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COMMITTEE OF PRIVILEGES

FOURTH LOK SABHA

ELEVENTH REPORT

(Presented on the 12th August, 1970)

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LOK SABHA SECRETARIAT
NEW DELHI

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PERSONNEL OF THE COMMITTEE OF PRIVILEGES

(1970-71)

CHAIRMAN

‡Shri R. D. Bhandare

MEMBERS

2. Shri N. C. Chatterjee
3. Shri Surendranath Dwivedy
@4. Shri K. Hanumanthaiya
*5. Shri C. M. Kedaria
6. Shri V. Mayavan
7. Shri H. N. Mukerjee
8. Shri Raja Venkatappa Naik
9. Shri K. Raghuramaiah
10. Shri Rabi Ray
11. Shri A. K. Sen
*12. Shri P. G. Sen
13. Shri Yajna Datt Sharma
14. Shri R. K. Sinha
**15. Vacant.

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

‡ Appointed Chairman with effect from 27-7-1970 *vice* Shri Nitiraj Singh Chaudhary resigned from the Committee of Privileges.

@ Appointed with effect from 29-7-1970, *vice* Shri P. Govinda Menon, died.

*Appointed with effect from 20-5-1970, *vice* Dr. Ram Subhag Singh and Shrimati Jayaben Shah resigned from the Committee of Privileges.

** *Vice* Chaudhary Nitiraj Singh resigned from the Committee of Privileges with effect from 25-7-1970.

ELEVENTH REPORT OF THE COMMITTEE OF PRIVILEGES

(FOURTH LOK SABHA)

I. Introduction and Procedure

I, the Acting Chairman of the Committee of Privileges, having been authorised to submit the report on their behalf, present this report to the House on the question of privilege raised[1] by Shri N. K. P. Salve, M.P., on the 22nd July, 1969, and referred[2] to the Committee by the House on the 18th August, 1969, regarding the notice[3] served on the former Speaker, Shri N. Sanjiva Reddy, and four other members of Lok Sabha, requiring them to appear before the High Court of Delhi, in connection with a suit for damages filed by Shri Tej Kiran Jain and others in respect of certain statements made by them in Lok Sabha.

2. The Committee held four sittings. The relevant minutes of these sittings form part of the report.

3. At the second sitting held on the 14th November, 1969, the Committee noted that the High Court of Delhi had dismissed[4] the suit of the plaintiffs but, in view of the certificate of fitness[5] for appeal to the Supreme Court granted to the plaintiffs by the High Court, decided to defer further consideration of the matter till the disposal of the appeal of the plaintiffs by the Supreme Court.

4. At the third sitting held on the 13th May, 1970, the Committee deliberated on the matter in the light of the judgment[6] of the Supreme Court dismissing the appeal filed by Shri Tej Kiran Jain and others, and came to their conclusions.

5. At the fourth sitting held on the 25th July, 1970, the Committee considered their draft report and adopted it.

II. Facts of the case

6. On the 22nd July, 1969, the Deputy Speaker, who was in the Chair, made the following announcement in the House:—

> "I have to infrom the House that on the 22nd June, 1969, the former Speaker, Shri N. Sanjiva Reddy, received a notice

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1. L. S. Deb., dt. 22-7-1969, cc. 230—247.
2. *Ibid* dt. 18-8-1969 cc. 259-60.
3. *See* Appendix I.
4. *See* Appendix II.
5. *See* Apperdix III.
6. *See* Appendix IV.

from the Assistant Registrar of the High Court of Delhi in the matter of Suit No. 228 of 1969: Shri Tej Kiran Jain and others, Plaintiffs *versus* Shri N. Sanjiva Reddy, Speaker Lok Sabha, and Sarvashri Narendra Kumar Salve, B. Shankaranand and S. M. Banerjee, Members of Lok Sabha, and Shri Y. B. Chavan, Minister of Home Affairs, Defendants, and requiring Shri N. Sanjiva Reddy to appear in the High Court of Delhi in person or by a Pleader duly instructed and able to answer all material questions relating to the suit, on the 4th day of August, 1969. With the notice, a copy of the plaint[1] claiming a sum of Rs. 26,000/- as damages in favour of the plaintiffs and against the defendants in respect of certain observations made by the Speaker and other Members of Parliament named above in Lok Sabha on the 2nd April, 1969, during the proceedings of the House on the Calling Attention Notice regarding the statement of Shri Shankaracharya of Puri on untouchability and his reported insult to the National Anthem, was also enclosed.

Since the matter relates to the proceedings of Lok Sabha and the powers, privileges and immunities of Parliament and its Members, I place the matter before the House for such directions as it may deem fit to give in the matter.

I also lay on the Table the notice, together with its enclosures[2], received from the High Court of Delhi in the above-mentioned suit.

On the same issue, Shri N. K. P. Salve has raised a question of privilege. He may now move his motion."

7. Shri N. K. P. Salve, M.P., then sought[3] leave of the House to raise a question of breach of privilege against the plaintiffs who had filed the suit in the High Court of Delhi, and the Judge of the High Court who had admitted it and issued the notice to him for his appearance in that Court, in respect of certain statements made by him in Lok Sabha. While raising the question of privilege, Shri Salve stated *inter alia* as follows:

"The charge of the plaint is that I and four others made malicious, false and defamatory statements against Shankaracharya. The charge further is that the entire debate on

1. *See* Appendix I.
2. *Ibid.*
3. L. S. Deb., dt. 22-7-1969, cc. 231—33.

and April, 1969, on the Calling Attention Motion, was outside the purview of the Rules and immunities granted to us under the Constitution and the privileges would not protect us from a proceeding in a court of law. The whole move is so utterly sinister and serious that the plaint *inter alia* reads:

'The Speaker is no more privileged to call a stranger to the House a dog as the stranger is no more privileged to call the Speaker a dog.'

Further they are imputing motives. In their misadventure they are mis-quoting the entire proceedings. I will just read a few lines to show how grave the entire offence is:

'The defendants severally and collectively in the manner already herein stated before in this plaint maliciously spoke and published of His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Gowardhan Peeth, Puri, words and sentences which not only mean that he is a criminal of the worst type who should be punished with public whipping, but also that he is also a degraded and wretched person unworthy of being permitted to live in this country, that he should therefore be hanged, and in any event he was a person who was so defiled, malignant and polluted that it was not proper for anyone even to touch him and in any event his status on earth was no better than that of a mongrel that he should be placed under the table.'

Whatever else the Members who participated in the motion might have said, they have never uttered these words and that only shows the utterly sinister and false implications involved in this matter. In the history of this Parliament at least there has never been a case where there has been such a frontal attack and such contempt has been brought on the Speaker himself. Nor have the members been so attacked, maligned, dishonoured and disrespected in this manner. The irony of the fate is that the Judge, on whose authority the notice has been issued has the authority to dismiss the suit *in limine* but he did not do so. Because article 105(2) in terms says that the immunity granted to us from all proceedings in a court of law is aboslute; it is not subject either to the provisions of the Rules of Procedure or to the Constitution. That is a matter which has been interpreted by the Supreme Court in Sharma's case. I do not want to cast any aspersion on the

judge right now. It would be unsafe to cast any aspersion on the judge. But it is really surprising that he should not have dismissed the suit but should have summoned all five of us to the court. I, therefore, submit that the matter be referred to the Privileges Committee and the Privileges Committee be directed to instruct us as to what we should do on the 4th August, 1969."

8. Speaking on the question, the then Minister of Law and Social Welfare (Shri P. Govinda Menon) stated[1] as follows:

"I share fully the feelings of this House that this is a very grave matter where the privileges of this House, its Members and of the Speaker are involved. The provisions of article 105(2) are absolute in their terms, and I am, therefore, in complete agreement with Shri N. K. P. Salve that this is a suit which ought to be dismissed *in limine*. I have no doubt about it. I have also no doubt that the plaintiffs in this matter, by the very fact of having made these allegations and made a complaint to the court are guilty of a breach of privilege.

So far as the court is concerned, the provisions of the Code are as follows. If a plaint is filed in a court with proper court fee, then summons issues as a matter of course and it is not necessary and it is not usual for the judge to read the plaints before summons is issued. In Order 14 of the CPC it is stated that as soon as the notice comes, it is open to a party to go and tell the court that this suit would not lie. For the enlightenment of the House, I would like to read it. It reads thus. It is stated in Order 14, rule (2) that:

'Where issues both of law and of fact arise in the same suit and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try that suit.....'

Therefore, it is the duty of the defendants in this case to point out to the court that under article 105(2), this is a matter which should be dismissed *in limine*.....Government can make arrangements to point out to the court that this is a matter covered by article 105(2), and, therefore, the suit should be dismissed *in limine*. After that, I have no doubt in my mind that the Privileges Committee of the

1. L. S, Deb, dt. 22-7-1969, cc. 240—42.

House or the House itself should call the plaintiffs to order under the rules regarding privilege, and if the court also persists in that matter, we may have to consider it. I, therefore, submit that this may be kept pending."

9. Thereafter, the Deputy Speaker, observed[1] as follows:

"The question that arises here is this, namely whether going to the court or the fact of going to the court and the issuing of the summons constitutes a breach of privilege.... These are the issues involved. The question is whether that constitutes a privilege issue or whether it is entertaining that petition or suit and not dismissing it. The Law Minister has pointed out that at this stage we may keep this question of privilege pending. If Government—not the Speaker, because we ignore it—wants to educate the Indian judiciary at the lower level regarding the basic, fundamental features of the Constitution, it may make an appearance. We shall then refer the matter to the Privileges Committee, not at this stage. Because this is a ticklish issue at this stage, as I said earlier, we cannot go into it. As the Law Minister has suggested, this matter is kept pending at this stage."

10. On the 1st August, 1969, Shri Madhu Limaye again sought to raise[2] the matter in the House on the ground that Mr. Justice Prakash Narain of the High Court of Delhi, before whom the matter had come up for hearing on the 31st July, 1969, had, instead of dismissing the suit *in limine*, suggested reference of the matter to a larger Bench. Shri S. M. Banerjee also stated that accroding to the news report appearing in the *Times of India*, dated the 1st August, 1969, Mr. Justice Prakash Narain in his order had stated that "since the matter was the first of its kind in the country and has raised a question of substantial Constitutional importance, the Chief Justice is requested to constitute a Bench of two or more Judges to decide the preliminary objection raised by the Union of India."

11. Shri P. Govinda Menon, thereupon, stated[3]:

"The Government counsel in the Delhi High Court was instructed by me to meet the Chief Justice and place an affidavit before him saying that the plaint because it is with respect to proceedings in Parliament is absolutely barred under Art. 105(2) of the Constitution and should be dismissed *in limine*

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1. L. S. Deb. dt. 22-7-1969, c. 242.
2. L. S. Deb. dt. 1-8-1969, cc. 243-44.
3. *Ibid*, c. 245.

under Order 7 Rule 11. That has been done. The Judge before whom it has come has recommended that the matter be placed before a Bench of two Judges being an important matter."

12. On the 4th August, 1969, Shri P. Govinda Menon informed[1] the House that when the matter came up for hearing before a larger Bench of the High Court of Delhi earlier on that day, the Attorney-General pointed out to the High Court that under Article 105(2), no such suit could be entertained, and that, the Court had dismissed the suit *in limine*.

On the 12th August, 1969, Shri P. Govinda Menon also laid[2] on the Table of the House a copy of the judgment[3] of the full Bench of the High Court of Delhi dismissing the aforesaid suit.

13. On the 18th August, 1969, the question of privilege raised by Shri N. K. P. Salve on the 22nd July, 1969, came up for further consideration before the House. While speaking on the subject, Shri N. K. P. Salve stated[4] *inter alia* as follows:

"For a proper appreciation of the issues involved, it is necessary for me to demarcate the entire dispute into two parts, firstly, relating to the action and lapse of these five plaintiffs and their lawyers, who entered into an unholy alliance to drag us into a court of law in respect of what we have said here and, secondly, in respect of the attitude of the Delhi High Court, and to determine whether the Delhi High Court and its Judges acted justly, fairly and properly to protect the privileges of the Members of Parliament and to protect the honour and respect of the Speaker."

"Their (the plaintiffs') entire action was motivated by considerations of retaliation and vengeance and the use of invective and abusive language against us which constitutes grave contempt and a matter of which a very serious notice will have to be taken by this House.

The charges are fourfold. Firstly, it is contended in the plaint that the entire calling attention was admitted in breach of the rules themselves, as though they are saying that Parliament acted in excess of its jurisdiction, beyond its competence in debating this issue. Never have I heard a more astounding, more insane and stupid contention about the jurisdiction of

1. L. S. Deb., dt. 4-8-1969, c. 263.
2. L. S. Deb., dt. 12-8-1969, c. 234.
3. *See* Appendix II.
4. L. S. Deb., dt. 18-8-1969, cc. 247—51.

Parliament. However, one of the contentions is that Parliament is not competent to discuss about the gospel of the Shankaracharya on untouchability.

The second contention is that the House was reduced to a commonplace with the connivance of the Speaker. It is unfortunate that many times things do happen in this House which do not add to the dignity of the House, but it is one thing to say that some things have happened which are unparliamentary and it is quite another thing to say that all of us have done this mudslinging on the Shankaracharya with your connivance. It constitutes a very grave contempt of the Speaker.

The third charge is that we, Members, who participated, used undignified and unparliamentary language and made false and malicious charge against the Shankaracharya. I have never known the Shankaracharya personally; I have never heard him. We are told that he is a man known for his profundity and erudition and that he is a great spiritual leader. We have absolutely nothing against him. All that we had stated was in relation to his observation in which he had propagated and justified untouchability, which conscientiously we had to oppose. It is in respect of that that we had made our submissions to the House.

The fourth charge is that in condemning the Shankaracharya we besmirched his image deliberately. Why so? Because the Government all these years had failed to eradicate untouchability and we were, therefore, anxious—all of us, including Shri Banerjee—to exonerate the Government and palm off the blame on the Shankaracharya....

Therefore I submit that the entire plaint has been drafted distorting facts. It makes out a case that we were people who are mean, cowards, untrustworthy and not capable of being proper representatives of the people. This constitutes very grave contempt.

Now I may refer very briefly to two or three lines in this plaint. First I refer to what is stated in paragraph 15. I quote:—

'In the instant case not only this Rule was thrown to the winds but the Speaker took part in the hurling of defamatory imputations and all the defendants while expressing themselves on the address of His Holiness Jagadguru Shankaracharya Anant Shri Swami Niranjan Deva Teertha of Goverdhan Peeth, Puri, gave themselves up to a use of language

which was more commonplace than serious, more lax than dignified, more unparliamentary than sober, and jokes and puns were bandied around with playful sprees and His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Goverdhan Peeth, Puri, was made to appear as a leperous dog. The defendants forgot that use of unparliamentary words by device is as prohibited as its direct use."

It is further observed in paragraph 17:

'To impute upon a person of the status of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Goverdhan Peeth, Puri, that he was a person worthy of being placed 'under the table' is nothing but saying that he is a dog or a lowly animal fit to lick the dust and when the unsolicited suggestion is made by the Speaker of the Lok Sabha, the imputation becomes more indecent and defamatory coming as it does from that forum and place. The Speaker is no more privileged to call a stranger to the House a dog as the stranger is no more privileged to call the Speaker a dog.'

'The defendants severally and collectively in the manner already herein stated before in this plaint maliciously spoke and published of His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Goverdhan Peeth, Puri, words and sentences which not only mean that he is a criminal of the worst type who should be punished with public whipping, but also that he is also a degraded and wretched person unworthy of being permitted to live in this country, that he should therefore be hanged, and in any event he was a person who was so defiled, malignant and polluted that it was not proper for anyone even to touch him.'

Not a word of these allegations has an iota of truth about this. This is done purely with a view to maligning us, distorting facts and wreaking vengeance upon us. Therefore, it is my submission to this House that the plaintiffs and their lawyer planned a conspiracy and filed a suit against the Speaker, myself, the Home Minister and two other Members of Parliament making insulting, unwarranted and outrageous statements against us, imputing unholy motives for what we stated *bona fide* and conscientiously on the floor of the House, and dragged us to a court of law tendenciously knowing full well that they had no remedy in a court of law. Therefore, I submit, the House should give its permission to raise this issue here in the House itself.

"I have made out a case, firstly, against the plaintiff and then the lawyer and now about the High Court. It is a very delicate matter. I submit that this House should consider whether the High Court should have dismissed the suit *in limine* without necessitating our presence in the court by issuing summons. I do not know whether the Government have to pay any fees to the lawyer who appeared before the High Court to argue the case and plead immunity for us from proceedings in a Court of Law under article 105(2) of the Constitution and whether it constitutes an act where the High Court has failed to be vigilant in its duties."

14. Speaking on the question of privilege, the then Minister of Law and Social Welfare (Shri P. Govinda Menon) stated[1] as follows:

"I am in complete agreement with hon. Shri Salve that this is a matter which should go to the Privileges Committee. This is a most extraordinary thing. Ever since this Parliament was constituted a thing like this has not happened. A suit by half a dozen people who have nothing to do with the matter, saying that they are aggrieved with what some Members of Parliament including the Speaker said on a certain matter go to the Court. This matter should go to the Committee of Privileges. The Committee of Privileges should examine who among these people referred to here have erred in this matter. My point is that there has been a breach of privilege and it is for the Committee to consider who are the persons who have to be summoned or who are to be punished in this matter. It may be the plaintiffs; it may be the defendants; it may be the registrar or it may be anybody else. I do not want to express my opinion as to whether the court has discharged its duties properly or not".

15. After some discussion, the Speaker, observed[2] as follows:

"The fundamental question that arises here is this. Who is to judge the relevancy or not is not the question. We are our own judges here. Why should it go to the court and why should any court sit around and see the merits of the observations. That is the point in question.....Any Member may invite the attention of the Speaker whether it is fair or not fair. It is for us to decide here and not for those people who

1. L. S. Deb., dt. 18-8-1969, c. 257.
2. L. S. Deb., dt. 18-8-1969, cc. 259-60.

are sitting out. As I understand it, I think the Members are unanimous on referring this to the Privileges Committee.

There are two points, as far as I understand, and we shall draft them properly along with the others that hon. Members might suggest. The two points on which we have to judge are as follows. The first is about the violation of the privileges of the House by the plaintiffs.....Then, we have also to judge the action of the judge in entertaining the plaint....and then issuing summons and then recommending it for reference to a full Bench. In that light, we shall have to examine in detail the relations between the legislature and the High Court.... With the unanimous approval of the Members, I refer this motion to the Privileges Committee."

III. Findings of the Committee

16. The High Court of Delhi, while dismissing the suit filed by Shri Tej Kiran Jain and others, in its judgement (*See* Appendix III) dated the 4th August, 1969, stated *inter alia* as follows:

"That the plaint is liable to be rejected under Order 7 Rule 11 clause (d) of the Code of Civil Procedure according to which the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Perusal of the plaint goes to show that the defendants are being proceeded aganist by the plaintiffs because of what was stated by them in Lok Sabha on April 2, 1969. According to clause (2) of Article 105 of the Constitution 'no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.' Plain reading of the above provision goes to show that as regards anything said by a member of Parliament in the Parliament or any Committee thereof the Constitution has guaranteed full protection and provided complete immunity against any proceedings in a court of law. The protection given by the above clause is to anything said in Parliament. The words 'anything said' are of the widest amplitude and it is not permissible to read any limitation therein....The object of the provision obviously was to secure absolute freedom in discussion in Parliament and to allay any apprehension of a legal proceeding in a court of law in respect of anything said in Parliament by a member thereof....the present suit is

barred by the provisions of clause (2) of Article 105 of the Constitution. We, therefore, reject the plaint."

17. Subsequently, the High Court of Delhi, in its order[1], dated the 19th September, 1969, on the application filed by Shri Tej Kiran Jain and others, while granting to the plaintiffs a certificate of fitness for appeal to the Supreme Court against their judgement, stated *inter alia* as follows:—

> "We are of the view that the petitioners are entitled to a certificate of fitness for appeal to the Supreme Court under Sub-Clause (a) of Clause (1) of Article 133 of the Constitution.....the suit, which was filed by the petitioners, was for the recovery of an amount of Rs. 26,000. By the impugned order we rejected the plaint under Order 7 Rule 11 of the Code of Civil Procedure on the ground that the suit was barred by Article 105 of the Constitution. According to the definition of the word 'decree' as given in clause (2) of Section 2 of the Code of Civil Procedure, decree shall be deemed to include the rejection of a plaint. It would, therefore, follow that the impugned order would fall within the definition of decree as given in the Code of Civil Procedure. In any case, the impugned order is a final order in a civil proceeding. In either view of the matter, the petitioners are entitled to a certificate of fitness for appeal to the Supreme Court. We, accordingly, order that the requisite certificate may issue in favour of the petitioners."

18. In view of the certificate of fitness for appeal to the Supreme Court in the matter granted by the High Court of Delhi to the plaintiffs, the Committee at their sitting held on the 14th November, 1969, decided to defer further consideration of the matter till the disposal of the appeal of the plaintiffs by the Supreme Court.

19. Consequent upon the filing of the appeal by the plaintiffs in the Supreme Court against the judgment of the High Court of Delhi, notices of the lodgment of the appeal were served on the defendants by the Assistant Registrar of the Supreme Court. This was raised as a matter of privilege in Lok Sabha on the 3rd April, 1970. Speaking on the matter, the then Minister of Law and Social Welfare (Shri P. Govinda Menon) stated[2] as follows:

> "Now also I think the better course would be to charge the Attorney-General with the duty of pointing out to the

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1. *See* Appendix III.
2. L. S. Deb., dt. 3-4-1970.

Supreme Court that this is a matter which cannot be proceeded against....I shall ask the Attorney-General to appear in the Supreme Court and point the provisions of article 105. I suppose the House will agree to that course....Members need not appear...."

Thereupon, the Speaker observed[1] as follows:

"I very much wish that the Supreme Court had realised the powers, privileges and immunities of this House even before admitting this petition.....I ask Members concerned not to appear before the Supreme Court and I request the Law Minister to take other steps. I quite appreciate the position he has rightly taken; he should point out to the Supreme Court that this matter was discussed and he should arrange to explain the constitutional point to them....If anything comes again, we shall be at liberty to discuss the matter."

Judgement of the Supreme Court

20. The Supreme Court in its judgment[2] dated the 8th May, 1970, while dismissing the appeal preferred by Shri Tej Kiran Jain and others against the judgment of the High Court of Delhi, stated *inter alia* as follows:

"The article [Article 105(2)] means what it says in language which could not be plainer. The article confers immunity *inter alia* in respect of 'anything said....in Parliament'. The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none.

1. L. S. Deb., dt. 3-4-1970.

2. *See* Appendix IV.

....In view of the clear provisions of our Constitution we are not required to act on analogies of other legislative bodies. The decision under appeal was thus correct. The appeal fails and is dismissed."

As regards the service of the notices of the lodgment of the appeal on the respondents, the Supreme Court observed as follows:

"Before we leave the case we wish to refer to the notice of the lodgment of the appeal. The suit was for Rs. 26,000 and the certificate was granted under Art. 133 of the Constitution by the High Court. Under the Rules of this Court an appeal has to be lodged after the certificate is granted and a notice of lodgment of the appeal is taken out by the appellants to inform the respondents so that they may take action considered appropriate or necessary. After service of notice this Court treats the appeal as properly lodged and can proceed to hear it when time can be found for hearing. Without the notice the case cannot be brought to a hearing. The notice which is issued is not a summons to appeal before the court. It is only an intimation of the fact of the lodgment of the appeal. It is for the party informed to choose whether to appear or not. Summonses issue to defendants, to witnesses and to persons against whom complaints are filed in a criminal suit. If a summons issues to a defendant and he does not appear the court may take the action to be undefended and proceeding *ex parte* may even regard the claim of the plaintiff to be admitted. This consequence does not flow from the notice of the lodgment of the appeal in this Court. The Court has to proceed with the appeal albeit *ex parte* against the absent respondent. If a summons is issued to a witness or to a person complained against under the law relating to crimes, and the witness or the person summoned remains absent after service a warrant for his arrest may issue."

Law and Precedents

21. Article 105(2) of the Constitution provides as follows:

"No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

22. The Orissa High Court, in its judgement delivered on the 26th February, 1958, in a contempt of Court case against Shri Nabakrishna Choudhury, the then Chief Minister, Orissa, to whom a notice to show cause why contempt proceedings should not be initiated against him was issued by the Court after a preliminary hearing, for allegedly casting reflections on the High Court while speaking in the Assembly, held:

> ".....the language of clause (2) of Art. 194 [corresponding article for Parliament is 105(2)] is quite clear and unambigous, and is to the effect that no law court can take action against a member of the Legislature for any speech made by him there. The immunity appears to be absolute.
>
> The speech of Shri Nabakrishna Choudhury is somewhat hasty and uninformed and amounts to contempt of this Court..... Nevertheless he is entitled to claim immunity under clause (2) of art. 194."
>
> [Surendra Mohanty *vs.* Nabakrishna Choudhury and others, A.I.R. 1958 Orissa 168.]

23. Article 122(2) of the Constitution also provides:

> "No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

24. As regards the discussion in Parliament on the conduct of a Judge of the Supreme Court or of a High Court, Article 121 of the Constitution provides as follows:

> "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided."

25. One of the issues that was referred by the President to the Supreme Court in the Special reference No. 1 of 1964 in Keshav Singh's case of U.P. Legislative Assembly, was:

> "Whether on the facts and circumstances of the case, Shri Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Shri B. Solomon, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Shri Keshav

Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh."

The answers to the above question given both by the majority opinion as well as by the minority opinion of the Supreme Court were in the negative.

In this connection, the majority opinion *inter alia* stated as follows:

"Let us first take Art 226. This Article confers very wide powers on every High Court 'throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto, certiorari,* or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.' It is hardly necessary to emphasise that the language used by Art. 226 in conferring power on the High Courts is very wide. Art. 12 defines the 'state' as including the Legislature of such State, and so, *prima facie,* the power conferred on the High Court under Art. 226(1) can, in a proper case, be exercised even against the Legislature. If an application is made to the High Court for the issue of a writ of *habeas corpus,* it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Art. 226(1) read by itself, does not seem to permit such a plea to be raised. Art. 32 which deals with the power of this Court puts the matter on a still higher pedestal; the right to move this court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what we have said about Art. 226(1) is still more true about Art. 32(1).

* * * * *

If a judge in the discharge of his duties passes an order or makes observations which in the opinion of the House amount to contempt, and the House proceeds to take action against the judge in that behalf, such action on the part of the House cannot be protected or justified by any specific provision made by the latter part of Art. 194(3).....The conduct of a judge in relation to the discharge of his duties cannot be the subject matter of action in exercise of the powers and privileges of the House. Therefore, the position is that the conduct of a

judge in relation to the discharge of his duties cannot legitimately be discussed inside the House though if it is, no remedy lies in a court of law. But such conduct cannot be made the subject-matter of any proceedings under the later part of Art. 194(3). If this were not the true position, Art. 211 would amount to meaningless declaration and that clearly could not have been the intention of the Constitution."

[A.I.R. (1964) S.C. 745]

26. In the *Strauss case* (1958), which was a case of threat of legal action by the Chairman of an Electricity Board against a member for his criticism of the Electricity Board in a letter to the Minister responsible for the Board, the following question was referred[1] by the House of Commons, U.K. to the Judicial Committee of the Privy Council:

"Whether the House of Commons would be acting contrary to the Parliamentary Privileges Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges."

The Judicial Committee of the Privy Council while answering the above question by saying that "the House would not be acting contrary to the Parliamentary Privileges Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges", observed[2]:

"But they (their Lordships) do not intend expressly or by implication to pronounce upon any other question of law. In particular they express no opinion.....on the question whether the mere issue of a writ would in any circumstances be a breach of privilege. In taking this course, they have been mindful of the inalienable right of Her Majesty's subjects to have recourse to Her Courts of Law for the remedy of their wrongs and would not prejudice the hearing of any cause in which a plaintiff sought relief."

27. The Committee observe that under Article 105(2) of the Constitution, a Member of Parliament enjoys *absolute* immunity from "any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof". The language of this article could not be plainer and it leaves no scope

1. H. C. Deb. dt. 4-12-1957.
2. H. C. Command Paper No. 431

for any ambiguity. It plainly and clearly says that the Courts of law have no jurisdiction in respect of *anything* said or any vote given by a Member in Parliament. As observed by the Supreme Court, while dismissing the appeal of Shri Tej Kiran Jain and others, "it is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."

28. The absolute privilege of statements made in Parliament and their immunity from any action outside Parliament is thus well-established. As stated[1] by *May*: "a Member may state whatever he thinks fit in debate, however, offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation."

29. The Committee are of the opinion that to commence proceedings in a court of law against any Member of Parliament on account of anything said or any vote given by him in Parliament or any Committee thereof, constitutes a breach of privilege and contempt of the House.

30. The Committee are of the view that the action of Shri Tej Kiran Jain and others in instituting a suit for damages in the High Court of Delhi, against the former Speaker, Shri N. Sanjiva Reddy, and four other Members in respect of their statements in Lok Sabha on the 2nd April, 1969, constitutes a breach of privilege and contempt of the House.

31. The Committee, however, feel that, as this is the first case of its kind and, as the position regarding the absolute immunity enjoyed by Members of Parliament, under Article 105(2) of the Constitution, from any proceedings in any court of law in respect of anything said or any vote given by them in Parliament or a Committee thereof, has been stated in clear and unambiguous terms both by the High Court of Delhi and the Supreme Court while dismissing the petitions of Shri Tej Kiran Jain and others, it is not necessary to pursue the matter any further. Now that the legal and constitutional position in this respect has been made clear by the proceedings in this case, the Committee hope that such cases will not reoccur in future.

1. May's Parliamentary Practice, 17th Edition, P.53.

IV. Recommendation of the Committee

32. The Committee recommend that no further action be taken by the House in the matter.

N. C. CHATTERJEE,
Acting Chairman,
Committee of Privileges.

Dated the 25th July, 1970.

MINUTES

I

First Sitting

New Delhi, Tuesday, the 26th August, 1969.

The Committee sat from 16.00 to 17.00 hours.

PRESENT

Shri K. K. Khadilkar--*Chairman*

MEMBERS

2. Shri Rajendranath Barua
3. Shri N. C. Chatterjee
4. Shri Hem Raj
5. Shri Thandavan Kiruttinan
6. Shri Raja Venkatappa Naik
7. Shri P. Ramamurti
8. Shri K. Narayana Rao.

SPECIAL INVITEE

Shri Anand Narain Mulla, M.P.

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

* * * * *

5. The Committee then considered the question of privilege raised by Shri N. K. P. Salve, M.P., regarding the notice served on the former Speaker, Shri N. Sanjiva Reddy, and four other Members of Lok Sabha, requiring them to appear in the High Court of Delhi, in connection with a suit for damages filed by Shri Tej Kiran Jain and others in respect of certain statements made by them in Lok Sabha.

The Committee decided to consider the matter further at their next sitting.

6. The Committee decided to meet again on Thursday, the 30th October, 1969 at 15-00 hours and, if necessary on the 31st October, 1969.

The Committee then adjourned.

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*Paragraphs 2, 3 and 4 relate to other cases and have accordingly been omitted.

II

Second Sitting

New Delhi, Friday, the 14th November, 1969

The Committee sat from 11·00 to 11·40 hours.

PRESENT

1. Shri N. C. Chatterjee—*In the Chair*
2. Shri Rajendranath Barua
3. Shri Surendranath Dwivedy
4. Shri Shri Chand Goyal
5. Shri Hem Raj
6. Shri Thandavan Kiruttinan
7. Shri Raja Venkatappa Naik
8. Chaudhuri Randhir Singh

SPECIAL INVITEE

Shri Anand Narain Mulla, M.P.

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

* * * * *

2. In the absence of the Chairman, the Committee chose Shri N. C. Chatterjee to act as Chairman.

* * * * *

7. The Committee then took up further consideration of the question of privilege raised by Shri N. K. P. Salve, M.P., regarding notice served on the former Speaker, Shri N. Sanjiva Reddy, and four other Members of Lok Sabha, requiring them to appear in the High Court of Delhi, in connection with a suit for damages filed by Shri Tej Kiran Jain and others in respect of statements made by them in Lok Sabha.

The Committee noted that the High Court of Delhi had granted to the plaintiffs a Certificate of fitness for appeal to the Supreme

*Paragraphs 3 to 6 relate to other cases and have accordingly been omitted.

Court in the matter. The Commiteee decided to defer further consideration of the matter till the disposal of the appeal of the plaintiffs by the Supreme Court.

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The Committee then adjourned.

III

Third Sitting

New Delhi, Wednesday, the 13th May, 1970.

The Committee sat from 16.00 to 16.25 hours.

PRESENT

Chaudhary Nitiraj Singh—*Chairman*

2. Shri R. D. Bhandare
3. Shri N. C. Chatterjee
4. Shri P. Govinda Menon
5. Shri K. Raghuramaiah
6. Shri A. K. Sen

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

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5. The Committee then considered the question of privilege raised by Shri N. K. P. Salve, M.P., regarding the notice served on certain members of Lok Sabha to appear in the High Court of Delhi in connection with a suit for damages filed by Shri Tej Kiran Jain and others in respect of certain statements made by the Members in Lok Sabha. The Committee felt that in view of the judgment given by the Supreme Court dismissing the appeal filed by Shri Tej Kiran Jain and others, the matter might not be pursued further. The Committee directed that a draft Report on this matter might be prepared and circulated to the members of the Committee for consideration at their next sitting.

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*Paragraph 8 relates to another case and has accordingly been omitted.

*Paragraphs 2 to 4 relate to other cases and have accordingly been omitted.

6. The Committee decided to hold their next sittings on Friday, the 24th and Saturday, the 25th July, 1970, to consider the pending cases.

The Committee then adjourned.

IV

Fourth Sitting

New Delhi, Saturday, the 25th July, 1970

The Committee sat from 11.00 to 12.20 hours.

PRESENT

Shri N. C. Chatterjee—*In the Chair*

2. Shri R. D. Bhandare
3. Shri C. M. Kedaria
4. Shri V. Mayavan
5. Shri P. G. Sen
6. Shri Yajna Datt Sharma
7. Shri R. K. Sinha

SECRETARIAT

Shri B. K. Mukherjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

* * * * *

2. In the absence of the Chairman, the Committee chose Shri N. C. Chatterjee to act as Chairman.

* * * * *

7. The Committee then considered their draft Eleventh Report on the question of privilege raised by Shri N. K. P. Salve, M.P., regarding the notice served on certain members of Lok Sabha to appear in the High Court of Delhi in connection with a suit for damages filed by Shri Tej Kiran Jain and others in respect of certain statements made by those members in Lok Sabha, and adopted it.

The Committee then adjourned.

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*Paragraphs 3 to 6 relate to another case and have accordingly been omitted.

APPENDIX I

(*See* para 1 of the Report)

Laid on the Table of Lok Sabha on 22-7-1969 by the Deputy Speaker

IN THE HIGH COURT OF DELHI AT NEW DELHI

(ORDINARY CIVIL ORIGINAL JURISDICTION)

In the matter of Suit No. 228 of 1969

Application No. of under

Shri Tej Kiran Jain and others .. Plaintiffs.

Versus

Shri N. Sanjiva Reddy and others .. Defendants.

To

Shri N. Sanjiva Reddy,

Speaker, Lok Sabha, New Delhi,

residing in 20 Akbar Road, New Delhi, through P.S./P.A.

WHEREAS the plaintiffs have instituted a suit against you for claiming damages (copy of petition attached) you are hereby summoned to appear in this Court in person or by a pleader duly instructed and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on the 4th day of August, 1969, at 10 o'clock in the forenoon to answer the claim, and you are directed to produce on that day all documents in your possession of power upon which you base your defence or claim for set off, and further a list of all other documents (whether in your possession or power or not) which are relied upon as evidence in support of your defence or claim for set off, which list shall be added of annexed to the written statement.

TAKE NOTICE that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence.

Dated this 29th day of May, 1969.

Supdt. Original,

for Assistant Registrar.

IN THE HIGH COURT OF DELHI AT NEW DELHI

O.S. No. 228 of 1969.

1. Shri Tej Kiran Jain, son of Lala Shri Atma Ram Jain, Honorary Editor, "Jan Sadharan" residing in 3637 Regharpura, Karolbagh, New Delhi.

2. Shri Acharya Laxmi Chand, M.A., M.Ed., son of Shri Kanchi Singh, residing in Peela Katra, Gali Sangkrishan, Paharganj, New Delhi.

3. Shri Nand Lal Shastri, son of Pandit Shri Harish Chandraji, residing in R-561, Shankar Road, New Delhi.

4. Shri Brahma Prakash Sharma, son of Shri Balak Ram Sharma, residing in B-69, Amar Colony, Lajpatnagar IV, New Delhi.

5. Shri Ravi Nandan Brahmachari, son of Shri Matadayal, residing in Dharamsangh Vidyalaya, Jamnabazar, Delhi.

6. Shri Shyamlal Shastri, son of Shri Manohar Lal, residing in Dharamsangh Vidyalaya, Jamnabazar, Delhi.

—Plaintiffs.

Versus

1. Shri N. Sanjiva Reddy, Speaker, Lok Sabha, New Delhi, residing in 20 Akbar Road, New Delhi.

2. Shri Narendra Kumar Salve, Member, Lok Sabha, New Delhi, residing in 4 Duplex Lane, New Delhi.

3. Shri B. Shankaranand, Member, Lok Sabha, New Delhi, residing in 179 North Avenue, New Delhi.

4. Shri S. M. Banerjee, Member, Lok Sabha, New Delhi, residing in 113 North Avenue, New Delhi.

5. Shri Y. B. Chavan, Member, Lok Sabha, New Delhi, residing in 1 Race Course Road, New Delhi.

—Defendants.

SUIT FOR DAMAGES

MAY IT PLEASE YOUR LORDSHIPS:

1. Plaintiffs Nos. 1 to 6 are Hindus. They are the citizens of India. The plaintiffs are the admirers and followers of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, commonly described in the papers as

Puri Swami. The plaintiffs are however aggrieved that the newspapers have taken to the brief description of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, in a manner which is not in keeping with the dignity of the high religious office of His Holiness.

2. Recently in March, 1969, the Second World Hindu Religious Conference, hereinafter called "the conference" was held at Patna. His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, is alleged to have addressed the conference. The address of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, has unfortunately become the subject matter of a national controversy because of the colour lent to it and the manner in which the address was maliciously publicized with a perversion purposely made by a Government which alone is guilty of committing not only of the so many intentional lapses but also of the various acts of omission and commission in neglecting the true interests of the so called "untouchables". The Government has deliberately coloured, misrepresented and torn out of context and then distorted passages out of the address as if to suggest to the public at large that "untouchability" continues to exist due to the views of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri. The suggestion is absurd and false and is maliciously made by the defendants. The defendants are aware that it is the Government of India who is primarily responsible for the continuation and perpetuation of "untouchability" and individually too none of the defendants have taken any practical overt step to combat "untouchability".

3. The matter cropped up in the Lok Sabha where the defendants spoke on the address. The plaintiffs respectfully rely upon the "Calling Attention to Matter of Urgent Public Importance", Lok Sabha Proceedings of 2nd April 1969. A copy of the said Lok Sabha Proceedings of 2nd April 1969 is attached herewith, marked as Annexure* 'A'. The case of the plaintiffs is that the proceedings are defamatory and beyond the protection of privilege.

4. Although the plaintiffs rely on the full and complete text of the report of the proceedings of 2nd April 1969, they crave indulgence of Your Lordships to be permitted to refer in the plaint to certain passages of the proceedings.

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*Not enclosed.

5. The said certain passages read as below:

(*Note*: Certain comments are supplied to make the extracts read as an intelligible whole. Wherever underlined, they are by plaintiffs to emphasise the word, phrase or sentence).

"**Shri Narendra Kumar Salve:** I correct myself. *Because he was not a crafty-enough politician, he said it publicly.*

Now, if we do not merely want to pay lip service to soothen the hurt and injury which is caused to our own kith and kin who are described as "untouchables", I should like to know from the Hon. Home Minister, firstly, whether he will take up the matter with the Bihar Government and prosecute Shri Shankaracharya....."

"**Shri Umanath:** Put him behind the bars". (Punish his offence—comments supplied by way of explanation).

"*Let it (public whipping) be practised on Shri Shankaracharya first*".

"**Shri Narendra Kumar Salve:**.....so that Shankaracharya and others like him *who propagate "VARNAVYAVASTHA" are publicly whipped* and the necessity of this august House shedding tears is obviated."

"**Shri Y. B. Chavan:** The Hon. Member has described the way the whole thing started. I must say, our colleague, Dr. Karan Singh, deserves our admiration for having taken a very correct stand. I entirely share the feeling of anger of the Hon. House. I am going to take up the matter with the Bihar Government.... . About the matter of treating it as an offence, I think there is already an Act of Parliament which treats this as an offence. About the matter of whipping etc. it is a suggestion for consideration".

"श्री सूरज भान : स्वामी दयानन्द को कोट कर सकता हूं । उन्होंने कहा है कि ऐसा (अस्पृश्यता की बात) किसी भी शास्त्र में नहीं है । इसलिए जो कोई भी ऐसी बातें कहते हैं, उनके मनमाने बनाये हुए शास्त्र होंगे । इसलिए मैं चाहूंगा कि उनके ऊपर पाब्दी लगा दी जाय ।"

"**Shri Y. B. Chavan:**.....About Sastras, I am not an authority. Even if it is there in the Sastras, *these are not Sastras meant for us.*"

"**Shri B. Shankaranand:** *He had put one Shankaracharya behind the bars. I do not know why he is hesitating to put this Shankaracharya behind the bars.....* (interruptions)...."

"**Mr. Speaker:** Come to the question now".

"**Shri B. Shankaranand:** I do not wish to read the whole of it. It says that usually the Shankaracharyas appoint their successors from their own kith and kin who have no knowledge about the tenets of the religion.....They should be appointed by Government.... May I know whether this Government will take up the cause of the Harijans with the Bihar Government and see that the *Shankaracharya is put behind the bars or else the people of this country will pull him down, trample him and hang him*".

"**Shri Y. B. Chavan:** I have already answered the question. We will take up the matter with the Bihar Government".

"**Shri S. M. Banerjee:** *Sir, the man should be arrested and laid on the Table*".

"**The Deputy Minister in the Ministry of Defence (Shri M. R. Krishna):** *Don't pollute the Table*".

"**Shri S. A. Dange:** It will be better if the Home Minister **gives** a copy of the interview that Guruji has given.... (interruptions)".

"**Mr. Speaker:** Will you kindly sit down. The Calling Attention Notice is very clear. It is about Shri Shankaracharya's statement. Now, there are many others in this country who hold the same views. But we are not going to bring in all those names here. The point is about Shri Shankaracharya and his views. Yesterday or the day before, the leader of the Jan Sangh, Shri Atal Behari Vajpayee made a very categorical statement on Shri Shankaracharya's views and he has condemned it on the floor of the House. If anybody else is holding the same views, that has to be taken up separately and that cannot be mixed up with this. So, Shri Golwalkar and others cannot be taken up now. As I have said, there may be a number of others in this country who have got similar views, reactionary views. Just now, a proposal has been made by Shri S. M. Banerjee that the *Shankaracharya must be brought and placed on the Table of the House*. But I honestly feel that he cannot be placed on the Table of the House because you cannot touch him, but *I would permit him being placed under the Table,* if there is no objection".

6. The plaintiffs say and submit that the Speaker of the Lok Sabha occupy in Parliamentary System of our country a position and place which is of great importance. He is expected to conduct himself with absolute and unvarying impartiality in the conduct of the affairs of the Lok Sabha.

7. The present incumbent to the post of the Speaker, Shri N. Sanjiva Reddy, said on March 17, 1967 (at the time of his election

as Speaker to the fourth Lok Sabha) "My office requires of me to be impartial and judicious in the conduct of my work. I can assure with all the force at my command that I will try to live up to this requirement and maintain the high traditions set up by my predecessors. As a necessary corrolary to this resolve, I resign my membership of the party (Congress), to which I had belonged for 34 years. So long as I occupy the Chair, it shall be my endeavour to see that all sections of this House get the honest impression that I do not belong to any party at all".

8. The plaintiffs say and submit that the rights, duties, obligations and privileges of the Members and the Speaker of the Lok Sabha do not rest on conventions but rest upon either the Constitution, the Statute or the Rules framed under the law. One of such Rules are known as "Rules of Procedure and Conduct of Business in Lok Sabha", hereinafter called "the Rules". The Speaker and the Members cannot claim protection of privilege beyond and outside the said Rules.

9. The plaintiffs crave indulgence of Your Lordships to refer, at the very outset, to Rule 379 of the Rules which enjoins that the Secretary (of the Lok Sabha) shall cause to be prepared full report of the proceedings of the House at each of its sittings and the plaintiffs have taken liberty of making use of the said proceedings as reported by the Secretary in order to substantiate what follows.

10. The plaintiffs further say and submit that Rule 360 of the said Rules provides for the address by the Speaker. On a fair and true construction of this Rule, it would be clear that the Speaker may himself, or on a point being raised, or on a request made by a Member, address the House with a view to aid the Members in their deliberations and such expression of views shall not be taken up in the nature of a decision. The plaintiffs respectfully submit to Your Lordships that Rule 360 of the Rules defines the complete amplitude of the right and privilege of the Speaker to address the House and the scope, object, nature and the extent of his rights in the matter.

11. The plaintiffs submit that the Speaker like any other Member of the Lok Sabha is under a duty to scrupulously observe Rule 380, that is, not to use words that are defamatory, indecent, unparliamentary or undignified. Although in terms Rule 380 enjoins upon the Speaker the duty to expunge from the Proceedings of the House indecent or undignified words, it is clear from the scheme of the Rules itself that it does not give the right to the Speaker to make

use of defamatory, indecent, unparliamentary or undignified language in his address to the House. It is universally recognised that good temper and moderation are the characteristics of Parliamentary language.

12. In fact, Rule 353 of the Rules says that nothing will be said which is defamatory or incriminatory in nature. What is enjoined upon the Members of the Lok Sabha is *ipso facto* enjoined upon the Speaker too. Nothing defamatory shall be said of a third party, *i.e.* a stranger to the House, unless the Member intending to say so has given previous intimation to the Minister concerned so that the Minister may be able to make an investigation into the matter for the purpose of reply. This rule, as already said, applies to the Speaker too. This salutory rule avoids the possibility of the proceedings of the Lok Sabha degenerating to an unbecoming debate which would tend to degrade the Parliament and its procedure in the estimation of the people.

13. The plaintiffs crave indulgence of Your Lordships to now refer to Rule 197 which deals with Calling Attention to Matters of urgent public importance.

14. This Parliamentary procedure is of Indian origin and was introduced in 1954 or 1955. There is no parallel procedure in the Parliamentary practice of U.K. Rule 197 is a complete code in itself. No debate is permitted when the reply is made by the Minister but there may be a debate on proper motion. The statement can be made by any Minister in response to Calling Attention to matters of urgent public importance and the Minister need not be in charge of the Ministry concerned—but what is of importance is the non-participation of the Speaker, *i.e.* he is not permitted to do what only a Minister is enjoined upon to do.

15. In the instant case not only this Rule was thrown to the winds but the Speaker took part in the hurling of defamatory imputations and all the defendants while expressing themselves on the address of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, gave themselves upto a use of language which was more common place than serious, more lax than dignified, more unparliamentary than sober, and jokes and puns were bandied around with playful spree, and His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, was made to appear as a leperous dog. The defendants forgot that use of unparliamentary words by device is as prohibited as its direct use.

16. The plaintiffs crave indulgence of Your Lordships to now refer to Clause (iii) of Rule 186, which, for facility of reference, is reproduced below:

> "186. In order that a matter may be admissible, it shall satisfy the following conditions, *viz.* .....
> (iii) it shall not refer to the conduct and character of persons except in their public capacity".

His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, was expressing his personal views and there is a clear distinction between the personal views of private or religious personalities and the views of persons in their public capacity.

17. The plaintiffs also submit that the Speaker acted in utter disregard of the Rules and constitutional propriety in the matter in entering into and perpetuating in the discussions already referred to above, in view of Rule 42 of the Rules. Rule 42 says that in matters which are subject matters of correspondence between the Government of India and the Government of a State, no question shall be asked except as to matters of fact and the answer shall be a statement of fact. The matter was already in correspondence between the Government of India and the Government of Bihar; in fact the only business that the Lok Sabha could have conducted on the subject was the statement of the Minister in answer to the notice that the matter was in correspondence stage and facts were being collected. To impute upon a person of the status of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, that he was a person worthy of being placed "under the table" is nothing but saying that he is a dog or a lowly animal fit to lick the dust and when the unsolicited suggestion is made by the Speaker of the Lok Sabha, the imputation becomes more indecent and defamatory coming as it does from that forum and place. The Speaker is no more privileged to call a stranger to the house a dog as the stranger is no more privileged to call the Speaker a dog. The elementary decency of expression is a universal code of behaviour which imbibes every sphere of society, be it the Parliament or any other forum. Unlike the British Parliament to which reference is made in the Constitution, the Indian Parliament is not absolutely free in choice of words that Members are permitted to use during debates. At the material time this question was already in correspondence between the State of Bihar and the Government of India, and it was no part of the business of the House to have embarked upon a debate prohibited by the

Rules. When making a reply and during the entire transaction, all the defendants who participated in the debate were not only going beyond the scope of the Rules but also in the process put themselves beyond the pail of privilege and therefore whatever they said in the debate or did mean to say or acted is culpable and not privileged.

18. The plaintiffs also respectfully refer Your Lordships to Entry No. 3 in List II of the VII Schedule of the Constitution of India. There is no entry corresponding to this Entry No. 3 either in List I or in List III of the VII Schedule. It was for this reason that the matter was in correspondence between the Central Government and the Bihar State Government and it is here that Rule 242 is attracted. Lok Sabha Rules are not more than Administrative Instructions but they are rules framed under the Constitution and therefore are binding. The plaintiffs refer to Article 118 of the Constitution which provide for rule making powers.

19. The plaintiffs as already stated are not only admirers and followers of His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, but they also regard His Holiness as the repository of the school of thought subscribed to by the plaintiffs and for which the plaintiffs have all respect. The plaintiffs are not the only persons who hold His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha in high esteem in his various spiritual and scholastic attainments. He has countless millions as followers, admirers, worshippers coming from all walks of life. To belittle His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, in the eyes of the plaintiffs is and has caused to them great hurt.

20. The defendants severally and collectively in the manner already herein stated before in this plaint maliciously spoke and published of His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, words and sentences which not only mean that he is a criminal of the worst type who should be punished with public whipping, but also that he is also a degraded and wretched person unworthy of being permitted to live in this country, that he should therefore be hanged, and in any event he was a person who was so defiled, malignant and polluted that it was not proper for anyone even to touch him and in any event his status on earth was no better than that of a mongrel that he should be placed under the table. The proceedings of the Parliament are very widely publicised not only in India but also abroad and these proceedings have been read by the plaintiffs and countless other millions of admirers of His Holiness Jagadguru Ananta

Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, wherein and whereby the various defendants have by words spoken of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, and of him by day of his religious office, well knowing that the reporters of the Lok Sabha as well as the reporters of the National and International Newspapers were present at the said sitting and with the knowledge that the said words would be (as the same in fact were) printed and published in the newspapers and the defendants falsely and maliciously caused and procured the said defamatory words to be printed and published and the said words were calculated to defame His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, to disparage him, and it has therefore caused hurt, annoyance and irritation to the minds of the plaintiffs as they hold uniformly and with the like mind His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, in high esteem and the plaintiffs do not agree with the defendants that the defendants should be permitted to degrade and sully the status in the religious life of the plaintiffs of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, to the level to which the defendants have in fact degraded it to. The very idea is repulsive to the plaintiffs that His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, should be likened to a malignant personality or a dog or a wretch or a villain, which in fact they have all said him to be by canvassing for a non-cognisable offence the sentence of being "hanged". All Members of the Parliament are expected to know under what circumstances a person can be hanged. That can be only for a capital crime or treason. By asking for the hanging of His Holiness Jagadguru Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, knowing fully well that he has committed no capital crime, they had in fact called him a traitor as well.

21. The plaintiffs are also aggrieved that His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, is in fact politically persecuted. The plaintiffs respectfully crave indulgence of Your Lordships to the note appended to the Report of the Committee on Untouchability, a copy of which is annexed with this plaint and marked as Annexure* 'B'. The plaintiffs are also aware that Government has prosecuted Government Officers who made attempts for removal of untouchability.

*Not enclosed.

A copy of one of the charge sheets is annexed and marked as Annexure* 'C'. The plaintiffs are also aware that in certain instances complaints against the practice of untouchability were permitted to go unattended for years on end. A quarter century would now be over with the present regime in the political saddle and yet the condition of the "untouchables" is no different from the condition of the "untouchables" before the "removal of untouchability" was assumed as a gag by the present regime. If only the present regime had been honest to its public pretensions, instead of doing lip service to removal of "untouchability" the present generation of "untouchables" born after the advent of freedom would have been breathing a new life and nursing new ambitions and planning for a better world. The debate which is the subject matter of this plaint is in fact not only a record of the self confessed failure of the present political regime in this matter, but the words of the debate look like huge sprawling expressions on the face of the history and condemning the present political regime for the hypocricy with which it has treated this problem. Yet, the Government took to distorting the address of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, in order to salvage its guilty conscience, as if His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, stood in the way of their amelioration. To the plaintiffs this looks to be a clever attempt of having His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, as a scape goat or in the matter of saying, giving "a dog a bad name before hanging him".

22. The plaintiffs are also aggrieved at the malicious falsehood uttered by defendant No. 5 when he said that the matter of whipping was a suggestion for consideration. The said defendant has intentionally injured the feelings of the plaintiffs to whipping.

23. The plaintiffs are also aggrieved at the malicious falsehood uttered by defendant No. 3 when he says that the Shankaracharyas appoint their successors from their own kith and kin and he also says that the successors have no knowledge about the tenets of the religion. This means and is only understood to mean that the office of the Shankaracharyas is hereditary and the incumbents are chosen without reference to their spiritual and religious attainment.

The plaintiffs regret that the defendants have uttered this malicious falsehood. On the contrary the tendency amongst our politicians is to perpetuate family line in places of authority. The plaintiffs can cite names, instances and examples in their abundance regarding politicians in authority literally founding dynasties.

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* Not enclosed.

24. The value of the suit for purpose of court fee and jurisdiction is fixed Rs. 26,000 on which the proper court fees of Rs. 2,149 have been paid. The plaintiffs assess the damage suffered by them at the hands of the defendants on this figure for which the suit is filed.

25. The parties to this suit are residents within the local limits of the original jurisdiction of this Hon'ble Court.

26. The cause of action arose in Delhi within the limits of the jurisdiction of this Hon'ble Court.

27. The plaintiffs have all joined in this one suit as they are all admirers, worshippers and followers of His Holiness Jagadguru Shankaracharya Ananta Shri Swami Niranjan Deva Teertha of Govardhan Peeth, Puri, and have the same right to relief in respect of the same transaction, and instead of bringing separate suits they have joined in this common proceedings.

PRAYER: It is prayed that this Hon'ble Court may be pleased to pass a decree in the sum of Rs. 26,000 as damages in favour of the plaintiffs and against the defendants in respect of malicious falsehood uttered by the defendants and the injury and damages caused by the defendants to the plaintiffs by the words said, spoken and as printed and published thereafter in the various reports, official and non-official. The plaintiffs also pray for any other relief that this Hon'ble Court may in the circumstances deem just, fit and proper.

The cost of the suit is also prayed.

(TEJ KIRAN JAIN)
3637 Regher Pura, Karolbagh,
New Delhi.

(ACHARYA LAXMI CHAND)
Peela Katra, Gali Sangkrishan,
Paharganj, New Delhi.

(NAND LAL SHASTRI)
R 501, Shankar Road, New Delhi.

(BRAHMA PRAKASH SHARMA)
B-69, Amar Colony, Lajpatnagar IV,
New Delhi.

(RAVI NANDAN BRAHMACHARI)
Dharamsangh Vidyalaya,
Jamnabazar, Delhi.

(SHYAM SHASTRI)
Dharamsangh Vidyalaya,
Jamnabazar, Delhi.

THROUGH COUNSEL

(PRAN NATH LEKHI)
Advocate.

(PREM SINGH PANWAR)
Advocate.

VERIFICATION

I, Tej Kiran Jain, son of Lala Shri Atma Ram Jain, Plaintiff No. 1, am fully conversant with the matter, and I am one of the plaintiffs and am competent to verify this plaint.

I do hereby verify that the allegations made in paragraphs 1 to 4, 6 to 13, 15 and 17 to 27 of this plaint are true and are in my knowledge, and the allegations made in paragraph 5 of this plaint are derived from the records of the proceedings of the Lok Sabha, and the allegations made in paragraph 7 of this plaint are derived from the record of speech made by Shri N. Sanjiva Reddy, as published in the official records, and the allegations made in paragraph 14 are verified as true from information received from the counsel and believed to be true, and the allegations made in paragraph 16 of this plaint are verified as true from information received and believed to be true.

I do hereby further verify that Annexures A, B and C are the true copies of the records they purport to be the copies.

Verified this Twenty Sixth Day of May One Thousand Nine Hundred and Sixty Nine, at Delhi.

(TEJ KIRAN JAIN)

DELHI,
26th May, 1969.

APPENDIX II

(*See* para 3 of the Report)

(Judgment of the High Court of Delhi)

IN THE HIGH COURT OF DELHI AT NEW DELHI

I.A. 1194 OF 1969.

O.S. No. 228 of 1969.

1, Shri Tej Kiran Jain, son of Lala Shri Atma Ram Jain, Honorary Editor, "Jan Sadharan" residing in 3637, Regharpura, Karol Bagh, New Delhi.

2. Shri Acharya Laxmi Chand, M.A., M.Ed., son of Shri Kanchi Singh, residing in Peela Katra, Gali Sangkrishan, Paharganj, New Delhi.

3. Shri Nand Lal Shastri, son of Pandit Shri Harish Chandraji, residing in R-561, Shankar Road, New Delhi.

4. Shri Brahma Prakash Sharma, son of Shri Balak Ram Sharma, residing in B-69, Amar Colony, Lajpat Nagar IV, New Delhi.

5. Shri Ravi Nandan Brahmachari, son of Shri Matadayal, residing in Dharamsangh Vidyalaya, Jamnabazar, Delhi.

6. Shri Shyamlal Shastri, son of Shri Manohar Lal, residing in Dharamsangh Vidyalaya, Jamnabazar, Delhi.

Plaintiffs.

Versus

1. Shri N. Sanjiva Reddy, Speaker, Lok Sabha, New Delhi, residing in 20, Akbar Road, New Delhi.

2. Shri Narendra Kumar Salve, Member, Lok Sabha, New Delhi, residing in 4, Duplex Lane, New Delhi.

3. Shri B. Shankaranand, Member, Lok Sabha, New Delhi, residing in 179, North Avenue, New Delhi.

4. Shri S. M. Banerjee, Member, Lok Sabha, New Delhi, residing in 113, North Avenue, New Delhi.

5. Shri Y. B. Chavan, Member, Lok Sabha, New Delhi, residing in 1, Race Course Road, New Delhi.

..Defendants.

An application under Order 7 Rule 11 and Order 27-A of the Code of Civil Procedure read with Article 105 of the Constitution was filed on behalf of the Union of India praying that this Honourable Court be pleased to—

(a) reject the plaint under Order 7 Rule 11;

(b) if necessary add the Union of India as a party under Order 27 Rule 2.

In the alternative

(c) issue Notice to the Attorney General of India under Order 27 Rule 1;

(d) to pass any further order or orders as to your Lordships may deem fit and proper.

This the 4th day of August, 1969.

PRESENT:

THE HON'BLE THE CHIEF JUSTICE

THE HON'BLE MR. JUSTICE S. K. KAPUR

THE HON'BLE MR. JUSTICE H. HARDY

THE HON'BLE MR. JUSTICE S. N. ANDLEY

THE HON'BLE MR. JUSTICE PRAKASH NARAIN.

For the plaintiffs:

Mr. P. N. Lekhi, Advocate.

For the defendants:

Mr. D. D. Choudhry, Central Government Counsel for the Respondents. Mr. Niren De, Attorney General upon Court's notice.

ORDER (ORAL)

A discussion took place in the Lok Sabha on April 2, 1969 about certain remarks alleged to have been made by Jagadguru Shankaracharya of Puri regarding untouchability. Shri Tej Kiran Jain and five other plaintiffs have filed the present suit for recovery of Rs. 26,000 as damages against Shri N. Sanjiva Reddy, Speaker of the Lok Sabha, defendant No. 1, Shri Narendra Kumar Salve, defendant No. 2, Shri B. Shankaranand, defendant No. 3, Shri S. M. Banerjee, defendant No. 4 and Shri Y. B. Chavan, defendant No. 5, Members of the Lok Sabha on the allegation that the plaintiffs are the admirers and followers of Jagadguru Shankaracharya of Puri. It is alleged that during the course of the above discussion certain remarks were made by the defendants which were defamatory and calculated to lower in public estimation Jagadguru Shankaracharya. The plaintiffs, accordingly, claimed a decree for recovery of Rs. 26,000 as damages from the defendants.

During the pendency of the suit an application under Order 7 Rule 11 and Order 27-A of the Code of Civil Procedure read with Article 105 of the Constitution was filed on behalf of the Union of India praying that the plaint might be rejected under Order 7 Rule 11 of the Code of Civil Procedure as the present suit was not maintainable in view of the provisions of Article 105 of the Constitution. Prayer was also made that the Union of India might be added as a party and that notice be issued to the Attorney General of India. When the case came up before Prakash Narain, J. on July 30, 1969,

the learned Judge observed that the matter was of considerable importance as to the interpretation of Constitution. He directed that a notice be issued to the Attorney General. He also referred the matter to the Chief Justice for constituting a Bench of two or more Judges for disposal of the contentions raised. It is in these circumstance that the case has been posted for hearing before the Full Bench of this Court.

We have heard Mr. Lekhi on behalf of the plaintiffs and are of the view that the plaint is liable to be rejected under Order 7 Rule 11 clause (d) of the Code of Civil Procedure according to which the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Perusal of the plaint goes to show that the defendants are being proceeded against by the plaintiffs because of what was stated by them in the Lok Sabha on April 2, 1969. According to clause (2) of Article 105 of the Constitution "no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". Plain reading of the above provision goes to show that as regards anything said by a member of Parliament in the Parliament or any committee thereof the Constitution has guaranteed full protection and provided complete immunity against any proceedings in a court of law. It is significant that while clause (1) of Article 105 starts with the words "subject to the provisions of the Constitution", there is no such limitation so far as clause (2) of Article 105 is concerned. Mr. Lekhi on behalf of the plaintiffs, has tried to canvass the proposition that what is protected by clause (2) of Article 105 is something which is germane to the matter before the House. It is contended that so far as other utterances are concerned they are not protected by the above clause. In our opinion, this contention is devoid of force because, as observed earlier, the protection given by the above clause is to anything said in Parliament. The words "anything said" are of the widest amplitude and it is not permissible to read any limitation therein. The object of the provision obviously was to secure absolute freedom in discussion in Parliament and to allay any apprehension of a legal proceeding in a court of law in respect of anything said in Parliament by a member thereof. It is not disputed that the impugned remarks were made in Parliament while it was in a regular session. Clause (2) of Article 105 of the Constitution was dealt with by their Lordships of the Supreme Court in the Special Reference No. 1 of 1964 reported in A.I.R. 1965 SC 745. Gajendragadkar, C.J., speaking for the majority observed:

"Having conferred freedom of speech on the legislators, clause (2) emphasises the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or any committee thereof. In other words, even if a legislator exercises his right of freedom of speech in violation, say of Article 211, he would not be liable for any action in any court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly he would not be answerable for the said contravention in any court. If the impugned speech amounts to liable or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause. He may be answerable to the House for such a speech and the Speaker may take appropriate action against him in respect of it; but that is another matter. It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered."

Mr. Lekhi points out that the words used by their Lordships in the course of the above observations were "freedom in debates". In our opinion it is difficult to infer from the above words that the remarks which are protected must necessarily be made in the course of a long speech. Every remark made by a member of the Parliament is fully protected.

Reference has also been made by Mr. Lekhi to the rules of practice in the Parliaments of other countries. In our opinion, it would have been necessary to refer to those rules if our Constitution had been silent on the point. As an express provision has been made in clause (2) of Article 105 of the Constitution giving complete immunity to the members of the Parliament for anything said by them during the Session of Parliament, no help can be derived from the practices prevailing in other countries.

We have given the matter our consideration and are of the view that the present suit is barred by the provisions of clause (2) of

Article 105 of the Constitution. We, therefore, reject the plaint.

(Sd.) H. R. Khanna,
Chief Justice.

August 4, 1969.

I agree. (Sd.) S. K. Kapur.
I agree. (Sd.) Hardayal Hardy.
I agree. (Sd.) S. N. Andley.
I agree. (Sd.) Prakash Narain.
Judges.

(Sd.) P. Govinda Menon.
11-8-1969.

APPENDIX III

(*See* para. 17 of the Report)

IN THE HIGH COURT OF DELHI AT NEW DELHI
SUPREME COURT APPLICATION NO. 86 OF 1969.

1. Shri Tej Kiran Jain, son of Shri Atma Ram Jain, Honorary Editor, "Jain Sadharan", residing in 3637, Regharpura, Karolbagh, New Delhi.
2. Shri Acharya Laxmi Chand, M.A.M.Ed., son of Shri Kanchi Singh, resident of Peela Katra, Gali Sangkrishan, Paharganj, New Delhi.
3. Shri Nand Lal Shastri, son of Pandit Shri Harish Chanderji, resident of R-561, Shankar Road, New Delhi.
4. Shri Brahma Parkash Sharma, son of Shri Balak Ram Sharma, resident of B-69, Amar Colony, Lajpat Nagar IV, New Delhi.
5. Shri Ravi Nandan Brahmachari, son of Shri Matadayal, resident of Dharam Singh Vidyalaya, Jamnabazar, Delhi.
6. Shri Shyamlal Shastri, son of Shri Manohar Lal, residing in Dharam Singh Vidyalaya, Jamnabazar, Delhi.

..Petitioners.

Versus

1. Shri N. Sanjiva Reddy, Ex-Speaker, Lok Sabha, New Delhi, residing in 20, Akbar Road, New Delhi.
2. Shri Narendra Kumar Salve, Member, Lok Sabha, New Delhi, residing in 4, Duplex Lane, New Delhi.

3. Shri B. Shankarnand, Member, Lok Sabha, New Delhi, residing in 179, North Avenue, New Delhi.

4. Shri S. M. Banerjee, Member, Lok Sabha, New Delhi, residing in 113, North Avenue, New Delhi.

5. Shri Y. B. Chavan, Member, Lok Sabha, New Delhi, residing in 1, Race Course Road, New Delhi.

..Respondents.

Petition under Article 132(1) and 133(1)(a) and (c) of the Constitution of India read with Order 45 Rule 2 of the Code of Civil Procedure for grant of certificate for leave to appeal to the Supreme Court of India from the order of the Delhi High Court in Suit No. 228 of 1969.

This the 19th day of September, 1969.

PRESENT:

THE HON'BLE THE CHIEF JUSTICE.

HON'BLE MR. JUSTICE S. K. KAPUR.

HON'BLE MR. JUSTICE HARDAYAL HARDY.

HON'BLE MR. JUSTICE S. N. ANDLEY.

HON'BLE MR. JUSTICE PRAKASH NARAIN.

For the Petitioners:

Shri P. N. Lekhi, Advocate,

For the Respondents:

Mr. Jagdish Sarup, Solicitor General, with
Mr. D. D. Choudhry, Advocate.

JUDGMENT (ORAL):

H. R. KHANNA, C.J.,

This is an application by the Tej Kiran Jain and five others seeking certificate of fitness for appeal to the Supreme Court against an order of this Court by which the plaint filed by the petitioners was rejected.

The petitioners claiming to be admirers and followers of Jagadguru Shankaracharya of Puri filed a suit for recovery of Rs. 26,000 as damages against Shri N. Sanjiva Reddy, the then Speaker of the Lok Sabha, and four other members of the Lok Sabha on the allegation that during the course of a discussion in Lok Sabha on April 2, 1969 certain remarks were made by the defendants which were calculated to lower Jagadguru Shankaracharya in public estimation. During the pendency of the suit an application under Order 7 Rule 11 and Order 27A of the Code of Civil Procedure read with Article 105 of the Constitution, was filed on behalf of the Union of India praying that the plaint might be rejected as the suit was not maintainable in view of the provisions of Article 105 of the Constitution. Prayer was also made that the Union of India might be added as a party and that notice be issued to the Attorney General of India. When the case came up before Prakash Narain, J. on July 30, 1969, the learned Judge observed that the matter was of considerable importance regarding the interpretation of the Constitution. He directed that notice be issued to the Attorney General. Direction was also given that intimation might be sent to the defendants that they need not put in appearance or file written statements till further orders. The case was thereafter referred to the Full Bench.

After hearing the learned counsel for the plaintiffs, we came to the conclusion that the suit was barred by the provisions of clause (2) of Article 105 of the Constitution. The plaint was accordingly rejected.

We have heard Mr. Lekhi on behalf of the petitioners and that learned Solicitor General on behalf of the Union of India and the Attorney General to whom notice of the application was given, and are of the view that the petitioners are entitled to a certificate of fitness for appeal to the Supreme Court under Sub-clause (a) of clause (1) of Article 133 of the Constitution. As stated above, the suit, which was filed by the petitioners, was for the recovery of an amount of Rs. 26,000. By the impugned order we rejected the plaint under order 7 Rule 11 of the Code of Civil Procedure on the ground that the suit was barred by Article 105 of the Constitution. According to the definition of the word 'Decree' as given in clause (2) of Section 2 of the Code of Civil Procedure, decree shall be deemed to include the rejection of a plaint. It would, therefore, follow that the impugned order would fall within the definition of decree as given in the Code of Civil Procedure. In any case, the impugned order is a final order in a civil proceeding. In either view of the matter, the petitioners are entitled to a certificate of fitness for appeal to the Supreme Court. We, accordingly, order that the requisite certificate

may issue in favour of the petitioners. In the circumstances, we make no order as to costs.

(Sd.) H. R. Khanna,
Chief Justice.

September 19, 1969.

I agree, (Sd.) S. K. Kapur,
Judge.

I also agree, (Sd.) Hardayal Hardy,
Judge.

I agree, (Sd.) S. N. Andley,
Judge.

I agree, (Sd.) Prakash Narain,
Judge.

APPENDIX IV

(*See* para. 4 of the Report)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 2572 *of* 1969

Tej Kiran Jain and others — Appellants.

Versus

N. Sanjiva Reddy and others — Respondents.

JUDGMENT

Hidayatullah, C.J.

This is an appeal from the order, August 4, 1969, of a Full Bench of the High Court of Delhi, rejecting a plaint filed by the six appellants claiming a decree for Rs. 26,000 as damages for defamatory statements made by Shri Sanjiva Reddy (former Speaker of the Lok Sabha), Shri Y. B. Chavan (Home Minister) and three members of Parliament on the floor of the Lok Sabha during a Calling Attention Motion. The High Court held that no proceedings could be taken in a court of law in respect of what was said on the floor of Parliament in view of Art. 105(2) of the Constitution. The High Court, however, certified the case as fit for appeal to this Court under Art. 133(1)(a) of the Constitution and this appeal has been brought.

Notice of the lodgment of the appeal was issued to the respondents in due course but they have not appeared. The Union Government which joined, at its request, as a party in the High Court alone appeared through the Attorney General. We have not considered it necessary to hear the Union Government.

The facts of the case, in so far as they are relevant to our present purpose, may be briefly stated. The appellants claim to be the admirers and followers of Jagadguru Shankaracharya of Goverdhan Peeth, Puri. In March, 1969 a World Hindu Religious Conference was held at Patna. The Shankaracharya took part in it and is reported to have observed that untouchability was in harmony with the tenets of Hinduism and that no law could stand in its way and to have walked out when the National Anthem was played.

On April 2, 1969 Shri Narendra Kumar Salve, M.P. (Betul) moved a Calling Attention Motion in the Lok Sabha and gave particulars of the happening. A discussion followed and the respondents execrated the Shankaracharya. According to the appellants, the respondents

> "gave themselves upto the use of language which was more common place than serious, more lax than dignified, more unparliamentary than sober and jokes and puns were bandied around the playful spree, and His Holiness Jagadguru Shankaracharya Ananta Shri Vibushit Swami Shri Niranjan Deva Teertha of Govardhan Peeth, Puri, was made to appear as a leperous (sic) dog."

The appellants who hold the Shankaracharya in high esteem felt scandalised and brought the action for damages placing the damages at Rs. 26,000. The plaint was rejected as the High Court held that it had no jurisdiction to try the suit.

Article 105 of the Constitution, which defines the powers, privileges and immunities of Parliament and its Members, provides:

"105 (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members

and committees, and at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament."

The High Court held that in view of clause (2) of the Article no proceedings could lie in any court in respect of what was said by the respondents in Parliament and the plaint must, therefore, be rejected.

Mr. Lekhi in arguing this appeal drew our attention to an observation of this Court in *Special Reference No.* 1 of 1964[1], where this Court dealing with the provisions of Article 212 of the Constitution pointed out that the immunity under that Article was against an alleged irregularity of procedure but not against an illegality, and contended that the same principle should be applied here to determine whether what was said was outside the discussion on a Calling Attention Motion. According to him the immunity granted by the second clause of the one hundred and fifth article was to what was relevant to the business of Parliament and not to something which was utterly irrelevant.

In our judgement it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity *inter alia* in respect of "anything said.....in Parliament". The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none.

[1](1965) 1 S.C.R. 413 at 455.

Mr. Lekhi attempted to base arguments upon the analogy of an Irish case and another from Messachussetts reported in May's Parliamentary Practice. In view of the clear provisions of our Constitution we are not required to act on analogies of other legislative bodies The decision under appeal was thus correct. The appeal fails and is dismissed but there shall be no order about costs.

Before we leave the case we wish to refer to the notice of the lodgment of the appeal. The suit was for Rs. 26,000 and the certificate was granted under Art. 133 of the Constitution by the High Court. Under the Rules of this Court an appeal has to be lodged after the certificate is granted and a notice of lodgment of the appeal is taken out by the appellants to inform the respondents so that they may take action considered appropriate or necessary. After service of notice this Court treats the appeal as properly lodged and can proceed to hear it when time can be found for hearing. Without the notice the case cannot be brought to a hearing. The notice which is issued is not a summons to appear before the Court. It is only an intimation of the fact of the lodgment of the appeal. It is for the party informed to choose whether to appear or not. Summonses issue to defendants, to witnesses and to persons against whom complaints are filed in a criminal suit. If a summons issues to a defendant and he does not appear the court may take the action to be undefended and proceeding *ex parte* may even regard the claim of the plaintiff to be admitted. This consequence does not flow from the notice of the lodgment of the appeal in this Court. The Court has to proceed with the appeal albeit *ex parte* against the absent respondent. If a summons is issued to a witness or to a person complained against under the law relating to crimes, and the witness or the person summoned remains absent after service a warrant for his arrest may issue. We hope that these remarks will serve to explain the true position.

Sd/- (M. Hidayatullah) ..C.J.

Sd/- (J. C. Shah) ..J.

Sd/- (K. S. Hegde) ..J.

Sd/- (A. N. Grover) ..J.

Sd/- (A. N. Ray) ..J.

Sd/- (I. D. Dua) ..J.

NEW DELHI;

May 8, 1970.

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