning TIB before it. Some lawmakers have even proposed to stop TIB from operating.

Based on newspaper scanning and focus group discussions, which are acceptable research methodology, the TIB report of October 14, it may be recalled, concluded that 97% of our lawmakers from 149 constituencies were involved in illegal and unethical activities. Despite its rejection by the ruling party, this conclusion has been affirmed by subsequent on-line newspaper surveys. For example, 93% of Prothom Alo's 3,855 readers participating in the survey agreed with TIB's conclusion (October 15). Similarly, 72% of 22,605 readers of Jugantor, on the same day, concurred with it.

Notwithstanding the blaming of TIB, it is clear that many citizens believe that most of our lawmakers are engaged in illegal activities; TIB has merely been the messenger of the "bad news." In our system, the Privilege Committee is vested with the responsibility of ensuring the accountability of MPs and upholding the prestige of the Parliament. Thus, we agree with the senior parliamentarians that the Privilege Committee must be made active immediately. The popular perception that most of our MPs are engaged in unwarranted activities is the result of the ineffectiveness of the Privilege Committee and failure of the Parliament to police the behaviour of its own members.

Article 76(1) of our Constitution specifically provides for two parliamentary standing committees: Public Accounts Committee and Committee on Privileges. Thus, Privilege Committee is an important Committee and Article 78 of the Constitution has specific provisions for it. The effectiveness of this Committee in essence determines the ability of the Parliament to regulate its procedures, conduct its business and maintain order in Parliament, and thereby ensure institutional accountability and protect its own reputation.

What is meant by parliamentary privilege? What specifically are the functions of the Privilege Committee?

The oldest and most acceptable definition parliamentary privilege is given by Erskine May (Treatise on the Law, Privileges, Proceedings and Usage of Parliament (23rd ed.): "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively ... and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus, privilege, though part of the law of the land, is to a certain extent an exemption from the general law."

These unique rights can be grouped into two categories: (1) those relating to immunities of the parliamentarians, and (2) those concerning the ability of the Parliament to control its own procedures. Rights relating to immunities are: (a) right of expression; (b) immunity from arrest from civil cases; (c) absolving from jury duty; (d) absolving from the obligation to be witnesses; and (d) right to publish documents with libelous contents.

The Parliament's power to control its own procedures include: (a) right to impose discipline; (b) power to regulate its procedures and the conduct of business; (c) power to control attendance and ensure

effectiveness of lawmakers; (d) power to investigate, call witnesses and require production of documents; and (e) administer oath to witnesses. These represent Parliament's power to punish any individual for breach of privileges, including expelling its members.

Breaching the privileges of Parliament is known as contempt of Parliament. Such contempt can be perpetrated by ordinary

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citizens, any institution or by parliamentarians themselves.

A citizen may be cited for contempt of Parliament if she/he fails to respond to a summons of the Parliament or any of its Committees, or fails to produce documents. An institution can be accused of contempt if it undermines the immunities of lawmakers. MPs themselves can be guilty of contempt of Parliament if they lower the prestige of the Parliament in the eyes of the public through undesirable behaviour. Corruption, indiscipline and other acts of illegal and unethical conduct of lawmakers can lower the prestige of the Parliament. The Privilege Committee has the responsibility to stand guard against the breach of parliamentary privileges and to recommend actions against contempt of Parliament.

Many members of the ninth Parliament have been accused of involvement in unwarranted activities, in response to which the Privilege Committee or the Parliament have failed to take any action. A glaring example is the case of Barrister Jamiruddin Sircar. At the beginning of the present Parliament, it may be recalled, a

Special Parliamentary Committee was formed with much fanfare to investigate the charges of corruption against former speaker Barrister Jamiruddin Sircar and former Chief Whip Late Kondoker Delwar Hossain. Although the Committee found evidence of corruption against the two, the Parliament refused to expel or take any action against Barrister Sircar, who is presently an MP. Instead, the Parliament

referred the matter to the ACC, which amounted to failure to discipline one of its own.

In addition, according to media reports, 18 MPs were allotted plots by Rajuk based on false affidavits sworn by them (Prothom Alo, January 27, 2010). Swearing false affidavit is a criminal act, but no action was taken against the lawmakers who, in committing this act, had become

lawbreakers. Many MPs became members of Parliamentary Standing Committees, ignoring conflicts of interest in some cases, and have used such membership to promote their own interests (Prothom Alo, February 6, 2010). Some MPs have been accused of land grabbing, defying the prevailing laws and rules (such as doing business with the government, constructing buildings without the required permit from Rajuk, etc.) and beating up government functionaries -- all of which amount to contempt of Parliament. Others have been accused of murder, trading of tax free cars ("gaari baniya"), accepting money for giving employment ("niog baniya"), and other undesirable activities. Still others have been accused of swearing false affidavits before their elections, and some are holding on to their membership of the Parliament despite losing their eligibility to remain as MPs. Even though such behaviour obviously undermines the reputation of the Parliament, the Privilege Committee has been totally silent about it.

It may be pointed out that, even though our Parliament has failed to take any action

against any of its members, the situation is very different in India. Punishing and even expelling lawmakers are regular phenomena in India. For example, 11 members of Lok Sabha and Rajya Sabha were expelled from both Houses in 2005 for engaging in illegal activities.

One hurdle against punishing anyone against contempt of Parliament is the absence of an enabling legislation. Articles 76(3) and 78(5) of our Constitution require the enactment of a law on parliamentary privilege, which has not taken place in the last 40 years. However, the absence of such law cannot be used as an excuse for not taking punitive action against anyone, especially against MPs for contempt of Parliament. According to experts like Thomas Cooley (A Treatise on the Constitutional Limitations, 1972), controlling its own procedures is an inherent power, and the Parliament can punish anyone for contempt of Parliament even in absence of constitutional provisions. The unwillingness of the Privilege Committee and the Parliament to take punitive action has clearly created a culture of impunity, with the result that some MPs have actually come to believe that they are immune from punishment for engaging in illegal activities.

To conclude, it must be remembered that MPs belong to the "House of the People," which must be a sacred place. Thus, the standard for their behaviour must be higher than those of common citizens. For, the lack of trust in these elected representatives may shake people's confidence in Parliament, which is the nerve centre of democracy. Thus, we hope that our leaders would stop their blame game, and instead take action to clean up their own act. At the same time, we hope they will take initiative to frame an enabling legislation for enforcing parliamentary privileges. Can we count on our Hon'ble Speaker, the leader of the House and the leader of the opposition for their leadership in performing these tasks?

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## 'Development of supply chain for different sectors is important'

**Dr. Khondaker Golam Moazzem, Senior Research Fellow CPD, talks with A.B.M. Shamsuddoja of The Daily Star about the current state of Foreign Direct Investment (FDI) and prospects for the future.**

**The Daily Star (TDS): How do you evaluate current FDI inflow in Bangladesh?**

**Dr. Khondaker Golam Moazzem (KGM):** FDI inflow in Bangladesh is still at a low level although it has increased in recent years. During 2006-2010, average yearly FDI inflow was \$830 million, which was only \$470 million in early 2000s and \$450 million in late 1990s. In 2011, Bangladesh received \$1.1 billion as FDI, which is the highest FDI inflow ever. But this inflow is lower compared to those in major competing countries such as India (\$32 billion), Indonesia (\$19 billion), Vietnam (\$7 billion) and even politically turbulent Pakistan (\$1.3 billion). Even a number of African LDCs received more FDI compared to Bangladesh. FDI's share was merely 1% of GDP, which was lower than that of the average level of FDI-GDP ratio in LDCs and developing countries. Since 1972, Bangladesh has so far registered \$17 billion worth of FDI proposals of which only one-third was finally realised (FDI stock at the end of 2011 was \$6.1 billion). Thus, most of the FDI proposals registered in Bangladesh were unrealised due to various reasons.

**TDS: What type of investment usually comes to Bangladesh?**

**KGM:** The composition of FDI in Bangladesh has changed over time with the changes in opportunities in domestic and international markets. In mid-1990s, major targeted sectors for FDI were banking, textiles and apparels, and gas and petroleum (about 98% in 1996), which were slightly changed in early 2000s. In mid-2000s major share of FDI was found to be in telecommunication, gas and petroleum, banking and textiles sector (about 83.3% in 2006), and in recent years major FDI flow was concentrated to telecommunication, and banking and textiles (about 86% in 2010). Although FDI in Bangladesh is usually expected more in export-oriented and labour-intensive sectors, major share of FDI so far has been found to be in capital-intensive and domestic market-oriented service sectors. In other words, foreign investors found sectors linked with domestic market more attractive compared to those linked with international market. Likewise, major sources of FDI have changed where share of developing countries has increased over time.

The compositional change is also observed in different components of FDI. Although equity capital usually comprises the major share of FDI in Bangladesh, the share of two other components (reinvested earnings and intra company loan) has significantly declined in recent years -- from 50% of total stock of FDI in 2000 to only 20% in 2010. In other words, existing foreign companies reinvest relatively less of their profit/dividend in recent years.

Most of the FDI projects registered in Bangladesh are joint venture types (about 74% of the total registered projects till 2010) and small scale (about \$1 million). Such kinds of FDI indicate various uncertainties and risks considered by foreign investors in case of investment in Bangladesh.

**TDS: Why are we lagging behind?**

**KGM:** The choice of a particular location for investment depends on various factors, including policy support, infrastructure facility, availability of supply chain, etc. Bangladesh has a liberal FDI regime under which it allows 100% FDI in all sectors except a few restricted ones, allows 100% repatriation of profit/dividend, safeguards foreign investment under bilateral investment treaties (BIT), avoids double taxation problem (DTT), and provides various kinds of fiscal and non-fiscal incentives and support. Despite the policy support, Bangladesh is not considered an attractive location for investment because of lack of enabling environment, including lack of sufficient physical infrastructural facilities (e.g. power, gas, land and road network), poor logistic facilities, insufficient supply of skilled workers and professionals, poor institutional mechanism to safeguard intellectual property rights and lengthy dispute settlement mechanism. Although a few constraints have been lessened in case of investment in EPZs, most of the constraints are still acute in the DTAs.

Lack of well-developed supply chain in most sectors is considered a major weakness in case of attracting large scale FDI. In the absence of reliable supply chains investors face problems in terms of getting access to reliable suppliers who are ready to supply raw materials, capital machineries at competitive price, maintain quality, ensure

commitment for on-time supply, etc. Foreign investors are interested to invest in major segments of the supply chain if they are found to be well developed. Thus, development of supply chain for different sectors is important in order to attract more FDI.

**TDS: What incentives could be provided to attract investors?**

**KGM:** Most of the incentives and support offered to FDI are usually applicable at the "post-establishment" phase. These include tax holiday facility, zero import duty on raw materials and capital machineries for export-oriented industries, duty drawback facility, bonded warehouse facility for investment in EPZs, secured land and utilities for investment in EPZs, facility for 100% repatriation of profit and dividend, etc. Such incentive structure lacks focus on various issues related to "pre-investment phase." It is well appreciated that major challenges faced by foreign investors are usually at the pre-establishment phase. Potential investors want to know more about supply chain operates within the country, which includes information related to size of the market, major sources of supply of raw materials, major suppliers, market structure, major market players, etc. In case of possible joint venture investment, investors are interested to know about possible local partners and their market exposure. Considering that investment promotion agencies, such as Board of Investment (BOI), lack the capacity to provide support to the prospective foreign investors. BOI should revisit its role and should capacitate adequately in order to provide required support to the investors. Various business bodies such as FBCCI, MCCI and sectoral trade bodies should provide necessary support to foreign investors, particularly at the pre-establishment phase. The government may consider providing special incentives to existing investors to attract more investment of their profit/dividend in the country, provide special economic zones for investors of important countries such as Japan, South Korea, China and India, and provide necessary institutional support for development of setting up private EPZs like Karnaphully EPZ.



Dr. Khondaker Golam Moazzem

## The secret of Cinderella



Man Booker Prize, the pre-eminent literary award was having dinner. I am fascinated by John Banville's writing, but I declined the invitation.

Two kilometres northeast of where I stood, there was an event featuring Suketu Mehta, who had just won the top literary award for Asia-Pacific writing: the Kiriama Prize. I could have gone to that, but I had had breakfast with him the previous day, so decided to skip it.

In the end, I went to an event for the launch of a new children's anthology by Chameleon Press, a small publisher based in Hong Kong. It was the least grand of the events listed for the literary festival for the day, but it was important in an unusual way: there were a range of authors, mostly amateur, in the book, from Indian to Chinese to Italian to Sri Lankan. Children's book authors are rare in Asia, so I joined the celebration for the anthology, which is called Thomas Beckham Wang.

I love children's books and I am fascinated by the mysteries in the history of the genre. One of them is the secret of Cinderella. I have long been intrigued by the tale, which most children assume started as a Disney cartoon, and most adults assume is a European fairy tale.

But there has always struck me as something odd about the tale: it's the shoe-size. Why should the story hinge on the shoe size of the main character? Stories are inevitably based on the inner beauty of the character, the outer beauty of the character, the brains or the strength or the courage of the character: but never the shoe size. Cinderella is unique in that respect. Think about it long enough and you will solve the mystery.

Cinderella is an early example of a pirated piece of creative intellectual property. It is a fairy tale from this side of the world, from East Asia. It was written around AD 860, and concerns a girl called Yeh-Shan, who had the smallest feet in town: a key signifier of beauty in traditional Chinese culture.

The tale of Yeh-Shan and her ugly sisters was lifted by French writers in the 1600s, some 700 years later. They changed her name but retained the fact that her fortune was made by her shoe-size: a detail that makes sense in Chinese culture, but is odd in a Western context.

So much creative work is misunderstood and wrongly packaged these days; and only the few people who are interested in culture and history know the truth.

Children all over Asia purchase the "Disney Princesses" books and videos and accompanying merchandise. But almost no-one remembers the origins.

But let us not forget. Welcome home, Yeh-Shan.

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