

4

**COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

FOURTH REPORT

(Presented to Speaker on 17 May, 2006)

(Laid on the Table on 19, May, 2006)

**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2006/Jyaistha, 1928(Saka)

**COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

FOURTH REPORT

(Presented to Speaker on 17 May, 2006)

(Laid on the Table on 19 May, 2006)

LOK SABHA SECRETARIAT

NEW DELHI

May, 2006/Jyaistha, 1928(*Saka*)

CONTENTS

| | PAGE |
|--|-------------|
| Personnel of the Committee..... | (ii) |
| Report..... | (1) |
| Minutes of sittings of Committee*..... | |
| Appendices*..... | |

* Will be appended at the time of printing of Report

**PERSONNEL OF THE COMMITTEE OF PRIVILEGES
(14TH Lok Sabha)**

Shri V.Kishore Chandra S.Deo - Chairman*

MEMBERS

2. Shri Ananthkumar Hedge
3. Shri A. Krishnaswamy
4. Shri Nitish Kumar
5. Shri Varkala Radhakrishnan
6. Shri Rajendrasinh Rana
7. Shri D. Vitthal Rao
8. Shri Kishna Singh Sangwan
9. Shri Iqbal Ahmed Saradgi
10. Shri Bijendra Singh
11. Shri Beni Prasad Verma
12. Shri Virendra Kumar
13. Shri Devendra Prasad Yadav
14. Shri Harihar Swain
15. Shri L. Ganesan

SECRETARIAT

1. Shri V.K. Sharma - Joint Secretary
2. Shri Ravindra Garimella - Under Secretary
3. Shri Ashok Sajwan - Under Secretary

* Appointed w.e.f. 9.3.2006 vice Shri Pawan Kumar Bansal resigned from the Committee.

+ Resigned his seat in Lok Sabha w.e.f. 15 May, 2006

**FOURTH REPORT OF THE COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

I. INTRODUCTION AND PROCEDURE

I, the Chairman of the Committee of Privileges, having been authorized by the Committee to submit the Report on their behalf, present this their Fourth Report to the Speaker, Lok Sabha on the question of privilege given notices of by Sarvashri Devendra Prasad Yadav, A. Krishnaswamy and Madhusudan Mistry, MPs regarding casting reflections on and imputing motives to Speaker Lok Sabha in an article captioned "COMRADE SPEAKER - Act of Discrimination Against Mamata Banerjee" published in 'The Statesman' datelined 24 August, 2005.

2. The Committee held 7 sittings. The relevant minutes of these sittings form part of the Report and are appended hereto.

3. At their first sitting held on 27 September, 2005, the Committee considered the matter. The Committee directed that Shri Bibhuti Bhusan Nandy, the author of the impugned article which appeared in

'The Statesman' may be asked to furnish his written comments in the matter latest by 10 October, 2005. The Committee further decided to take the evidence of Shri Nandy after perusing his written comments.

4. At their second sitting held on 10 November, 2005 the Committee decided that Sarvashri Devendra Prasad Yadav, A. Krishnaswamy and Madhusudan Mistry, MPs may be requested to appear before the Committee for oral evidence on 29 November, 2005. The Committee after taking into account comments furnished by Shri Bibhuti Bhusan Nandy and Shri Ravindra Kumar, Editor of 'The Statesman', decided that the Editor and Printer & Publisher of the 'The Statesman' and the author of the impugned article may be asked to appear before the Committee for oral evidence on 30 November, 2005.

5. At their third sitting held on 29 November, 2005 the Committee examined on oath Shri Madhusudan Mistry, MP. The Chairman then desired to know from Shri Devendra Prasad Yadav and Shri A. Krishnaswamy, MPs (who had given notices of question of privilege

in the matter and are also members of the Committee of Privileges) whether they would like to depose before the Committee in the matter. Both the members stated that they fully endorsed the submissions made by Shri Madhusudan Mistry, MP, during his evidence. They accordingly did not give any separate evidence.

6. At their fourth sitting held on 30 November, 2005 the Committee examined on oath Shri Ravindra Kumar, Editor & Managing Director, 'The Statesman'. The Chairman directed that a copy of the compendium "Parliamentary Privileges - Digest of Cases, 1950-2000" and relevant extracts from 'Practice & Procedure' (5th edition) by Kaul & Shakhder may be provided to Shri Ravindra Kumar, as desired by him, to enable him to study the past precedents relevant to the issue.

The Committee decided to hear Shri Ravindra Kumar at a later date after he had an opportunity to study the relevant material. The Committee further desired that Shri Bibhuti Bhushan Nandy, if he so

desired, might be asked to appear before the Committee for oral evidence at their next sitting.

7. At their fifth sitting held on 13 December, 2005, Shri Bibhuti Bhusan Nandy and Shri Ravindra Kumar were to be examined on oath. However, Shri Nandy owing to his indisposition and Shri Ravindra Kumar owing to a death of a relative, could not appear before the Committee.

8. At their sixth sitting held on 20 January, 2006 the Committee considered the written communications received from Shri Bibhuti Bhusan Nandy and Shri Ravindra Kumar in which the former had expressed his inability to appear before the Committee due to ill health and the latter had requested the Committee to take a decision in the matter in the light of written submissions made by him. The Committee deliberated upon the matter and arrived at their findings and conclusions on the basis of material on record. The Committee directed the Secretariat to prepare a draft report in the matter for their consideration.

9. At their seventh sitting held on 3 May, 2006 the Committee considered the draft report. The Committee after some deliberations, while agreeing with the "Findings and Conclusions" in the draft Report, felt that in view of gravity of charges against the Editor & Managing Director of 'The Statesman' and author of the impugned article, the Committee's displeasure over their conduct might be expressed in more harsher terms. The Committee then authorised the Chairman to finalise the Report accordingly.

II. Facts of the case

10. Shri Devendra Prasad Yadav, MP gave a notice¹ of question of privilege dated 25 August 2005, against Shri Bibhuti Bhusan Nandy, the author of an article captioned "**COMRADE SPEAKER - Act of Discrimination Against Mamata Banerjee**" published in 'The Statesman' dated 24 August, 2005. The member contended that the author of the said article had adversely commented upon the decisions taken by the Speaker, Lok Sabha and also accused the Speaker of being partial. The member also contended that the

author had deliberately cast reflections on the Speaker, which had affected not only the pride and prestige of the august office of the Speaker, but also of the entire House.

The member also stated in his notice that it was only recently that the Speaker had closed the matter regarding publication of a derogatory news-report in 'The Pioneer', after expressing his displeasure over publication of such derogatory news-reports and cautioning the press persons not to indulge in such irresponsible news-reporting. The member had stated that despite this ruling, the trend of publication of derogatory news-reports *vis-à-vis* the Speaker and Parliament was continuing.

The member requested that the matter may be referred to the Committee of Privileges for examination, investigation and report.

11. Shri A Krishnaswamy and Shri Madhusudan Mistry, MPs also gave notices⁴ of question of privilege dated 25 August, 2005 in the matter. Members, while contending that serious aspersions had been cast on

the office of the Speaker, Lok Sabha, sought privilege proceedings against the author of the impugned article, the Editor, Printer and the Publisher of 'The Statesman'.

12. The thrust of the article captioned "**COMRADE SPEAKER - Act of Discrimination Against Mamata Banerjee**", was on the matter of disallowance by the Speaker, Lok Sabha on 4 August, 2005 of the notice of adjournment motion given by Km. Mamata Banerjee on the subject of 'Infiltration in West Bengal and parts of North-Eastern Region' and the related events. In the article, reflections were cast upon the Speaker, Lok Sabha and also unfair motives were imputed to him.

13. On 26 August, 2005 the Speaker, Lok Sabha in exercise of his powers under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for examination, investigation and report.

14. The Committee of Privileges at their sitting held on 27 September, 2005 *inter-alia* considered the matter and desired that Shri Bibhuti Bhusan Nandy, the author of the article may be asked to furnish his written comments, if he so desired in the matter latest by 10 October, 2005 for their consideration. The Committee, however, did not decide to call for the comments of the Editor of 'The Statesman' at that juncture. The Committee decided to take evidence of Shri Nandy after perusing his written comments, if any, in the matter.

15. Accordingly, on 28 September, 2005 a communication was addressed to Shri Ravindra Kumar, Editor & Managing Director of 'The Statesman' requesting him to obtain the comments of Shri Nandy and furnish the same to the Lok Sabha Secretariat for consideration of the Committee of Privileges. Shri Ravindra Kumar, Editor & Managing Director of 'The Statesman' *vide* his communication dated 7 October, 2005 furnished comments of Shri Bibhuti Bhusan Nandy in the matter. The Editor in his communication also expressed his views in the matter.

16. Shri Bibhuti Bhusan Nandy in his comments dated 7 October, 2005 addressed to the Editor & Managing Director, 'The Statesman' made the following submissions:-

(i) While the notice of question of privilege pertains to (directed against) Editor, Publisher, Printer of 'The Statesman' as well as author of the impugned article, only he, the author had been singled out for the investigation. Such a pick and choose approach is violation of his fundamental right to equality and has amounted to blatant discrimination.

(ii) The members in their notices of question of privilege have not specified the reasons and also not indicated as to which expression of the impugned article have been deemed to have constituted a breach of privilege and contempt of the Hon'ble Speaker and the House. In this context he stated that "allegation being too

general and vague lacking specificity, to answer them, one would be forced to anticipate the evidence(s) sought to be made out by the three MPs and then either accept or rebut that. Such a tortuous process would expose one to a self-incriminatory exercise which is repugnant to all canons of jurisprudence."

(iii) Raising of question of privilege by three members on the same issue was in violation of provision of Rule 224(1) of the Rules of Procedure and Conduct of Business in Lok Sabha.

(iv) The matter against 'The Pioneer' was dropped by the Hon'ble Speaker, whereas the instant case was referred to Committee of Privileges. It is not open to the Hon'ble Speaker and the Privileges Committee to apply different yardsticks for different persons in dealing with identical privilege notices.

(v) As for the impugned article, he denied having insulted or derogated the position of the

Hon'ble Speaker anywhere in the article. He further stated that "the comments, analyses and observations in the write-up were fair and well within the limits of my right to self-expression, they were not in any way intended to be derogatory to the office and person of the Speaker or any other member of Lok Sabha".

17. The gist of the views expressed by the Editor in the matter is as follows:

(i) The responsibility of publication of the article solely lay with him. To restrict the inquiry of the matter to the author of the article was "unfair and arbitrary". He submitted that the Committee of Privileges must seek his comments too "on the topic in general as well as on the specific passages that are alleged to have cast reflections or imputed motives. In order to do so it would be appropriate to identify those passages which in this case has not been done."

(ii) He took objection to the subject of the communication addressed to him ie "casting of reflections and imputing motives to the Speaker, Lok Sabha..." He was of the view that until the Committee had concluded their deliberations and reached their findings, the issue/matter before the Committee is "only an allegation of reflections being cast and motives being imputed". The principles of natural justice demand that no inquiry be conducted with pre-disposition.

18. The Committee at their sitting held on 10 November, 2005 considered the matter in the light of the replies given by the Editor & Managing Director of 'The Statesman' and Shri Bibhuti Bhusan Nandy, author of the impugned article made *vide* their letters dated 7 November, 2005.

19. The Committee felt that the notices were against the article as a whole. The Committee, however, desired that reference to Speaker, Lok Sabha at thirteen places in the article "COMRADE

Speaker - Act of Discrimination Against Mamata Banerjee" which *prima facie* appeared to cast reflections on the impartiality of the Speaker may be brought to the notice of the Editor of 'The Statesman' and the author of the impugned article.

20. The Committee also felt that since the Printer and Publisher of the newspaper was as much responsible for the printing and publication of the article as the Editor and the author, he may also be given an opportunity of making written/oral presentation before the Committee.

21. Shri Ravindra Kumar, Editor & Managing Director of 'The Statesman' and Shri Bibhuti Bhusan Nandy, author of impugned article *vide* their communications dated 23 November, 2005 furnished their further comments.

22. The Editor & Managing Director on his behalf and on the behalf of the Printer and Publisher of 'The Statesman' stated at the outset that they submit "respectfully that it was never their intention to cast reflections on or impute motives to the

Speaker, and if there existed a reasonable basis to believe that we did in fact cast reflections on or impute motives to him, we would unhesitatingly express regrets."

After having stated this, he justified publication of the article and stated that the references in the article "were fair and temperate where conclusions were drawn or comments made by the author, and factual where facts were cited by him."

After referring to the First Report of the Joint Parliamentary Committee on Parliamentary Privilege - 1998-99 and observations of some correspondents, Press Council of India etc, the Editor concluded by stating that "in the absence of codification, the balance of convenience must rest with the Press when issues of purported breach of privilege are taken up.

23. Shri Bibhuti Bhusan Nandy and Shri Ravindra Kumar furnished their final comments in the matter

vide letters dated 9 and 11 December, 2005 respectively.

Shri Bibhuti Bhusan Nandy in his letter had *inter alia* stated as follows:-

..."I hold the office of the Speaker and members of the Lok Sabha in the highest esteem and cannot even think of casting reflections on and imputing motives to Speaker or any other Member of Parliament. I wrote the impugned article in The Statesman in good faith without any ill intent or malice towards any person and entity, but would hasten to add that if there existed a reasonable basis to believe that I had cast reflections on and imputed motives to the Hon'ble Speaker, I sincerely and unreservedly express regrets... The Hon'ble Committee of Privileges may now like to dispose of the complaints in the light of this clarification and submissions made in my earlier letter dated 7 October and 22 November 2005 as well as the submission made by the Editor of The Statesman *vide* his letter dated 7 October and 22 November, 2005 and his oral evidence before the Committee on 30 November, 2005."

Shri Ravindra Kumar in his comments *inter alia* stated as follows:-

..."I would like to reiterate that The Statesman had no intention of belittling the office of the Hon'ble Speaker, and that the paper holds Parliament in the highest respect. I leave it to the Hon'ble Committee to decide if it requires my presence on a subsequent date or would like to come to a conclusion on the basis of the submissions already made."

III. EVIDENCE

Evidence Of Shri Madhusudan Mistry, MP

24. Shri Madhusudan Mistry, MP during his evidence before the Committee on 29 November, 2005 *inter-alia* stated as follows:-

"...Mr. Chairman, you as well as members of the Committee may be aware that 'The Statesman' is a reputed newspaper. It has a very wide circulation and has the capacity to impress upon the opinion of the people in general who are its readers and as a result, whatever has been written and the content of the article written by one Shri Bibhuti Bhusan Nandy would be very harmful to the structure of democracy and the very pillar of the democracy, which is the Parliament. I would like to read some portions of the allegations that have been made in the article on the Presiding Officer of the Indian Parliament, Shri Somnath Chatterjee. The first charge, he has made on the Speaker is '...From all indications, there is no let up in Somnath Chatterjee's loyalties and sympathies for the Left in general and the CPI-M in particular ...' Second charge made on the Speaker is '...No wonder, many of his comments, decisions and rulings as Speaker appear partisan in tone and content, and on many occasions, during the past year, cross-sections of MPs have repeatedly voiced strong resentment...' The third charge made on the Speaker is that he was in the habit of interjecting in the debate and the leader of the Opposition felt compelled to go on record deprecating his running commentary. Further charge made on the Speaker is '...Somnath Chatterjee does not seem to believe in the sound maxim that in a parliamentary democracy, the

Speaker does not speak, but listens...' Further allegation made against the Speaker is '...But then, one should not expect such grace, restraint and finesse from someone who by intellect, instinct and association has remained every inch a Marxist...' Again the author has gone on saying that '...Shri Somnath Chatterjee's action was tainted by malice born of his electoral defeat by Mamata Banerjee in the 1984 parliamentary election...' Sir, to me this is a very serious charge that has been levelled on the Speaker of Lok Sabha... This article which appeared in 'The Statesman' lowers the prestige of the Presiding Officer. It casts wild allegations against him. It is understood that as Member assumes the chair of the Presiding Officer, he disassociates himself from the party he belongs to, he is always seen as impartial, that his decisions are unbiased and that he tries to give as much chance as he can to Members in Parliament... If no action is taken against the person who has written this article as also the newspaper which published it, it will put the person holding the post of Presiding Officer always in a situation wherein he will have to constantly struggle to prove himself that he is unbiased. As a result of that, all his efforts will be concentrated towards proving himself that he is unbiased. That will put extra pressure on the post of the Presiding Officer. If this article is allowed to go without being taken notice of, and if the Privileges Committee does not take any action, an impression will go to the members of Parliament as well as the public in general that as every system in the country is more or less degenerating, so has the parliamentary system. They would feel that the House itself is not adhering to the rules and conduct of business is manipulated by one person, the Speaker as he is having a lot of authority. It will encourage the members of Parliament within the House, and the public outside, disregard the highest office of democracy... The article is

based on completely biased ideas and opinions. My strong feeling is that it should not be allowed to go unnoticed... My request to you and the Committee is that very stringent action should be taken and the Editor should be summoned and asked as to what encouraged him to write the said article and as to what he had in mind when he was making such a wild allegation...I am pretty sure that at the back of his mind he should be thinking of not only questioning the Speaker alone but to question the entire proceedings of Parliament... My humble request to you, Sir, and the members of the Committee is that allegations against the Speaker are very serious and should be taken equally seriously and the Editor should be asked to explain his conduct in publishing the article..."

**Evidence of Shri Ravindra Kumar, Editor & Managing
Director, 'The Statesman'**

25. During his evidence before the Committee on 30 November, 2005, Shri Ravindra Kumar, Editor & Managing Director, 'The Statesman' *inter-alia* stated as follows:-

"My humble submission to this Committee is that in our view, it is essential for Parliament to codify its privileges. The necessity for codification of privileges has been highlighted several times by various bodies including the Press Commission in its Report in 1982, by the Press Council, by the Editors' Guild of India and even by the Supreme Court in the case of 'The Hindu' and the Speaker of the Tamil Nadu

Legislative Assembly... At the outset, I wish to state that 'The Statesman' is one the country's oldest newspapers. It has had a continuous heritage of utmost respect for the institutions of our country. We hold Parliament in greatest respect...On several occasions, for instance, 'The Statesman' has reported very favourably about the conduct of specific proceedings. But, at the same time, it is our submission that the right to fair criticism must be retained by a newspaper. If there are to be any abridgements of the rights to fair criticism, these must be codified. With your permission, I would like to read out article 105(3) of the Constitution. It says:

'In other respects, the powers, privileges and immunities of each House of Parliament, and the members, and the Committee 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 that House and of its members and Committees immediately before the coming into force of section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978.'

My submission here is that for 99 per cent of journalists it would be virtually impossible to lay their hands on an edition of the Constitution issued prior to 1978. Kindly consider just the physical fact of laying one's hand on an edition of the Constitution issued before the enactment of this amendment...In short, therefore, the ambiguity which is created by the Forty-Fourth Amendment is to be considered. I am not claiming that I am unaware of the provision as it existed before the enactment of the Forty-Fourth Amendment. I am aware that the original Constitution it was stated that the right shall be such as enjoyed by the House of Commons. But my humble submission to this distinguished Committee is

that in 90 per cent of the cases a person who is cited for contempt or breach of privilege would not be able to lay his hands on the 1977 edition of the Constitution in the year 2005. In other words, he would not have access to the Constitutional provision under which he is required to answer a charge of breach of privilege. Unless the position is known, how does he decide which of his actions is permissible, is within the bounds of good taste and which of them is not. This is of course, a simplistic example... It is my submission that between 1978 and 2005, perhaps a generation and a half of Indians have come and gone. The codification is, therefore, essential because it is necessary for a journalist, for an Editor-who is assessing the contribution whether from his own staff or from outsider- to know what his bounds are. In the absence of a provision, he has to scrounge around for positions. There could be two positions, even with the legal provision, as they prevail in the House of Commons. One interpretation would say that the position as it prevailed in 1950 on the day of the Constitution was enacted should prevail. The other interpretation could be that just as the laws that prevail in the House of Commons, has evolved, between 1950 and 2005, so too must our thinking of what constitutes a breach of privilege. If that be the case, then I would like to draw the attention of the Committee to the Report of the Joint Committee on Parliamentary Privileges of the United Kingdom. It says:

“ Parliament’s disciplinary and penal powers are part of the control exercised by Parliament over parliamentary affairs. Conduct, whether of a member or a non-member which improperly interferes with the performance by either House of its functions or the performance by members or officers of their duties is a contempt of Parliament.”

Contempt should be statutorily defined. The penal sanctions make it particularly important that the scope of contempt should be clear and readily understood. Parliament's jurisdiction over contempts committed by non-members should be transferred to courts. This is the position as it prevails in the House of Commons. I would very humbly submit that this is not just the question of 'The Statesman' or an Editor of 'The Statesman' or of a contributor determining what would or ought to be the correct position or the road map which any newspaper or any publication should follow. This is a moment to define the relationship between the Legislature and the Media as a whole. Certain definitions must be there. The law on defamation exists; the Press Council Act exists to limit the freedom available to journalists or at least to put them within the bounds of what is reasonable. It is our submission that the privileges must be codified. I am expressing at the threshold of the hon. Members of the Committee the difficulty that I faced or an Editor would face when confronted with a situation like this. The two views could be taken-(i)that this is a fair criticism and(ii)that is an unfair criticism. Therefore, the decision would be left to the subjective interpretation of an individual Editor. Now, it is for the Committee to see at the end of its deliberations whether 'The Statesman', its Editor and the writer are guilty of breach of privilege or not. Whatever be the outcome, the fact is that there is a prescribed set of regulations. In brief, I have cited about my two correspondences. I have extensively quoted several instances from the 25th Report of the Committee of Privileges which says that the members of Parliament are not above criticism. It is for the Committee to see that the criticism should be fair, factual and couched in temperate language. I have also quoted from the Joint Committee on Parliamentary privilege of the United Kingdom. Apart from this, I have quoted from the recommendations of the Second

Press Commission which had observed in 1982 that 'we think from the point of view of freedom of the Press, it is essential that the privileges of Parliament and of the State Legislatures should be codified as early as possible.' I have quoted from the recommendations adopted by the Press Council of India in 1982, one of which is the codification of privileges in the interests of the freedom of the Press. I have also quoted from the legal background in other Westminster-styled democracies... the Australian Parliament feels that any criticism of the conduct of the House outside the House ought not to be within the ambit of privilege. I have also quoted from what some eminent legal commentators, people with greater acumen than I do have had to say on the question of privilege in particular. I have quoted from an article written by Mr.A.G.Noorani where he quotes the Constituent Assembly Debates to say:

'The debates in the Constituent Assembly reveal that articles 105(3) and 194(3) were adopted on a solemn promise that the privileges would be codified.'

On behalf of the Drafting Committee, Alladi Krishnaswami Iyer assured the House on 9 May, 1949 that 'only as a temporary measure the privileges of the House of Commons are made applicable.' I have quoted further from the National Commission to review the Constitution which, in its Report submitted as recently as in 2003, had said:

'The founding fathers envisaged codification of parliamentary privileges by Parliament by law, but so far no law has been made and these privileges remain undefined. It is somewhat a curious situation that even after more than 50 years after the commencement of the Constitution, we are unable to lay down precisely, by law, when a member of Parliament is not subject to the same legal obligations as any ordinary citizen is. The

only idea behind parliamentary privileges is that Members who represent the people are not, in any way, obstructed in the discharge of their parliamentary duties and are able to express their views freely and fearlessly inside the Houses and Committees of Parliament without incurring any legal action on that count. Privileges of Members are intended to facilitate them in doing their work to advance the interests of the people. They are not meant to be privileges against the people or against the freedom of the Press.'

In short, therefore, the position that I have taken in both these letters is that in the absence of codified privileges, it is extremely difficult and I would request this Committee to sympathise with the difficulties confronting any Editor in today's democratic India when dealing with a submission or an article which might be on the border line. If it is clearly contemptuous it is apparent, if it is clearly not contemptuous it is also apparent. But where a submission or an article or a writing happens to be on the border line, what must be the guiding principles for that Editor? That is all I would like to say."

26. When apprised by the Committee that by now it is well settled as to what the privileges are and that the Committee could pass on to him case law as contained in the Digest of Privilege Cases and the cases which have been decided over the years about different matters, Shri Ravindra Kumar replied, "...What I did do when it came to me was that I tried to search from various reports from the

Lok Sabha and Rajya Sabha websites on the Committee of Privileges whether any material was available...If some of these findings could either be circulated, I will be personally interested to have them as a responsible Editor..."

27. On being asked whether he was aware that there was detailed discussion in the Lok Sabha on Illegal Migration Detection Tribunal Act and Km. Mamata Banerjee had not participated in that discussion, Shri Ravindra Kumar replied," Sir, I am not personally aware whether she had participated in it or not."

28. On being further asked whether he knew that Km. Mamata Banerjee was present in the House on that day or not, Shri Ravindra Kumar replied," No Sir, I am not."

29. When his attention was drawn towards that part of the impugned article which read," assuming for the sake of argument what the House had discussed on July 26,2005 and subsequent date on which Km. Mamata wanted to raise the issue was identical, there was

clear gap of nine days and a fresh discussion on the subject was perfectly permissible under the rules...”, and was informed that as per Rule 338 of the Rules of Procedure and Conduct of Business in Lok Sabha ‘A motion shall not raise a question substantially identical with the one on which the House has given a decision in the same session’ was aware of this provision Shri Ravindra Kumar replied “I am grateful to you for allowing the opportunity to review the material of the Committee, and also for pointing out my attention to the rule 338. I would be grateful for an opportunity of a few days to be given to me to review this material. I could come back to the Committee based on a consideration of all of this.”

III Findings and Conclusions

30. The issue before the Committee is whether in the article captioned “COMRADE SPEAKER - Act of (Discrimination Against Mamata Banerjee “published in ‘The Statesman’ datelined 24 August, 2005

reflections had been cast on and motives imputed to the Speaker, Lok Sabha.

31. The Committee note that the thrust of the article captioned "COMRADE SPEAKER - Act of Discrimination Against Mamata Banerjee" was on the matter of disallowance by the Speaker, Lok Sabha on 4 August, 2005 of the notice of adjournment motion given by Km. Mamata Banerjee on the subject of "Infiltration in West Bengal and Parts of North-Eastern Region and the related events." The Committee would like to state at the very outset that even a cursory reading of the impugned article would show that reflections were cast upon the Speaker, Lok Sabha and also unfair motives were imputed to him.

32. The Committee find that the article is replete with derogatory references to the Speaker, Lok Sabha.

33. The Committee are of the view that the following thirteen references are particularly damaging.

- By preventing Mamata Banerjee from initiating a discussion and debate in Parliament on infiltration from Bangladesh and enrolment of aliens as voters, Speaker Somnath Chatterjee has raised serious doubts.

- Assuming for the sake of argument that what the House had discussed on 26 July and the subsequent date on which Mamata wanted to raise the issue, were identical, there was a clear gap of nine days and a fresh discussion on the subject was perfectly permissible under the relevant rules.

- ...the Speaker's action has revealed that since assuming the august office, he has not, stood aside from politics as he is required to do under the Westminster model of parliamentary norms and practices.

- From all indications there is no let-up in Somnath Chatterjee's loyalties and sympathies for the Left in general and the CPI-M in

particular. No wonder, many of his comments, decisions and rulings as Speaker appear partisan in tone and content, and on many occasions, during the past year, cross-sections of MPs have repeatedly voiced strong resentment,

- Speaking on his habit of interjecting in debates, the leader of the opposition felt compelled to go on record deprecating his "running commentary". Clearly, he has failed to earn the confidence of the House.
- Somnath Chatterjee does not seem to believe in the sound maxim that in a parliamentary democracy, the Speaker does not speak, but listens. After dismissing Mamata's move to speak on an important national issue, the Speaker and his fellow Marxist MPs and Comrades launched an orchestrated tirade against her in media.
- One should not expect such grace, restraint and finesse from someone who by intellect, instinct

and association has remained every inch a Marxist.

- If the comrade Speaker gags her, his party's unruly MPs...hurl insults and abuses at her every time she speaks in the House.
- The Speaker has not so much as raised his little finger to protect her from such ill-treatment.
- The manner in which the Speaker guillotined Mamata's adjournment motion strengthens the suspicion that his over riding consideration was to prevent her from tabling documentary evidence to prove that the CPI-M regime in West Bengal had made infiltrators, voters on a massive scale.
- A former Secretary of Parliament has characterised the Speaker's decision as an act of discrimination against Mamata Banerjee. He has gone to the extent of saying that Somnath Chatterjee's action was tainted by malice born

of his electoral defeat to Mamata in the 1984 parliamentary election.

- The Speaker threw even the pretence of neutrality to the winds and took the blatantly partisan decision to block the right of an MP to raise a grave issue concerning national sovereignty and security.

- Toeing his party line, the Speaker has even joined issue with the Supreme Court on this score. In the context of the apex court's recent decision striking down the notorious IMDT Act that stood in the way of detection and deportation of illegal immigrants from Assam, the Speaker roared "How does the Supreme Court come to the conclusion about lakhs of foreigners getting in?"

- The ineptness of Somnath Chatterjee's statement is all the more regrettable because he is aware of how the on-going demographic changes have

shifted the Indo-Bangladesh border deep inside India.

34. The Committee at this juncture would like to invite attention to the well established position as laid down in "Practice and Procedure of Parliament" by Kaul & Shakdhar (5th edn.) that reflections on the character and impartiality of the Speaker in the discharge of his duty, constitute a breach of privilege and contempt of the House.

The Committee further note that in the Erskine May's treatise on "The Law, Privileges, Proceeding and usage of Parliament", it has been laid down that the "reflections on the character of the Speaker and the accusation of partiality in the discharge of his duty have been held to constitute breaches of privileges and contempt."

35. The Committee note that the defence taken by Shri Ravindra Kumar, Editor and Managing Director of the 'The Statesman' and Shri Bibhuti Bhusan Nandy, author of the impugned article is that the views

expressed in the article were by way of "fair comment" or fair criticism. In the context the Committee note that Shri Bibhuti Bhusan Nandy in his comments *inter alia* took the position that "the comments, analyses and observations in the write up were fair and well within limits of (his) self expression, they were not in anyway intended to be derogatory to the office and person of the Speaker or any other member of (Lok Sabha)". Shri Ravindra Kumar Editor & Managing Director of 'The Statesman' in his comments while justifying publication of the impugned article had stated that the references in the article "were fair and temperate where conclusions were drawn or comments made by the author, and factual where facts were cited by him" The Editor also stated in his comments that the responsibility of the publication of the article solely lay with him.

36. The Committee note that in the article it had been *inter-alia* alleged that "...Speaker guillotined Mamata's adjournment motion..." At another place in the article it was reported "Assuming for the sake

of argument what the House has discussed on July 26, (2005) and subsequent date on which Ms. Mamata wanted to raise the issue was identical, there was a clear gap of nine days and a fresh discussion on the subject was perfectly permissible under the relevant rules". The Committee would wish to draw attention to Rule 338 of the Rules of Procedure and Conduct of Business in Lok Sabha precludes raising of a motion on a question substantially identical with the one on which the House had given a decision in the same session.

On this being pointed out to the Editor during his evidence, he conceded of being unaware of the said provision of Rule 388.

37. As far the plea of fair comment taken by the Editor of 'The Statesman' and author of the impugned article is concerned the Committee wish to draw attention to the position as laid down in Kaul & Shakdher, according to which freedom of press has not been expressly provided for in the Constitution but is implicit in the fundamental right of the

"freedom of speech and expression" guaranteed to the citizens under the Constitution. Further it has been settled by judicial decisions that freedom of speech and expression" includes the liberty to propagate not only one's views but also the right to print matters which have been borrowed from someone else or are printed under the direction of that person and also includes the liberty of publication and circulation.

38. The Committee note that as per the Random House Webster's Unabridged Dictionary, the word *fair* means 'free from bias, dishonesty or injustice'.

39. The Committee note that in the *Blitz* case the Committee of Privileges (Second Lok Sabha) in their Thirteenth Report, presented to the House on 11 August, 1961 reported *inter-alia*.

"Nobody would deny the press, or as a matter of fact, any citizen, the right of fair comment. But if the comments contain personal attacks on individual members of Parliament on account of their conduct in Parliament or if the language of the comments is vulgar or abusive, they cannot be deemed to come within the bounds of fair comment or justifiable criticism. Even the Press Commission (1954) held the view that

'comment couched in vulgar or abusive language is unfair'. Nor can 'fair comment' be stretched to include irresponsible sensationalism. ... One of Shri Karanjia's main contentions is that article 105(3) of the Constitution, which provides that "the powers, privileges and immunities of each House of Parliament, and of the members and the Committees of each House 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', must be read as subject to article 19(1)(a) which guarantees to all citizens the fundamental right to freedom of speech and expression', which includes within its scope the freedom of the Press. Shri Karanjia seems to imply thereby that any action taken by Lok Sabha against any newspaper for a breach of privilege and contempt of the House, in pursuance of its powers and privileges under article 105(3), would violate article 19(1)(a) and be void in terms of article 13. This contention is wrong and cannot be accepted. The provisions of article 105(3) [as also of article 194(3)] are constitutional laws and not ordinary laws made by Parliament (or a State Legislature) and therefore they are as supreme as the provisions of Part III of the Constitution. The provisions of article 19(1)(a) of the Constitution, which are general must therefore yield to the latter part of article 105(3) which are special. The correct position in this regard has been stated by the Supreme Court in the Searchlight Case."

The Committee further observed:

"It must, however, be remembered that being only a right flowing from the freedom of speech and expression, the freedom of the Press does not stand on a higher footing than the freedom of speech and expression enjoyed by a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of

speech and expression of a citizen. Actually, a newspaper writer should be more cautious than a private citizen as his criticisms are widely publicized. The Committee are, therefore, of the view that the impugned dispatch constitutes a breach of privilege and contempt of the House."

40. The Committee further note that in the *Times of India case*, the Committee of Privileges (Sixth Lok Sabha) in their Fourth Report presented to the House on *inter-alia* observed.

"The Committee are conscious that the freedom of the Press is an integral part of the fundamental right of the freedom of speech and expression guaranteed to all citizens under article 19(1)(a) of the Constitution. The Committee consider it important that in a Parliamentary system, the Press should enjoy complete freedom to report the proceedings of Parliament fairly and faithfully. If, however, freedom of the Press is exercised *mala fide*, it is the duty of Parliament to intervene in such cases. At the same time, the Committee are of the view that Parliamentary privilege should in no way fetter or discourage the free expression of opinion or fair comment."

41. The Committee would wish to reiterate here that the Committee of Privileges have all through upheld freedom of speech and expression of the Press and their right of fair comment. It has, however, been held that Parliament has a right to intervene in the

event of *mala fide* exercise of this freedom or if comments are made with malice.

42. The Committee would also wish to state that there is no gainsaying the fact that press is an indispensable asset to any democracy. The Committee therefore, feel that the Press being the prime and principal medium for purveying information, must ensure that whatever goes in print must have the hallmark of veracity.

43. In the case under consideration the specific issue that emerges is whether in the light of the evidence, legal position and the precedents, the article as a whole and the thirteen references to the Speaker, Lok Sabha, as mentioned above in particular, in the impugned article can be termed as fair comment as contented by the author of the article or come within the purview of breach of privilege and contempt of the House being contumacious in nature and derogatory to the dignity of the Speaker, Lok Sabha in discharge of his duties in the House.

44. The Committee note that the entire article, reeks with maliciousness. The Committee do not have even an iota of doubt in coming to the conclusion that the phrases/remarks, as mentioned above with regard to the Speaker, Lok Sabha are malicious and contumacious. In at least two out of the thirteen references cited above, clear and specific mention has been made about the Speaker's decision being partisan. These remarks clearly cast reflections on the impartiality of the Speaker, Lok Sabha and impute motives to him.

45. The Committee are not at all convinced by the plea taken by Shri Ravindra Kumar that since parliamentary privileges are not codified, it becomes very difficult for an Editor to judge, particularly in borderline cases, as to what would amount to a breach of privilege or contempt and what would not. The Committee wish to make only two observations in this regard. First, the article, with thirteen derogatory references to Speaker, Lok Sabha, cannot be said to be a borderline case by any

stretch of imagination. The brazen manner, in which allegation after baseless allegation is made against the Speaker in the said article would make even a layman sit up and take note of the author's personal agenda, leave alone an experienced Editor like Shri Ravindra Kumar. Secondly, had Shri Ravindra Kumar taken half as much pain, as he did in defending Shri Nandy's right to freedom of expression, in consulting Kaul and Shakhder's treatise on Practice and Procedure of Parliament he would have immediately realised that to publish such an article imputing motives to Speaker, Lok Sabha would amount to a contempt of the House.

46. The Committee, therefore, are firmly of the view that the defence of fair comment put forth by the Editor of 'The Statesman' and author of impugned article does not hold good.

47. The Committee hold that Shri Bibhuti Bhusan Nandy author of the impugned article captioned "COMRADE SPEAKER - Act of Discrimination Against Mamata Banerjee" published in 'The Statesman' datelined 24 August, 2005, has committed a gross

contempt of the House for having cast reflections on the Speaker, Lok Sabha, imputing unfair motives and in commenting upon the impartiality of the Speaker, Lok Sabha in discharge of his duties.

48. The Committee are of the view that in case of publication of scurrilous and malicious articles in a newspaper, the Editor is as much responsible as the author of such article. The Committee, therefore, are of the view Shri Ravindra Kumar, Editor & Managing Director of 'The Statesman' has a vicarious liability in the matter. Besides as noted by the Committee earlier (para 35 supra) the Editor in his comments had owned sole responsibility for publication of the article in 'The Statesman'.

49. The Committee, therefore, hold that Shri Ravindra Kumar, Editor & Managing Director too has committed contempt of the House.

50. The Committee note that initially Shri Bibhuti Bhusan Nandy and Shri Ravindra Kumar adopted a confrontationist stance. Shri Ravindra Kumar in his initial comments sought to justify publication of

the impugned article. However, after the Committee apprised him of the true import of Parliamentary privileges and all related literature was furnished to him, he appeared to appreciate the ramifications of publication of the impugned article and its privilege implications. The Committee further note that as a consequence thereof the Editor *vide* his letter dated 11 December, 2005 *inter alia* stated that "...The Statesman had no intention of belittling the office of the Hon'ble Speaker, and that the paper holds Parliament in the highest respect..." Subsequently Shri Nandy in his communication dated 9 December, 2005 *inter alia* stated that "I hold the office of the Speaker and members of Lok Sabha in the highest esteem and cannot even think of casting reflections on and imputing motives to Speaker or any other Member of Parliament. I wrote the impugned article in 'The Statesman' in good faith without any ill intent or malice towards any person and entity, but would hasten to add that if there existed a reasonable basis to believe that I had cast reflections on and

imputed motives to the Hon'ble Speaker, I sincerely and unreservedly express regrets."

51. The Committee are of the view that the fundamental precept governing Journalistic ethics is a dispassionate coverage of news and views shorn of prejudices and blinkered visions. It was incumbent upon Shri Bibhuti Bhusan Nandy, who had been a senior bureaucrat, to have checked facts and exercised restraint while writing a feature in a reputed newspaper like "The Statesman". It was all the more necessary for him to be temperate and judicious while writing about a personality holding the august office of the Speaker, Lok Sabha. Contrary to that the impugned article was a fusillade of imputations, innuendoes and accusations directed against the Speaker, Lok Sabha, The Committee strongly condemn this intemperate, indiscreet journalistic misdemeanor on the part of Shri Bibhuti Bhushan Nandy.

52. The Committee find it intriguing that a senior journalist like Shri Ravindra Kumar, who is Editor of prestigious and reputed newspaper like 'The

Statesman' has been so unmindful of the ramifications of publication of such a scurrilous and contumacious article in the newspaper. The Committee would like to point out here that the impugned article was published in the "The Statesman" barely within a week after the detailed ruling given by Speaker, Lok Sabha on 18 August, 2005 in 'The Pioneer' case, wherein he held that breach of privilege and contempt of the House was committed by the Editor and Correspondent of 'The Pioneer'. However, while cautioning the media persons to be careful in future, the Speaker taking a magnanimous view, dropped the matter. The Committee find it lamentable that despite this ruling, Editor of 'The Statesman' went ahead with the publication of the impugned article. The Committee are of the view for the conduct of the Editor was unbecoming of a responsible and senior journalist.

53. The Committee would like to reiterate that the penal powers of the House for breach of privilege or contempt of the House are, however, exercised only

in extreme cases where a deliberate attempt is made to bring the institution of Parliament into disrespect and undermine public confidence in and support of Parliament. The Committee would also like to emphasize here that law of privileges has never been administered to fetter or discourage the free expression of opinion or criticism, however, prejudicial or exaggerated such opinions or criticism may be.

54. The Committee of Privileges note the following recommendations made by the Select Committee on Parliamentary Privileges of House of Commons, UK, 1967:

"The House should exercise its penal jurisdiction (a) in any event as sparingly as possible, (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its members or its officers from such improper obstruction or attempt at or threat of obstruction as is causing or is likely to cause substantial interference with the performance of their respective functions."*

* Subsequently, the Committee of Privileges of the House of Commons, in their Third Report (1976-77) reiterated this recommendation, and the House of Commons, UK, adopted it on 6 February, 1978.

55. The Committee further note that adopting the above approach the Committee of Privileges of Seventh Lok Sabha, in their First Report presented to the House on 8 May, 1981, observed *inter alia* as follows:

"The Committee feel that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution is, the greater restraint is called for particularly in exercising its penal jurisdiction."

56. The Committee also note that it is the tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by taking no further notice of the matters.

57. The Committee, keeping in view the well established tradition and the apologies tendered by Shri Bibhuti Bhusan Nandy, author of impugned article and Shri Ravindra Kumar, Editor & Managing

Director of 'The Statesman' are of the view that no penal action need to be taken against them.

58. The Committee, nevertheless, wish to express their grave displeasure over the injudicious and callous attitude of Shri Bibhuti Bhusan Nandy, and Shri Ravindra Kumar in the matter. The Committee, however, expect that Shri Bibhuti Bhushan Nandy and Shri Ravindra Kumar would in future refrain from such journalistic misdemeanours and exercise due restraint and discretion in such matters.

IV. Recommendation

59. The Committee therefore, while strongly deprecating the reckless and irresponsible behaviour of Shri Bibhuti Bhushan Nandy, author of the impugned article and Shri Ravindra Kumar, Editor & Managing Director of 'The Statesman' and cautioning them to be more careful in future, recommend that the matter be treated as closed.

NEW DELHI
17 MAY,2006

(V. KISHORE CHANDRA S. DEO)
CHAIRMAN
COMMITTEE OF PRIVILEGES

