Part Two

ISSUES, PROBLEMS
AND SOLUTIONS
Chapter 7
THE PRESS AND PARLIAMENT

All are involved in a Parliament.

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7.1 The dichotomy between legislative privileges and freedom of the press presents an interesting panorama of paranoiac confrontations and unresolved conflicts. If freedom of the press is the ark of the covenant of democracy, the essence of parliamentary democracy is a free, frank and fearless discussion in parliament. The rule of freedom of speech and debate in Parliament became established in England in the 17th century in the famous case of Sir John Eliot, followed by a declaration in the Bill of Rights in 1688 that the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament. In India, this freedom is expressly safeguarded by Cls (1) and (2) of Art 105 (in the case


of the State legislature, by Art 194) of the Constitution. It is this freedom which is in direct conflict with a newspaper's right to publish and inform the public.

7.2 When the Constitution of independent India was adopted in 1950, it was provided that so long as Parliament did not enact any law of its own, its privileges would be the same as those of the British House of Commons, including the inherent power to punish for contempt or breach of its privileges. Apart from a cosmetic change for the purpose of a sentimental omission of the reference to the "House of Commons of the United Kingdom," the 42nd as well as the 44th Constitution amendments did not effect any departure from the position prevailing on 26 January 1950. Therefore, whenever a question arose as to whether any privilege of a legislative house had been infringed by a newspaper, invariably it becomes necessary to make a reference either to the bewildering mass of English precedents or to May's Parliamentary Practice to understand the position, practice and precedent obtaining in the House of Commons. The privileges exist to enable members to carry out their work and the object is to safeguard the dignity of each House, allowing members to perform their
duties without fear or favour. In the United Kingdom, a review of this branch of the law was undertaken by the Select Committee of the House of Commons in 1966-67.

7.3 A journalist may encounter the law of Parliament in various ways:

(i) By violating any of the privileges of Parliament, e.g. relating to publication of its proceedings.

(ii) By violating any of the Rules of Procedure made by a House of the Legislature, in exercise of the power conferred by Arts 118 and 208 of the Constitution, e.g. relating to admission and withdrawal of strangers.

(iii) By publishing comments or any other statement which undermines the dignity of the House or the confidence of the public in the legislature, and are, accordingly, punishable by Parliament as 'contempt of parliament', which is analogous to the power of a court of record to punish for 'contempt of court'.

7.4 However, like judges, members of parliament are nowadays more resilient and accustomed to strident criticism than they used to be. It is highly unlikely that robust but honest attacks in the media on parliament

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or its members would lead to findings of contempt—
although action might easily be taken over reports which
seem to be malicious.

7.5 Two instances can be cited to illuminate this
point: When Arun Shourie, executive editor, wrote an
article in Indian Express on 4 September 1981 under the
title "Pretty Little Lies in Parliament," commenting on
the Finance Minister's statement in both houses of
Parliament on the issue of association of the Prime
Minister, Mrs Indira Gandhi, with a trust floated by A R
Antulay, the then Chief Minister of Maharashtra,
permission to move a motion of breach of privilege was
refused on the ground that "it is not consistent with the
dignity of the house to take notice of every case which
may technically appear to constitute a breach of
privilege". The Chairman of the Rajya Sabha observed on
this aspect of the matter:

As regards Shri Arun Shourie, I do not think
this is a proper case for action. Newspapers
always look into things closely and critically.
They must, however, ascertain the facts better.
Although the item is phrased in language which
is not high-toned or polite, I am going to
ignore it. Arun Shourie was doing a
journalistic duty according to his lights.

4. Lok Sabha Proceedings, XXVI Priv. Digest, No. 2,
I have said before that the newspapers are the eyes and ears of the public and if every citizen has a right to criticise the actions of others, so also the newspapers whose profession is to turn the light of publicity on the irregularities of public actions.\footnote{Rajya Sabha Proceedings, XXVI Priv. Digest, No. 2, pp 18, 21 (1981).}

7.6 Earlier in 1967, S Mulgaokar, editor-in-chief of the Hindustan Times, was held guilty of a breach of privilege and contempt of the house for using the term 'Star Chamber' with reference to Parliament. Mulgaokar did not express regrets; but the committee of privileges took a liberal view. It took note of the disclaimer on the part of the editor that he had any intention to bring the institution of parliament into disrepute and contempt. While the committee felt that he should have unhesitatingly and gracefully expressed an unconditional and unqualified regret, nevertheless, in the totality of the circumstances, it felt it better to ignore the matter "as that would add to the dignity of the house". It was further observed:

The Committee feel that the penal powers of the House for breach of privilege or contempt of the House should be exercised only in extreme cases where a deliberate attempt is made to bring the institution of Parliament into disrespect and undermine public confidence in
and support of Parliament.

7.7 These two instances clearly reflect the mature wisdom of a Parliament which on an earlier occasion had condemned R.K. Karanjia, editor of Blitz, for publishing adverse and derogatory comments on J.B. Kripalani for his speech in the Lok Sabha during the defence debate. When the editor was called to the bar of the House and reprimanded, it was the first such instance in the history of our Parliament.

7.8 The penal power of Parliament hanging like a Democles' sword in the slender thread of discretion is not conducive to a free press. As regards the plea of justification put up by Karanjia that the comments in question amounted to fair comment, the Committee of Privileges said:

Nobody would deny the press, or as a matter of fact any citizen, the right of fair comment. But if the comments contain personal attacks on individual members of parliament on account of their conduct in parliament or if the language of the comments is vulgar or abusive, they cannot be deemed to come within the bounds of fair comment or justifiable criticism. 7

7.9 Despite the grace and indulgence shown by Parliament in the case of Arun Shourie, the Andhra

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Pradesh Legislative Council preferred to remain adamant in getting Ramoji Rao, Chief Editor of Eenadu, before the bar of the House for admonishing him on the charge that he had committed a breach of privilege and contempt of the House by commenting in the daily on 9 March 1983 on the proceedings of the Council under the headline 'Peddalu Golaba' (elders' commotion). The intervention of the Supreme Court further infuriated the Council and the rapid developments were reminiscent of the conflict of the legislature and the judiciary in the Keshav Singh case. Though at one point of time it appeared that it would lead to a major constitutional crisis, it was avoided by the tactful handling of the situation by the Chief Minister, N T Rama Rao, who advised the Governor to prorogue the Council on 30 March 1984. Again it was 'privilege' which served as the atrocious cover for the Tamil Nadu Legislative Assembly sending to jail, in April 1987, the editor of Ananda Vikatan for daring to publish a cartoon which did not even name specific legislators or insinuate identities.

7.10 The experience of the exercise of legislative privileges by the legislatures in India until now will


show that it is neither expedient nor advisable to confer such absolute powers on them. After a review of the privilege cases handled by the various legislatures, the First Press Commission reported in 1954 that some of the cases disclose "over-sensitiveness on the part of the legislatures to even honest criticism". The Commission went on to observe:

The press, as a whole, is anxious to maintain and enhance the dignity and prestige of our courts and legislatures and recognises that within the precincts of the Assembly hall the presiding officer's ruling is supreme and the freedom of the members absolute. It is, therefore, all the more necessary that the legislatures should respect the freedom of expression where it is exercised by the press within the limits permitted by law, without imposing additional restrictions in the form of breach of privileges unless such restrictions are absolutely necessary to enable them to perform their undoubtedly responsible duties. No one disputes that parliament and state legislatures must have certain privileges and the means of safeguarding them so that they may discharge their functions properly but like all prerogatives the privilege requires to be most jealously guarded and very cautiously exercised. Indiscriminate use is likely to defeat its own purpose. The fact that there is no legal remedy against at least some of the punishments imposed by the legislature should make them all the more careful in exercising their powers, privileges
and immunities.\textsuperscript{10}

7.11 Though 1954 was too early an year to make a comprehensive assessment and objective evaluation, it is pertinent to note an important suggestion made by the Press Commission:

It would therefore be desirable that both Parliament and state legislatures should define by legislation the precise powers, privileges and immunities which they possess in regard to contempt and the procedure for enforcing them ... Articles 105 and 194 do contemplate enactment of such a legislation and it is only during the intervening period that Parliament and state legislatures have been endowed with the powers, privileges and immunities of the House of Commons.\textsuperscript{11}

7.12 Reiterating this suggestion, the Second Press Commission said:

We think that from the point of view of freedom of the press it is essential that the privileges of parliament and state legislatures should be codified as early as possible.\textsuperscript{12}

7.13 The intention of the framers of the Constitution was that sooner than later the legislatures should frame their own


\textsuperscript{11}. Ibid, p. 421.

laws and it was only as an interim measure that they were given the privileges of the House of Commons.\textsuperscript{13} When Article 105(3) came up for consideration before the Constituent Assembly on 19 May 1949, there was strong criticism against the reference to the privileges of the House of Commons and on behalf of the Drafting Committee, Sir Alladi Krishnaswamy Ayyar said: "If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good". He assured the House that "only as a temporary measure, the privileges of the House of Commons are made applicable to this House". This assurance was reiterated by the President of the Constituent Assembly, Dr Rajendra Prasad, when he said on 16 October 1949:

The Parliament will define the powers and privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the members to be vigilant.\textsuperscript{14}

7.14 That apprehension became prophetic because

\textsuperscript{13} Subba Rao, J., in Searchlight I, A.I.R. 1959 S.C. 395 at 417, expressly characterised the second part of Art 194(3) as "a transitory measure".

\textsuperscript{14} As quoted by Ramakrishna Hegde in his introduction to The Karnataka Bills, published by the Government of Karnataka, 1988.
Parliament never legislated and what was intended to be "a temporary affair" has lasted for more than four decades, the only exception being the futile attempt of Ramakrishna Hegde to codify the privileges, define the offences and prescribe the punishment by introducing the Karnataka Legislature (Powers, Privileges and Immunities) Bill in 1988 during his tenure as Chief Minister of Karnataka.  

7.15 It is significant that the Press Council, distressed by this nebulous state of affairs, took up "a study of the question of parliamentary privileges vis-a-vis the press" as soon as it came into being in 1966. In chapter 2 of the second Annual Report (1967), the Council published the results of the study and strongly recommended codification. It said:

The Press Council is convinced that the present undefined state of the law of privileges has placed the press in an unenviable position in the matter of comments on the proceedings of Parliament.

7.16 The undefined boundary of parliamentary privileges which Justice Subba Rao described as 'nebulous' has been a cause of chronic uneasiness for the press. In the absence of a

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16. Supra n. 13 at p. 419.
precise and unambiguous code, parliamentary correspondents and commentators are scared of treading, albeit unwillingly, on what is often described as 'privileged corns'. In order to get insulated from this latent danger, they may try to tone down their comments which is detriment to the genuine interests of both the press and the legislature.

7.17 It is this danger which prompted the Press Council to repeat in 1982 what it said 15 years ago:

The Council reiterates its view that the privileges of Parliament and State legislatures should be codified in the interest of the freedom of the press.¹⁷

7.18 This aspect was highlighted by Justice A N Sen, Chairman of the Press Council, at Ahmedabad on 20 January 1987 when he said:

The major constraint on the freedom of the press, as I see it, is the lack of proper and necessary recognition of the right to information by the press ...I am also of the opinion that the privileges of the legislature should be codified to throw sufficient light on what may be considered to be

¹⁷. Recommendations of the Press Council, finalised at its meeting of 28 December 1982. For full text of the recommendations, see supra n. 9 pp 121-23.
acts of contempt and the area of contempt should be clearly demarcated and identified.

7.19 The Supreme Court in M S M Sharma v. S K Sinha observed that if Parliament or a State legislature enacted a law under Articles 105(3) or 194(3) of the Constitution, defining its privileges, that law would be subject to Article 19(1)(a) and could be struck down if it violated or abridged any of the fundamental rights, unless that law could be validly saved under clause (2) of Article 19. As pointed out by Justice A N Grover, a former Chairman of the Press Council, the houses of Parliament or the State legislatures would be most reluctant to codify legislative privileges in view of this constitutional position.

7.20 When a spate of rulings in the Tamil Nadu Assembly came down heavily on the print medium and the editor of the Illustrated Weekly of India was summoned on 20 April 1992 to be reprimanded for an article carried by the weekly sometime in 1991, the Press Council issued a press release on 2 May 1992 reminding all concerned the important recommendations made by it on parliamentary


\[1^9\] Supra note 9, Foreword.
privileges and freedom of the press in the study conducted in collaboration with the Indian Law Institute way back in 1982.\textsuperscript{20} Describing the conflict as one between a House and a citizen, the Council reiterated its demand for the preparation of an informal code of privileges by a body appointed by the Parliament and the State legislatures.\textsuperscript{21}

7.21 The Committee of Privileges of the Lok Sabha which examined the issue in the light of the developments in Tamil Nadu has since summarily rejected the demand for codification of privileges.\textsuperscript{22} Allaying apprehensions that the

\textsuperscript{20} While approaching the Press Council, the editor, Anil Dharkar, stressed on two points: (a) he was not the editor of the publication at the relevant time; (2) he was not and never has been the publisher of the magazine as stated by the Speaker. The Council was unable to help him as he had also moved the Supreme Court in the matter and the Council is debarred from taking up any matter which may be sub judice. However, the explanation provided by him was accepted by the Tamil Nadu Assembly and privilege motion against him was dropped. Consequently the Supreme Court dismissed the petition. For recommendations of the Council, see supra n. 17.


\textsuperscript{22} The fourth report of the Committee of Privileges received approval of the Speaker on 5 August 1994 and was tabled in the Lok Sabha on 19 December 1994. Following the conference of presiding officers in New Delhi in September 1992, the Lok Sabha Secretariat, however, issued a document which is a compilation of rulings, House committee reports, established parliamentary practices, rules of conduct and conventions of Lok Sabha. The document will help the journalists as well as the
unfettered power to punish posed a threat to freedom, the Committee pointed out on the basis of a detailed study of privilege cases that have arisen in the Lok Sabha since 1952 that the House has used the power "extremely rarely". Barring cases of contempt of the House where visitors created disturbances by shouting slogans or throwing leaflets from the visitors gallery, there has only been one instance in the Lok Sabha since 1952 when a person was sent to jail for having committed breach of privilege and contempt of the House. The contemnor was Smt Indira Gandhi, former Prime Minister. She was expelled from the post-emergency Parliament and was sentenced to imprisonment which ended with the prorogation of the House a week later.

7.22 A study of the pattern of disposal of privilege notices since 1980 revealed that out of the hundreds of notices received each year only a tiny fraction reached the Committee stage with the public and the harassed officials to know what are not privileges. For instance, misbehaviour of a member is not a privilege. Though this exclusionary list lacks statutory force, yet it is expected to have a persuasive effect on the legislators as well as reporters to self-regulate their conduct along the path of professional rectitude. As pointed out in the 14th Annual Report (1992-93) of the Press Council, it is a step in the right direction.
majority being disallowed either at the threshold or through a ruling by the Speaker in the House. In 1981, out of 246 notices of question of privilege received in the Lok Sabha secretariat, 226 were disallowed at the threshold, 17 were disallowed by the Speaker through a ruling given in the House and only two were referred to the Committee of Privileges. In 1991, out of 100 notices received 99 were disallowed at the threshold and only one notice was referred to the Committee of Privileges. In 1992, however, all the 122 notices received were disallowed at the threshold.\(^{23}\)

7.23 These figures will justify the assertion of the Committee that the misuse and abuse of privileges is only a myth. However, the Committee does not cite any study relating to the abuse of privileges in different legislatures. For instance, while it approvingly quotes the restraint shown by the Lok Sabha, the Committee has nothing to say about the actions of the legislature in Tamil Nadu from where the issue arose in the first place. The panel noted that absence of codification was not responsible for confrontation between the legislature and the judiciary. But what is the difficulty in codifying the privileges? The answer in the words of the Committee is: "If codified, parliamentary privileges will become subject to fundamental rights enshrined in the

\(^{23}\). Report of the Lok Sabha's Committee of Privileges tabled in the Lok Sabha on 19 December 1994. (as reported in The Hindu on 30 December 1994.)
Constitution and they will come within the ambit of judicial scrutiny and determination." There lies the crux of the matter.

7.24 Apart from the vexed question of codification, it is time to deliberate on whether a legislative house should enjoy privileges and wield penal powers for the conduct of its business and maintenance of its authority. It will be expedient if legislative privileges were confined for the purpose of dealing with encroachers, detractors and obstructors. The entire idea of a person committing a breach of privilege by making a comment or writing a report in a newspaper should be discarded as obnoxious. The American process of government, based on free and uninhibited discussion, is a shining example worthy of examination in this context. The power of the U.S. Congress to punish for contempt is subject to judicial review; but it does not in any way belittle the authority of the House or hamper its functioning. The scope of legislative privileges in the United States is extremely limited and scope of judicial review much broader than in the United Kingdom.24 If a press commentator, in the legitimate exercise of his right to freedom of speech, abuses or defames a legislature or a

legislator, the remedy ought to be sought in a court of law. Such a contraction in the area of legislative privileges in favour of freedom of speech will definitely enhance the prestige and dignity of the legislature. The preamble to the paramount parchment of the people (our Constitution) fulfils itself, as pointed out by Justice V R Krishna Iyer and Dr Vinod Sethi, in such an atmosphere of light, thought and speech.²⁸