

R E P O R T
of the
COMMITTEE OF SPEAKERS

on the procedure to be adopted when a member of
Parliament or a State Legislature commits a
breach of privilege in respect of the
other House or another Legis-
lature or its members or
committees thereof.



सत्यमेव जयते

LOK SABHA SECRETARIAT
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MEMBERS OF THE COMMITTEE OF SPEAKERS

1. Shri D. K. Kunte, Speaker, Bombay Legislative Assembly—
Convenor.
2. Shri S. K. Mukerjee, Speaker, West Bengal Legislative
Assembly.
3. Shri A. G. Kher, Speaker, U.P. Legislative Assembly.
4. Shri K. S. Vaidya, Speaker, Hyderabad Legislative As-
sembly.

SECRETARIAT

Shri S. L. Shakhder—*Joint Secretary, Lok Sabha.*

REPORT

REPORT OF THE COMMITTEE OF SPEAKERS

I

INTRODUCTORY

On 2nd November, 1955, the following subject came up for consideration before the Conference of Presiding Officers of Legislative Bodies in India, held at Shillong:

“Procedure to be adopted when a member of Parliament or a State Legislature commits a breach of privilege in respect of the other House or another Legislature or its members or committees thereof.”

2. After some discussion, the Conference decided that a Committee consisting of four Presiding Officers should be appointed to go into the question and report to the Conference.

3. Accordingly, the Chairman of the Conference appointed a Committee and made the following announcement at the Conference on the 4th November, 1955:—

“I have nominated the following Committee to consider in all its aspects the question of the procedure to be adopted when a member of Parliament or a State Legislature commits a breach of privilege in respect of the other House or another Legislature or its members or committees thereof and to make a report thereon to this Conference as early as possible:

- (1) Shri D. K. Kunte, Speaker, Bombay Legislative Assembly.
- (2) Shri S. K. Mukerjee, Speaker, West Bengal Legislative Assembly.
- (3) Shri A. G. Kher, Speaker, U.P. Legislative Assembly.
- (4) Shri K. S. Vaidya, Speaker, Hyderabad Legislative Assembly.

Shri D. K. Kunte shall be the Convenor of the Committee.

The Committee of Speakers shall be assisted in its work by the Committee of Secretaries.”

4. The Committee of Secretaries met in New Delhi on the 24th and 25th January, 1956 and submitted their Report to the Committee of Speakers on 3rd February, 1956.

5. The Committee of Speakers met in New Delhi on the 7th and 8th February, 1956.

6. All the members of the Committee were present.

7. The Committee considered the memorandum on the subject (Conference No.* 21) prepared by the Lok Sabha Secretariat embodying the Report of the Committee of Secretaries as well as the memoranda of the Lok Sabha Secretariat, West Bengal Legislature Secretariat and U.P. Legislature Secretariat, which had been placed before the Committee of Secretaries.

8. The Committee also discussed the various aspects of the subject including the law of privilege in the U.K. and its applicability to India under the Constitution, *vide* Articles 105 and 194.

9. The Committee also construed their terms of reference, as including all the various aspects of the problem such as contempt committed by members of Legislatures, by non-members, by persons residing in the State, by persons residing outside the State etc.

10. The Committee wish to place on record their deep appreciation of the invaluable assistance they have received from Shri M. N. Kaul, Secretary, Lok Sabha who on their request attended the meetings and advised the Committee in dealing with this complex and intricate subject. They also thank the Committee of Secretaries for their comprehensive report containing much useful information.

II

GENERAL

11. Articles 105 and 194 of the Constitution of India read as follows:—

- “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, 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.”
- “194. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the legislature, there shall be freedom of speech in the Legislature of every State.
- (2) No member of the legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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, 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 the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.**”

12. The law of privileges in the U.K. has been stated in May's Parliamentary Practice. It is from this book that knowledge about Parliamentary privilege in the U.K. is derived though in order to seek an authority for any proposition stated therein one has to go to original cases and source material which may itself in some cases be several centuries old. The Committee feel that in order that all literature about Parliamentary privilege is available in our country for proper guidance to Legislatures in this country, a comprehensive library on Privilege Law should be developed in each Legislature Secretariat. Parliament should not only build a complete self-contained library for this purpose but also help the Legislature Secretariats in organizing such libraries. All references on the subject and all known literature should be compiled in the first instance and kept up-to-date so that complete and authentic advice is readily available whenever a case involving a privilege of Legislature arises.

✓ 13. The main privileges of Legislatures are now well known and have been often recited. The most important privilege, however, is the power of Legislature to punish any person who commits a contempt of Legislature or a breach of any of its privileges.

14. The Courts have held in England that the Speaker's warrant which simply states that a contempt has been committed is a valid one and the Courts will not enquire further.

✓ 15. The penal jurisdiction of the Houses (in U.K.) is not confined to their own members nor to offences committed in their immediate presence, but extends to all contempts of the Houses, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls.

✓ 16. It would be of interest to recall that in the struggle of Parliament against the Crown in the U.K., the question of privilege was, in its early stages, viewed from a different angle. Privilege at that time was regarded as a protection of the Member of Parliament against an executive authority not responsible to Parliament. The entire background in which matters of privilege are now viewed has changed because the executive is now responsible to Parliament. Questions of privilege are not now wrapped up with the struggle of Parliament against the Crown. The foundation upon which they rest is the maintenance of the dignity and independence of the House and its Members.

✓ 17. The following extracts from May's Parliamentary Practice (15th Edn.) are quoted to show broadly the extent and content of Parliamentary privilege:—

“The privileges of Parliament are rights which are ‘absolutely necessary for the due execution of its powers’. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and by each House for the protection of its members and the vindication of its own authority and dignity.

“Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, which, being rather directed to the maintenance of its own collective authority than to the security of the individual members, may be said to belong primarily to each House as a collective body.”

✓ 18. There is a clear distinction between the continental conception of privileges and the British conception of *privilegēs*. For example in France, no M.P., during the period of his mandate may be proceeded against or arrested for a criminal or correctional matter unless it be with the authorisation of the House of which he is a member. In U.K., on the other hand, the whole attempt has been to see that the privileges are the collective privileges of Parliament. The attempt there has been to level down these privileges, unless there were good and sufficient reasons in the interest of Parliament to place a member of Parliament on a different footing from that of an ordinary citizen in the matter of the application of the law.

19. In U.K. both Houses of Parliament have the power to send for persons whose conduct has been brought before the House on a matter of privilege by an order for their attendance without specifying in the order the object or the causes wherein their attendance is required. They have also power to send for supposed offenders in custody, and all civil officers and magistrates and indeed all subjects of the King, are bound to assist when required, in executing their warrants and orders. It has been a very ancient practice in both Houses to cause persons to be brought in custody to the Bar to answer charges of contempt.

20. By the Speaker's warrant to the Sergeant-at-Arms, for taking a person into custody, all mayors, sheriffs, under-sheriffs, bailiffs, constables, head-boroughs, and officers of the House are required to be aiding and assisting in the execution thereof.

21. Both Houses consider every Branch of the civil Government as bound to assist, when required, in executing their warrants and orders, and have repeatedly required such assistance. It is agreed that the law of privilege is part of the law of the land and that the judges are bound to take judicial notice of privileges.

22. It may be noted here that the provisions of Article 194(3) of the Indian Constitution and the provisions of Section 49 of the Australian Constitution are identical. That means that like our Constitution, the Constitution of the Commonwealth of Australia also equates the powers, privileges and immunities of the Senate and the House of Representatives and of the Members and Committees of each House to those of the House of Commons in the U.K. Recently in Australia in what is known as the Bankstown Case two citizens were called to the bar of Parliament and sentenced to prison for having committed a breach of privilege in publishing certain articles in the "Bankstown Observer" wherein an attempt had been made to influence and intimidate a Member in his conduct in the House.

It was argued before a full bench of the High Court that Parliament had acted *ultra vires* of the Constitution in exercising a judicial power it did not possess. The applications for writs of *habeas corpus* were unanimously refused by the Court. Delivering his judgment on June, 24, 1955, the Chief Justice observed:

"The basis upon which the House appears to have proceeded and upon which the warrants were issued is that the Parliament has not declared so far the powers, privileges and immunities of the Senate and of the House of Representatives, and that the latter part of Section 49 is in operation, with the consequence that the powers of the

House of Representatives are those of the Commons House of Parliament of the United Kingdom and of its members and committees at the establishment of the Commonwealth."

As regards the position in England the Chief Justice observed:

"The question, what are the powers, privileges and immunities of the Commons House of Parliament at the establishment of the Commonwealth is one which the Courts of Law in England have treated as a matter for their decision. But the courts in England arrived at that position after a long course of judicial decision not unaccompanied by political controversy. The law in England was finally settled about 1840."

* * * * *

"It is for the Courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and the manner of its exercise. The judgment of the House is expressed by its resolution and by the warrant of the Speaker. If the warrant specifies the ground of the commitment the Court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms."

This statement of the law in its application to Australia, he added, was established authoritatively by the decisions of the Privy Council in *Dill v. Murphy* in 1864 and in the *Speaker of the Legislative Assembly of Victoria v. Glass* in 1871.

He further observed:

"Now, if, under the law which I have attempted to describe, that warrant were produced to a Court sitting in London, as we are here, as a warrant of the House of Commons, it would be regarded by the Court as conclusive of what it states, namely, that a breach of privilege had been committed and that the House, acting upon that view, had directed that the two persons concerned should be committed and the Speaker, accordingly, had issued his warrant.

In the ordinary phrase current in the law courts, it would not be possible to go behind that warrant. It states a contempt or breach of privilege in general terms, and not in

particular terms, but it is completely consistent with a breach having occurred and it states that one did occur."

With regard to the question whether the law as obtaining in the United Kingdom applied under Section 49 of the Constitution to the House of Representatives, the Chief Justice stated as follows:—

"If you take the language of the latter part of Section 49 and read it apart from any other considerations, it is difficult in the extreme to see how any other answer could be given to the question than that that law is applicable in Australia to the House of Representatives.*** The language is such as to be apt to transfer to the House the full powers, privileges and immunities of the House of Commons."

In conclusion his Lordship observed as under:

"Accordingly, all the arguments which have been advanced for giving to the words of Section 49 a modified meaning, and the particular argument for treating them as not operating, fail. We are, therefore, in a position of having before us a resolution of the House and two warrants which conclusively show that a breach of privilege has been committed and the two persons who seek release are properly held by the person to whom these proceedings are addressed, Mr. Edward Richards.

It follows that the applications should be dismissed and we accordingly dismiss them."

23. In India the power of the House to punish persons for its contempt has recently been exercised by the Rajasthan Assembly. On the 10th April, 1956, nine persons who were present in the Visitors' Gallery trespassed on the floor of the House and caused obstruction in the proceedings of the House and they, thus, committed contempt of the House. They were taken into the custody of the Sergeant-at-Arms under the orders of the Speaker. The House after having considered the matter decided that action should be taken against them on the same day. The persons concerned were called one by one to the Bar of the House and were examined by the Speaker. After hearing them, the House unanimously decided to sentence eight persons to fifteen days' simple imprisonment and to pardon the ninth person who had apologised.

III

SPECIFIC POINTS

24. The Committee have listed six categories into which the broad question of contempt of legislature might be divided. These are:—

- (i) Contempt or breach of privilege committed by any person against Parliament.
- (ii) Contempt or breach of privilege committed by a person residing inside a State against the Legislature of that State.
- (iii) Contempt or breach of privilege committed by a person residing in one State against the Legislature of another State.
- (iv) Contempt or breach of privilege committed by a member of one House of the Parliament against the other House.
- (v) Contempt or breach of privilege committed by a member of one House of the Legislature of a State against the other House.
- ✓ (vi) contempt or breach of privilege committed by a member of Parliament against a State Legislature or by a member of a State Legislature against the Parliament or the Legislature of another State.

25. *As regards (i).*—The Committee are of the view that since the legislative authority of Parliament extends to the whole of India, there can be no doubt that its jurisdiction to enforce attendance and impose penalty on any person who commits any contempt or breach of privilege against it also extends to the whole of India.

26. *As regards (ii).*—The Committee consider that since the legislative authority of a State Legislature extends to the whole of the State, its jurisdiction to enforce attendance and impose penalty on any person who commits any contempt or breach of privilege against it also extends to the whole of that State.

27. *As regards (iii).*—From a reading of Article 194(3) of the Constitution, it is clear that by equating the powers and privileges of State Legislatures in India to those of the House of Commons the Constitution recognises the power of those Legislatures to punish for contempts of them.

28. Obviously the intention of the Constitution makers was that contempt of Parliament in its general sense should be taken as including the contempt of Legislatures and it should be punished irrespective of where it was committed. The Committee feel that it would be ludicrous if somebody defames a State Legislature a few yards beyond the borders of the State and the State Legislature is left helpless. The intention of the Constitution makers in framing Article 194(3) was that the dignity of the State Legislatures should be preserved to the same extent and to the same degree as that of Parliament itself. In the matter of the preservation of the dignity, they did not want to make any distinction between the dignity of Parliament and dignity of the State Legislatures. Their intention could not be given effect to unless the jurisdiction of the State Legislatures existed in respect of persons outside their territorial limits. The power to punish for contempt of Parliament and Legislatures is implicit in the very provisions of the Constitution and there was no need to state that separately and explicitly because the whole body of English case law and procedural law on the subject was imported into our Constitution.

✓ 29. It is commonsense that a Legislature would not be able to discharge the high functions entrusted to it properly if it had no power to punish offenders against breaches of its privileges or enforce obedience to its commands. It has been said that they would sink into utter contempt and inefficiency without it.

30. The position has been very lucidly stated in the following passage in the judgment delivered by Chief Justice Lord Denman, in the case of the Sheriff of Middlesex, 1840 (Reports of State Trials, New Series, Vol. III, Columns 1253-54):—

“.....The Crown has no rights which it can exercise otherwise than by process of law and through amenable officers, but representative bodies must necessarily vindicate their authority by means of their own, and those means lie in the process of committal for contempt. This applies not to the Houses of Parliament only, but, as was observed in *Burdett v. Abbot* to the courts of justice, which, as well as the Houses, must be liable to continual obstruction and insult if they were not entrusted with such powers. It is unnecessary to discuss the question whether each House of Parliament be or be not a court; it is clear that they cannot exercise their proper functions without the power of protecting themselves against interference.....
And we must presume that what any court, much more

what either House of Parliament, acting on great legal authority, takes upon it to pronounce a contempt is so."

✓ 31. The position has also been made clear in the following passage by a Judge in the U.S.A. in 1821 when a case instituted by John Anderson against the Sergeant-at-Arms of the House for assault and battery and false imprisonment was brought before the United States Supreme Court—*vide* Hind's Precedents, Vol. II, page 1062:—

"That a deliberative Assembly clothed with the majesty of the people and charged with the care of all that is dear to them, composed of the most distinguished citizens, selected and drawn together from every quarter of a great nation whose deliberations are required by public opinion to be conducted under the eye of the public and whose decisions must be clothed with all that sanctity which unlimited confidence in their wisdom and purity can inspire, that such an assembly should not possess the power to suppress rudeness or repel insult is a supposition too wide to be suggested."

32. The Committee note that whatever the historical origin of privilege, the power to punish for contempt exists in U.K. It is also founded on sound Parliamentary principles. It exists in law and fact in England. In India our Constitution has equated the privileges of Parliament and State Legislatures to those obtaining in England; and it may be recalled that "under English law the exclusive jurisdiction of Parliament when dealing with its privileges was established beyond question as early as 1850."* Therefore, such a power exists in India also. From this it is clear that as regards power to punish for contempt, each Legislature in India has jurisdiction *throughout the country*.

33. If, however, any doubt is entertained in any quarter regarding automatic vesting in the legislature of the power to punish for its contempt *wherever it is committed in the country* as stated above, early and effective steps should be taken to reinforce the existing constitutional provision so that the power vested or intended to be vested in the legislatures is not in any way tampered with.

34. Attention may in this connection be invited to Section 5 of the Contempt of Courts Act, 1952 which gives power to a High Court to try offences committed or offenders found outside its jurisdiction (Appendix I).

*Judgment of the Chief Justice of High Court, Australia in *Bankstown Case*.

35. The Committee also consider that in order that Parliament may be in a position to enact such a law, entry 39 in the State List which reads:

“39. Powers, privileges and immunities of the legislative Assembly and of the members and the committees thereof, and if there is a legislative Council, of that Council and of the members and the Committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.”

may be transferred to the Concurrent List by amendment of the Constitution so that authority is given to Parliament to make a law while the power of State Legislatures also remains intact.

36. The Committee also recommend that until such a law is enacted, executive instructions should be issued by the various State Governments making it incumbent on their officers to assist in the execution of warrants or orders issued by the Speaker of any State Legislature in India. In this connection, it is worthwhile to mention that the Committee have come across in recent years three different cases in which different State Governments have acted differently *e.g.*, the Government of Bombay complied with the warrant of arrest issued by the Speaker of U. P. (Blitz case), whereas the Government of Punjab on a request made by the PEPSU Vidhan Sabha to ask their officers to appear before the Committee of Privileges of the PEPSU Vidhan Sabha did not think it proper to direct their officers to do so but agreed to supply any information that may be required by the PEPSU Vidhan Sabha. In the third case, the Andhra Government were approached by the Hyderabad Government to cause the appearance of one of their officers before the Bar of the Hyderabad State Legislature to receive admonition in respect of a breach of privilege committed by him. The Andhra Government, however, refused to surrender their officer and intimated that the admonition would be communicated by them to the said officer if so desired by the Hyderabad State Government. The Committee feel that it is essential that there should be uniformity of practice in such cases.

37. The Committee have also studied the judgment of the Supreme Court in the Blitz case whereby the accused was set free because the provisions of Article 22 were not complied with. The Committee feel that there is some kind of conflict between the provisions of this Article and Article 105 or 194 regarding the privileges of Parliament and State Legislatures. It is necessary that there should be no interference with the sovereignty of Parliament and

State Legislatures by the judiciary or the Executive in the matter of their privileges or in regard to the procedure to punish for contempt. The Committee after careful consideration recommend that Article 22 of the Constitution should be amended to provide that provisions thereof should not apply to any person who is arrested or detained under the Speaker's warrant. It is interesting to note that the following two exceptions have already been made in this Article—

“(a) to any person who for the time being is an enemy alien;
or

(b) to any person who is arrested or detained under any law providing for preventive detention.”

38. Where law and order is involved, the Executive have the power of preventive detention and an arrest made in exercise of that power is exempted from the provision of Article 22(3) (b). Therefore, if the Executive have felt it necessary to have such powers it is all the more reasonable that Legislatures should have similar powers where the contempt of Legislature is committed. The Committee are clear in their opinion that so long exemption in regard to preventive detention as in Article 22(3)(b) exists, such exemption should also be provided in the case of Legislatures.

39. The Committee have also discussed the question of codification of the law of privilege. The problem is essentially one of determining: how far it would be advantageous for the legislatures to define the privileges precisely?

40. One view is that:

It would be simple to have the privileges codified so that one knows precisely what they are and what are the remedies that are available.

41. The other view is that:

(a) at the present moment, the privileges of Parliament and State Legislatures in India are part and parcel of the Constitution and therefore part of what is known as the 'fundamental law';

(b) the Courts will therefore be compelled to reconcile the existing law of privilege with the fundamental rights;

(c) once, however, privileges are codified by law they will no longer be a part of the Constitution or the fundamental law and the rules of interpretation will therefore be of a different character;

(d) after the privileges are codified, all matters would come before the Courts and the Legislatures would lose their exclusive right to determine matters relating to their privilege;

(e) precision will be gained at the sacrifice of substance.

42. It seems clear to the Committee that it will not be to the advantage of the Legislatures to codify the law of privileges.

43. *As regards (iv).*—The Committee note that the procedure suggested by the Committees of Privileges of Lok Sabha and Rajya Sabha at their joint sitting held in 1954 (*vide* Report dated 22nd May 1954—Appendix II) has already been approved by Parliament and therefore the Committee have nothing further to add in this connection.

44. *As regards (v).*—The Committee are of opinion that the same procedure as referred to in (iv) above should also be uniformly followed as between two Houses of the Legislature of a State by resolutions passed by the Houses of the Legislature.

45. The Committee suggest that whenever matters relating to procedure affecting Parliamentary Privileges have to be laid down they should better be regulated by resolutions of the House or Houses and not by the Rules of Procedure. The resolutions adopted by Lok Sabha and Rajya Sabha approving the Report of the Joint Sitzings of the Committees of Privileges may serve as precedents in this regard (for text of the resolutions—*vide* appendix III). It may be stated that in the House of Commons in the U.K. Privilege Law and Procedure has been mostly determined by resolutions. Resolutions are in the form of declaration of collective opinion or intention of the House and are couched in precise language. They are subject to interpretation by the House itself and no outside authority.

46. *As regards (vi).*—The Committee feel that although the Legislature contemned can punish an offending member of Parliament or member of another State Legislature, a convention should be developed to the effect that when a question of breach of privilege is raised in any legislature in which a member of another legislature is involved, the Presiding Officer should refer the case to the Presiding Officer of the legislature to which that member belongs and the latter should deal with the matter in the same way as if it were a breach of privilege of that House. The Committee suggest that identical resolutions somewhat on the lines of the draft given in Appendix IV may be adopted by the various Houses. The resolutions will serve as directions of the Houses and will be binding on their members and Committees.

✓47. The Committee would like to make it clear that the power of the Legislatures to punish offenders against them is a reserve power. It is there as a deterrent. It is there to ensure the dignity of the Legislatures. As to how and in what cases it should be exercised would be determined by precedents; but it will be wrong to think that for trifling matters people will ever be called to the Bar of any House and sent to prison. It has been laid down "the privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth". The Committee of Privileges of Lok Sabha in their report in the Deshpande Case have rightly said: "It has further to be remembered that the fundamental principle is that all citizens including Members of Parliament have to be treated equally in the eyes of law. Unless so specified in the Constitution or in any law, a Member of Parliament cannot claim any higher privileges than those enjoyed by any ordinary citizen in the matter of the application of the laws."

D. K. KUNTE.

S. K. MUKERJEE.

A. G. KHER.

K. S. VAIDYA.

**SUMMARY OF OBSERVATIONS AND
RECOMMENDATIONS**

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

A comprehensive library on Privilege law should be developed in each Legislature Secretariat. Parliament should not only build a complete self-contained library for this purpose but also help the State Legislature Secretariats in organising such libraries. (Para 12).

2. The most important power of a Legislature is the power to punish any person who commits a contempt against it or a breach of any of its privileges. (Para 13).

3. The Courts have held in England that the Speaker's warrant which simply states that a contempt had been committed is a valid one and the Courts will not enquire further. (Para 14).

4. The penal jurisdiction of the Houses (in U.K.) is confined not only to their own members or to offences committed in their immediate presence, but extends to all contempts of the Houses, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls. (Para 15).

5. In U.K. the Law of privilege is part of the law of the land and the judges are bound to take judicial notice of privileges. (Para 21).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY ANY PERSON AGAINST PARLIAMENT

6. The jurisdiction of Parliament to enforce attendance and impose penalty on any person who commits any contempt or breach of privilege against it extends to the whole of India. (Para 25).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY A PERSON RESIDING IN ONE STATE AGAINST THE LEGISLATURE OF THAT STATE

7. The jurisdiction of a State Legislature to enforce attendance and impose penalty on any person who commits any contempt or breach of privilege against it extends to the whole of that State. (Para 26).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY A PERSON RESIDING IN ONE STATE AGAINST THE LEGISLATURE OF ANOTHER STATE

8. By equating the powers and privileges of State Legislatures in India to those of the House of Commons, the Constitution recognises the power of those Legislatures to punish for contempts of them. (Para 27).

9. The Power to punish for contempt of Parliament and Legislatures is implicit in the very provisions of the Constitution and there was no need to state that separately and explicitly because the whole body of English Law and Procedural Law on the subject was imported into the Constitution. (Para 28).

10. As regards power to punish for contempt, each Legislature in India has jurisdiction throughout the country. (Para 32).

11. If, however, any doubt is entertained in any quarter regarding automatic vesting in the Legislature of the power to punish for its contempt *wherever it is committed in the country*, early and effective steps should be taken to reinforce the existing constitutional provisions so that the power vested or intended to be vested in the legislatures is not in any way tampered with. (Para 33).

12. Section 5 of the Contempt of Courts, Act, 1952 gives power to a High Court to try offences committed or offenders found outside its jurisdiction. In order that Parliament may be in a position to enact such a law in respect of contempt of Legislatures, entry 39 in the State List may be transferred to the Concurrent List by an amendment of the Constitution, so that authority is given to Parliament to make a law while the power of State Legislatures also remains intact. (Paras 34 and 35).

13. Until such a law is enacted, executive instructions should be issued by the various State Governments making it incumbent on their officers to assist in the execution of warrants or orders issued by the Speaker of any State Legislature in India. (Para 36).

14. Article 22 of the Constitution should be amended to provide that provisions thereof should not apply to any person who is arrested or detained under the Speaker's warrant. So long as exemption in regard to preventive detention as in Article 22(3)(b) exists, such exemption should also be provided in the case of Legislatures. (Paras 37 and 38).

15. It will not be to the advantage of the Legislatures to codify the law of privilege. (Para 42).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY A MEMBER OF ONE HOUSE OF THE PARLIAMENT AGAINST THE OTHER HOUSE

16. The procedure suggested by the Committees of Privileges of Lok Sabha and Rajya Sabha at their joint sitting held in 1954 has already been approved by Parliament and, therefore, the Committee have nothing further to add in this connection. (Para 43).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY A MEMBER OF ONE HOUSE OF THE LEGISLATURE OF A STATE AGAINST THE OTHER HOUSE

17. The same procedure as referred to in para 16 above should also be uniformly followed as between two Houses of the Legislature of a State by resolutions passed by the Houses of the Legislatures. (Para 44).

18. Whenever matters relating to procedure affecting Parliamentary Privileges have to be laid down, they should better be regulated by resolutions of the House or Houses and not by the Rules of Procedure. (Para 45).

CONTEMPT OR BREACH OF PRIVILEGE COMMITTED BY A MEMBER OF PARLIAMENT AGAINST A STATE LEGISLATURE OR BY A MEMBER OF A STATE LEGISLATURE AGAINST THE PARLIAMENT OR THE LEGISLATURE OF ANOTHER STATE

19. A convention should be developed to the effect that when a question of breach of privilege is raised in any Legislature in which a member of another Legislature is involved, the Presiding Officer should refer the case to the Presiding Officer of the Legislature to which that member belongs and the latter should deal with the matter in the same way as if it were a breach of privilege of that House. Identical resolutions may be adopted by the various Houses which may serve as directions of the Houses and be binding on their members and Committees. (Para 46).

20. The power of the Legislatures to punish offenders against them is a reserve power. It will be wrong to think that for trifling matters people will ever be called to the Bar of any House and sent to prison. (Para 47).

APPENDICES

APPENDIX I

[Vide para 34 of the Report]

The Contempt of Courts Act, 1952 No. XXXII of 1952

5. Power of High Court to try offences committed or offenders found outside jurisdiction.—A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt, is within or outside such limits.

APPENDIX II

[Vide para 43 of the Report]

Report of Joint Sitting of Committees of Privileges of Lok Sabha and Council of States

I, the Chairman of the joint sitting of the Committees of Privileges of the Lok Sabha and the Council of States, having been authorised to present the report on their behalf, present this report.

2. In connection with the point of privilege raised by Shri N. C. Chatterjee in the Lok Sabha, the Speaker observed in the House on the 14th May, 1954, that the Privileges Committees of both the Houses might examine the procedure that should be followed in cases where a breach of privilege or contempt of the House was alleged to have been committed by a member of the other House. The Chairman of the Council of States, to whom the Speaker forwarded a copy of the relevant proceedings of the House, concurred in this view at the sitting of the Council of States held on the 15th May, 1954.

3. Accordingly, three joint sittings of the two Privileges Committees were held on the 15th, 18th and 21st May, 1954 and the whole question was examined in all its aspects.

4. The Prime Minister was good enough to record a note * * * for the use of the Committees. The Committees have given due consideration to the views expressed therein. The Committees are anxious that whatever procedure is decided upon it should be such as would lead to mutual understanding, harmony and goodwill between the two Houses. The procedure should be so devised that a possible conflict or friction between the two Houses is avoided and at the same time the independence of, and respect due to, each House is fully secured.

5. The Committees have considered carefully the procedure followed in the Parliament of the United Kingdom in such cases. * * *. The Committees observe that the British procedure falls in two parts—one dealing with initiation of case and conducting of enquiries to be completed by the House in which a complaint is made; and the other relating to taking proper measures for reaching findings and conclusions and deciding as to the nature of punishment (if any) to be dealt with by the House to which the

offending member belongs. The Committees note that this procedure is based on some ancient cases and in modern times there has been no case in the U.K. in which this procedure has actually been followed.

6. Article 105(3) of our Constitution provides as follows:—

“(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, at the commencement of this Constitution.”

The Committees consider that this Article equates only the privileges of our Houses of Parliament with those obtaining in the House of Commons in the United Kingdom and does not make it obligatory on our Parliament to follow the same procedure as obtains in the United Kingdom. The Committees feel that we are completely free to prescribe our own procedure and by consent form conventions which would be suitable to our requirements or circumstances.

7. Having fully considered all these matters, including the views expressed in the Prime Minister's note referred to in paragraph 4 above, the Committees are of the opinion that the following procedure should be followed in a case where a member or officer or servant of one House is alleged to have committed a breach of privilege or contempt of the other House:—

- (i) When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, he is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.
- (ii) Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof.

(iii) The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised a report about the enquiry, if any, and the action taken on the reference.

8. It is the intention of the Committees that if the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which the question of privilege is raised or the Presiding Officer of the other House to which the reference is made, no further action in the matter may be taken after such apology is tendered.

9. The Committees suggest that if the recommendations contained in paragraph 7 and 8 above are accepted, then rules on the subject in identical terms may be framed and incorporated in the Rules of Procedure of each House.

NEW DELHI;

K. N. KATJU.

The 22nd May, 1954.

APPENDIX III

[Vide para 45 of the Report]

*Motion Re: Report of Joint Sitting of Committees of Privileges
of Both Houses*

Dr. Kailas Nath Katju moved the following motion:—

“This House approves the recommendations contained in the Report of the Joint Sitting of the Committees of Privileges of the Lok Sabha and the Council of States which was presented to the House on the 23rd August, 1954.”

APPENDIX IV

[Vide para 46 of the Report]

RESOLUTION

✓ This House resolves that if a member, officer or servant of the other House or another Legislature in India is involved in a case of contempt or an alleged breach of privilege of this House, the Speaker/Chairman shall refer the matter to the Presiding Officer of that House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, the Speaker/Chairman is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.

This House further resolves that when a case of contempt or an alleged breach of privilege against the other House or another Legislature in India, in which a member, officer or servant of this House is involved, is referred to this House by the Presiding Officer of the House or Legislature contemned; the Speaker/Chairman of this House shall deal with the matter in the same way as if it were a case of breach of privilege of this House and communicate to the Presiding Officer who made the reference, a report about the enquiry and the action taken on the reference received. ✓