

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

5

FIFTH REPORT

(Presented to Speaker, Lok Sabha on 23 May, 2007)

(Laid on the table on 7 September, 2007)

SEAL

LOK SABHA SECRETARIAT

NEW DELHI

September, 2007/Bhadrapada 1929 (Saka)

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CONTENTS

| | PAGE |
|---------------------------------------|-------------|
| Personnel of the Committee..... | (ii) |
| Report..... | (1) |
| Minutes of sittings of Committee..... | 32 |
| Minutes of Evidence..... | 44 |
| Appendices..... | 112 |

PERSONNEL OF THE COMMITTEE OF PRIVILEGES

(14TH Lok Sabha)

Shri V.Kishore Chandra S.Deo - Chairman

I. MEMBERS

2. Shri Omar Abdullah
3. Shri Sartaj Singh Chhatwal
4. Shri Anantkumar Hegde
5. Shri Virendra Kumar
6. Shri Hemlal Murmu
7. Shri Brajesh Pathak
8. Shri Shrinivas Patil
9. Dr. Sebastian Paul
10. Shri Varkala Radhakrishnan
11. Shri Raju Rana
12. Shri D. Vittal Rao
13. Shri Iqbal Ahmed Saradgi
14. Choudhary Bijendra Singh
15. Shri Beni Prasad Verma

SECRETARIAT

- | | | |
|----------------------------|---|---------------------|
| 1. Shri V.K. Sharma | - | Joint Secretary |
| 2. Shri Ravindra Garimella | - | Deputy Secretary |
| 3. Shri Ashok Sajwan | - | Deputy Secretary-II |
| 4. Smt. Saroj Sharma | - | Under Secretary |

FIFTH REPORT OF THE COMMITTEE OF PRIVILEGES (FOURTEENTH LOK SABHA)

II. 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 Fifth Report to the Speaker on the question of privilege against the District Magistrate, the Superintendent of Police and Deputy Superintendent of Police, Madhubani, Bihar for allegedly detaining Shri Devendra Prasad Yadav, MP without genuine grounds on 12 November, 2005.

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

3. At their first sitting held on 20 January, 2006, the Committee considered the matter and decided to hear the member at their next sitting.

4. At their second sitting held on 3 May, 2006, the Committee examined on oath Shri Devendra Prasad Yadav, MP.

5. At their third sitting held on 6 July, 2006 the Committee examined on oath Shri Atish Chandra, District Magistrate, Madhubani, Smt. Anupma Nilekar, Superintendent of Police, Madhubani and Shri Vishwajeet Dayal, Deputy Superintendent of Police, Madhubani, Bihar.

6. At their fourth sitting held on 7 August, 2006, the Committee deliberated upon the matter and decided to hear the Investigating Officer of the case at their next sitting.

7. At their fifth sitting held on 13 September, 2006, the Committee examined on oath Shri Kamod Prasad, Sub-Inspector and Officer-in-charge, Phoolparas Police Station, Madhubani, Bihar.

8. At their sixth sitting held on 10 October, 2006, the Committee deliberated upon the matter and arrived at their conclusions.

9. At their seventh sitting held on 11 April, 2007, the Committee considered the draft report. The Committee after some deliberation adopted the draft report with some modifications.

II. Facts of the case

10. On 23 November, 2005 Shri Devendra Prasad Yadav, MP gave a notice of question of privilege against the District Magistrate, the Superintendent of Police and Deputy Superintendent of Police, Madhubani, Bihar alleging that on 12 November, 2005 at 4 PM, when he was on his way to Siswabarhi, his native village in Bihar, to cast his vote in the Assembly elections to be held on 13 November, 2005, the Deputy Superintendent of Police, Madhubani stopped his vehicle on Suggapatti main road, and asked him to come to the police station. The member stated that he had taken prior written permission from the District Magistrate, Madhubani to use his car on 12 and 13 November, 2005 in Siswabarhi. A written permission was also taken for his other two vehicles carrying his security personnel. The member stated that this was done by the Deputy Superintendent of Police, Madhubani, on the directions of the District Magistrate and the Superintendent of Police, Madhubani. When the member apprised the DM about the incident on phone, the latter told him that he would talk to the Deputy Superintendent of Police. However, on the contrary, the Deputy Superintendent of Police and the SP were instructed by the District Magistrate to lodge an FIR in the matter against him.

11. The member further alleged that in order to gain publicity, the District Magistrate and Superintendent of Police, Madhubani called a press conference and apprised the media about the incident which tarnished his image as a member of Parliament. The member contended that by stopping his vehicle, which had requisite written permission to ply on the said road on that day, by arresting him without genuine grounds and causing delay in intimating the Lok Sabha Secretariat about his arrest, the District Magistrate, Superintendent of Police and Deputy Superintendent of Police, Madhubani had not only caused breach of his privileges as a member of Parliament but also denigrated the image of the House.

12. On 21 December, 2005, the Speaker, 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.

13. The Resident Commissioner, Government of Bihar *vide* his letter dated 26.12.2005 forwarded a factual note of the Department of Home (Special) Affairs, Government of Bihar and comments of the concerned officials in the matter.

14. The Additional Secretary, Home (Special) Deptt., Government of Bihar *vide* his letter dated 15 December,2005, while forwarding the reports/comments of the District Magistrate, Madhubani, Superintendent of Police, Madhubani and sub-Divisional Police Officer (Deputy Superintendent of Police), Phoolparas, stated that action had been taken by the local administration in the light of rules and guidelines of the Election Commission in force at that time and keeping in view the dignity of the member. He also stated that local administration was not biased against the member. The member was treated with respect and was dropped at his residence under police escort.

15. The District Magistrate, Madhubani, Bihar in his factual note stated that on 9 November, 2005, one representative of Shri Devendra Prasad Yadav, MP submitted an application for extending the date of permission for vehicle meant for the security guards of the member and accordingly permission was granted for the first phase of elections. The permission was granted till 4 P.M. of 11.11.2005, for the first phase and till 4.00 pm of 14.11.2005 for the second phase of elections. The representative also requested for grant of permission for two security guard vehicles after the first phase of elections. The representative was informed that the permission for the vehicles on the day of the election could be granted only by the Election Officer, Phoolparas and the member did not need any permission to go to the polling booth from his home town and he would have to leave his security guards beyond the 200 meter periphery of the polling booth. He also stated that on 12.11.2005 at 4.00 pm the sub-Divisional Police Officer, Phoolparas informed him that three vehicles of the member had halted at Suggapatti village and the member was holding a meeting with the villagers. He further stated that the Superintendent of Police directed the sub-Divisional Police Officer, Phoolparas to act as per the rules and guidelines of the Election Commission. The District Magistrate further stated that after some time the member called him to inform that he was being arrested by the sub-Divisional Police Officer, Phoolparas while he was moving towards

his home town at Siswabarhi. The member asked him to speak to the officer and to give him instructions. He informed the member that the officer was competent to take action in the matter and therefore, his interference would be unwarranted. If the said officer had any doubts, he himself could speak to him, if required. The District Magistrate also stated that no instruction was given by him to the sub-Divisional Police Officer, Phoolparas regarding lodging of FIR against the member. If any FIR had to be lodged, the said officer was competent to do so. The District Magistrate further stated that intimation regarding arrest of the member was sent to the Speaker, Lok Sabha by Fax on 13 November, 2005. The District Magistrate also submitted that the allegation of conspiracy by him against the member was devoid of truth and there was no prejudice against the member. Everything was done as per the law and directions/guidelines of the Election Commission.

16. The Superintendent of Police, Madhubani in her reply stated that she was informed by the sub-Divisional Police Officer, Phoolparas that Shri Devendra Prasad Yadav, MP was canvassing by holding a meeting with the people of the village at the courtyard (Dalan) of a residence on the road side of Suggapatti village under Phoolparas police station. She directed the sub-Divisional Police Officer, Phoolparas to take appropriate action under rules in this matter. The sub-Divisional Police Officer took action against the member for canvassing for the elections even after the canvassing period had come to an end. The case was registered against the hon'ble member as case number 257 dated 12/11/2005 under sections 188/171 F of IPC and section 133 of RP Act. Since offences under these sections were bailable, he was granted bail in the police station itself. The member was brought to the police station at 4.30 in the evening and was granted bail at 5.00 after registering an FIR. This information was faxed to the Hon'ble Speaker, Lok Sabha *vide* letter No. 46 dated 13th November, 2005.

The Superintendent of Police also stated that as per the Election Commission of India order No. 491/96/MCS, dated 27th March 1996, the District Magistrate and the Superintendent of Police had to hold press conference during election period on five occasions. In the same context, there was a pre-scheduled press conference on 12th November, 2005 regarding election to be conducted on 13th November 2005. At that time when journalists asked regarding arrest of the member, they were informed about the same. Hence, no press conference was held specially to publicise this issue.

The member was given due respect and honour at the police station and was also taken to his residence under the security cover with police escort. Action was not taken against the member under any conspiracy or *mala fide* intention. There was no intention to hurt his honour and no laxity was shown with regard to his security arrangement.

17. The sub-Divisional Police Officer, Phoolparas, Madhubani in his comments stated that when he reached Suggapatti village under Phoolparas police station, at about 4.00 p.m. for collecting information pertaining to election process and making physical verification of deployment of armed forces at polling stations, he found that three-four vehicles were parked along the roadside. Some armed personnel were also standing nearby these vehicles. He came to know that Shri Devendra Prasad Yadav, MP was holding a meeting with the villagers in the verandah of the house of one Shri Dhaneshwar Bhindwar of village Suggapatti. Meanwhile, he found that permission for the movement of two vehicles with a specific purpose to work as escort party of Shri Yadav was given up to 4.00 p.m. on 11-11-2005. He informed the District Magistrate cum District Election Officer, Madhubani on mobile that three vehicles of hon'ble member were parked in Suggapatti village and he was holding a meeting with the villagers in the verandah. He also spoke to the Superintendent of Police, Madhubani who ordered him to take action as per rules. After the time for canvassing was over, the act of Shri Devendra Prasad Yadav, MP *viz.* making contact with the people in Siswabarhi village (which happened to be polling station) was in violation of the code of conduct pertaining to elections. After sometime when the member came on the road with some villagers, he was politely told that after expiry of time of electioneering, holding a meeting or staying in the village with so many armed forces was a violation of the code of conduct of elections. He was also told that the permission for the use of both the vehicles of escort party, meant for visit to such areas, was up to 4.00 p.m. on 11-11-2005 which had since expired. Thereafter, the member was arrested and taken to the police station. On the way, the member instructed the driver to stop the vehicle and alighting from the car, he talked to the District Magistrate. The member was escorted to the police station with full and due respect. He was also offered a chair. A case was filed against him and four others under section 133 of R.P. Act with Phoolparas Police Station. As the sections of the offence were bailable, the member was granted bail on 17.00 hrs., the same day. Subsequently, the member was sent to his residence under police escort. As the Model Code of Conduct of election had been violated by the member, which was a cognizable offence,

therefore, it was mandatory to file an FIR. There was no need of any directions from his senior officers.

18. On 14 November, 2005 an intimation was received in the Lok Sabha Secretariat from the District Electoral Officer-cum-District Magistrate, Madhubani, Bihar, sent on 13 November, 2005, intimating of arrest and release of Shri Devendra Prasad Yadav, MP. The same was published in Lok Sabha Bulletin Part-II dated 16 November, 2005 (as para No.1740) for information of members.

III. Evidence

Evidence of Shri Devendra Prasad Yadav, MP

19. During his evidence before the Committee on 3 May, 2006, Shri Devendra Prasad Yadav, MP *inter-alia* stated as follows:-

“After the first phase of election campaign in Madhubani district was over, I was going in my authorised vehicle to my village Siswabarhi one day before the election *i.e.* 12.11.2005 for exercising my voting right in the election to be held on 13.11.2005 in my Assembly constituency, Phoolparas. I was accompanied by two bodyguards, and jawans of the 2/8 armed security personnel in two vehicles for my security as per my security category. The Election Commission had directed, through a press conference, that the leaders and Ministers whose names do not figure in the voters list and who are given the security, will remain out of the districts on the day of voting. However, the leaders and Ministers whose name are in the voters list, may remain in their homes/assembly constituency on the day of voting but they could go up to the polling booth only...My journey towards my village on 12.11.2005 did not violate the code of conduct in any way. My representative Shri Vishnudev Bhandari had sent a letter to the District Election Officer, Madhubani seeking permission for additional vehicles of security personnel as a precautionary measure and also informed him of my departure for my village for voting...District Election Officer, Madhubani told my representative that there was no need for seeking separate permission for the movement of vehicles of the security personnel accompanying me to

my village as the circular of Election Commission had already been received in this regard. With a view to getting praise from the Election Commission and to remain in news, the District Election Officer, Madhubani and S.P., Madhubani sent a message to the D.S.P. Phoolparas to search my vehicles thoroughly and file a case against me in order to malign my image and affect my political career spanning 29 years. The sub- Divisional Police Officer, Phoolparas, Shri Vishwajeet Dayal, admitted in his report that he acted on the direction of the S.P., Madhubani and District Election Officer. Madhubani as a result of which I was arrested. On the directions of District Election Officer, Madhubani and S.P., Madhubani the DSP, Phoolparas along with other police personnel., thoroughly searched my vehicle as well as vehicles of my security personnel in a pre-planned manner at Suggapatti village, which is three kilometres from my village. During the search, neither any unwanted person nor any objectionable articles such as arms and ammunitions, money or election material *i.e.* posters, flags, banners etc. were found. Therefore, no evidence of violation of Model Code of Conduct was found. I have enclosed a list of retrieved items from the police station and a copy of the FIR, which will clarify that nothing was found during the search...The vehicle of security personnel accompanying me to my village on 12.11.2005 was for providing security, and not for any election campaigning. On the recommendation of Central Security Agency and as per the direction given by Director General of Police, Bihar, Patna *vide* his letter No. 4315/52-14-15-03/L-2 dated 8-9-2005 two bodyguards and eight security personnel and a home guard were deputed for my security... I had obtained permission up to 14.11.2005 for the movement of vehicles of my security personnel as a precautionary measure though it was not required...As per the directions of Election Commission, under section 77 of the Representation of the Peoples Act, 40 leaders of recognized political parties had been permitted to visit their constituency during the Assembly elections. The vehicles of said leaders were exempted from being impounded...There was no proof against me with regard to violation of Model Code of Conduct...When the D.S.P. could not find any legal fact and ground for my arrest, he impounded the vehicle of my security personnel. Not only this, My 'Bolero' car on which label, issued by Government of Bihar, Cabinet (Election) Department and Chief Election officer, Bihar, Patna, was affixed and the vehicle in which I was sitting, were also taken to the police station forcibly,

though they were not authorised to take them to police station. Arresting me and the drivers of my security personnel without any proper ground is an attack on the dignity of an M.P. and the Parliament and therefore, my parliamentary privilege has been breached. At Phoolparas Police Station a case was registered against the innocent drivers under section 188/171 of Indian Penal Code and under section 133 of the Representation of the Peoples Act by making false and concocted charges of violation the Model Code of Conduct. In this case, not having the latest permission regarding the two vehicles of security personnel, was made the sole ground for the crime of violation of Model Code of Conduct. In the F.I.R. no charges were framed against me, as to whether I was holding any meeting or seminar or was doing other kind of act of violation of Model Code of Conduct...There was no case against me under sections 188/171 of I.P.C. It may be noted that the crime, mentioned in clause (5) of section 123 of the Representation of the Peoples Act is punishable under section 133. But as per clause (5) of section 123 of the Representation of the Peoples Act, it is penal offence to use the vehicle to carry the voter to polling booth or drop him back on the day of polling. It is clear that this section shall be effective on the day of polling and not a day before the polling... the case was registered hurriedly by the police officer, the local police remained busy trying overnight of 12.11.2005 to collect evidence to justify my arrest in village Suggapatti, where I was arrested and many people of that village were threatened to give their evidence to the effect that I visited Suggapatti village for campaigning during the election, but no one came forward to give evidence. The villagers said that they will not give any false evidence. I immediately intimated this incident to the Election Commission of India and Election Commission of Bihar by a Fax message on 13.11.2005. All these police officials are now in a very embarrassing situation, as the case was registered without any evidence. The District Magistrate and Superintendent of Police, Madhubani while responding to the notice of breach of privilege, intimated the Lok Sabha Secretariat...that on 12.11.2005, I was holding a meeting with the villagers in the Verandah of the house of Shri. Dhaneshwar Bhindwar in Suggapatti village. Shri. Dhaneshwar Bhindwar is a Government teacher and he had proceeded on his duty seven days ago and there was no one in his house. Now, if I held any meeting, thereafter, breaking the lock of his house then a separate case should have been registered against me...This alibi was made in a

hurry. I think it is necessary to conduct an inquiry and take evidence in this case to ascertain whether any such meeting was actually held there, since police have registered a case on this ground. This charge is baseless and is completely bereft of reality and is totally different from the facts registered in FIR. In the first FIR, there is no mention that I held any meeting on the way, since the time of campaigning was over and if any meeting is held, it would be treated as the violation of Model Code of Conduct. The District Magistrate or DSP are not framing the charges for impounding two vehicles. As they found it a matter of breach of privilege they have withdrawn this charge. Now they have created new grounds. These new grounds have been created to somehow make it a case of violation of Model Code of Conduct. In order to collect the concrete evidence to justify the case, the character of F.I.R. was changed in a pre-planned manner to the extent that it becomes totally different *vis-à-vis* original FIR. It may be elaborated further but no officer can completely change the original FIR...Whether a line that hon'ble Member of Parliament was taken into custody, while holding the meeting, could not have been added in the original FIR? Nothing like that had been recorded.... The District Magistrate and S.P. did not visit the place even once and approve whatever has been written in FIR. In this way, by giving false and misleading information they have misled the Lok Sabha Secretariat and the Committee of Privileges. Hence, from these facts a case of breach of my privilege has been substantiated further...I was not even meted out proper treatment at Phoolparas Police Station. I was prevented from performing my duties by keeping me in police custody for two hours...During my custody in police station, I demanded a plain paper from D.S.P. in order to write a letter to the Speaker and Secretary- General of Lok Sabha regarding my arrest, so that at least I can intimate them as to how they were behaving with me. They said there was no paper in the police station, and that I can write the letter after my release...Consequent upon my release from there, on reaching home, I immediately sent a fax message in the evening on 12.11.2005 to the Chief Election Commissioner, Election Commission of India, New Delhi, Speaker Lok Sabha and Election Commission, Bihar, intimating them regarding my illegal detention for two hours and consequent release. I also gave entire details of what happened with me and how I was detained without any charges...There has been a breach of parliamentary privilege by preventing a Member of Parliament from making a correspondence with the Speaker and the

Secretary -General of Lok Sabha, during his police custody. There is also a reference in Kaul and Shakhder's 'Parliamentary Practice and procedure' in this regard. Consequent upon my release on bail from the police station. I was rendered without any security due to impounding of both the vehicles of my security personnel. Just to humiliate and to lower the prestige of a Member of Parliament, the Superintendent of Police, Madhubani, immediately, after my detention, called a special press conference to give exaggerated details of my detention to media and this incident was made public in such a way as if a hard-core criminal had been arrested. When Media asked what has been seized, the reply was that security vehicle was not in order. When they asked if any article had been seized, they replied in negative....It is a routine that the District Returning Officer apprises the media regarding law and order situation of the district, prohibitory action and election related other information in the press conference which is called just before the elections, but in this case information regarding my arrest and release alone was given in this press conference, as is clear from the news-item published in the newspapers...So, the press conference called on 12 November, 2005 was not pre-planned, rather correspondents were called in a hurry over telephone at 6 o'clock in the evening to tell that we have done a great job by arresting and releasing an MP....I was arrested on 12th of November, 2005 while the Secretariat was informed on 14.11.2005 which is a contempt of the House...Immediately after my release on bail from the police station, the local administration detailed a round the clock videographer to keep a vigil on my activities. Since the vehicle of my security guards had been seized, I had to spend 36 hours at my own residence as if I were under house arrest. I was harassed by way of mental torture which amounts to breach of privilege. The CRPF personnel searched and re-searched my authorized vehicle outside my residence during the night of my release on 12.11.2005 at 8 P.M. and 10.00 P.M. They attacked my dignity as an M.P. again and again and harassed me mentally...In my opinion, to intimidate the voters during elections is nothing but a violation of Model Code of Conduct. An officer has violated the code of conduct, which is not meant only for the leaders, the voters, the party presidents, the public, but is also applicable to the officers...The videographer deputed with me followed me inside the polling booth up to the EVM and captured my vote in his camera. This way, the confidentiality of the secret voting was breached. Here a separate section would be

applicable...This is a violation of the Model Code of Conduct. They have openly violated the Model Code of Conduct by breaching the confidentiality in respect of my right to vote. Besides, political parties, Model Code of Conduct should be followed by the officers on election duty as well. But these officers have influenced the fair, free and fearless elections by creating an environment of fear and terror among the people and lakhs of my supporters by arresting an innocent person like me. The officers have violated the Model Code of Conduct. In view of the reply to the notice of breach of privilege, Deputy Superintendent of Police, Phoolparas, in his reply has stated that a large number of people were waiting at Shri Krishna Lal Kiwad's residence *en-route* the police station after the arrest of the MP, which indicates that the people gathered there had prior intimation. I would like to bring it to the notice of the Committee that the news of my arrest spread like wild fire. People gathered there to see as to where I was being taken after my arrest...As people are very much attached to their representatives, they were there. I accept it. I am the Chairman of the Standing Committee on Food, Consumer Affairs and Public Distribution. This parliamentary Committee was in session. A report was to be presented before the Committee regarding Weights and Measures Standard (Enforcement) Amendment Bill, 2005 and Weights and Measures Standard (Amendment) Bill, 2005. It was necessary for me to reach Delhi by 15.11.2005 positively to finish the unavoidable task of the Committee. But I was mentally pained as the vehicle of my security personnel was seized, as a result, I could not leave my home on 14.11.2005 at 2.00 p.m. Consequently, I could not reach Delhi as per my programme, I could not discharge my parliamentary duties, submission of report was delayed...This obstructed me from discharging my parliamentary duties as Chairman and the privilege of the committee was also breached. Now, I would like to specify the breach of privilege. The Dignity of the House was lowered by arresting an innocent MP. The powers and privileges of an MP were breached. The MP was intimidated and obstructed in discharging his official duties. The House was misled by hiding the facts of the FIR and by providing incorrect information...The House was informed two days after the arrest and release of a member of Parliament. An MP was barred from having important correspondence with the Speaker, Lok Sabha and the Secretary-General, Lok Sabha during the detention. He was ill-treated during the detention. The Member of Parliament was, intentionally or unintentionally, directly

or indirectly, deprived of his privilege under some conspiracy to get appreciation or to satisfy their ego. This way, it was a breach of privilege of an MP and the House. Hence, I request you that by following the full procedure and completing intensive investigation against the concerned arrogant and high handed officers, punishment be determined for violating the privileges of a Member of Parliament so that no one in future would dare to think of doing this again and the dignity of Parliament may remain intact in the parliamentary democratic set up...”

Evidence of Shri Atish Chandra, District Magistrate, Madhubani, Bihar.

20. During his evidence before the Committee on 6 July, 2006, Shri Atish Chandra, District Magistrate, Madhubani, Bihar, *inter-alia* stated as follows:

“...The Assembly election in November, 2005 in Madhubani constituency which was earlier scheduled to be conducted in a single day was later on rescheduled to be conducted in two phases by the Election Commission. All the preparations in this regard were made in two phases. First phase of election was on 13 November and second was on 16 November, 2005. The permission for electioneering by the political leaders, the candidates and their election agents for the election scheduled to be conducted on 13 November, 2005 was up to 4 p.m. of the 11 November, 2005 and up to 4 p.m. of the 14 November, 2005 for the election to be conducted on 16 November, 2005. The information about the member was given to me on telephone by the DSP that a vehicle is parked near the village Suggapatti and that the member was holding a public meeting there. He was taking action accordingly on the basis of that information. I directed him to take action as per rules. I did not give him any more direction except this. Since the election was scheduled for the next day so we were preparing our strategy regarding deployment of our polling force from all the police stations in all the seven polling areas and the S.P. was also present in my office. I also shared that information with the S.P. which was given by the DSP and she also instructed him to take action as per rules. Since we were around 30-35 km. away from the place of incident and it was not possible for us to give further guidance from there so we directed him to take action as

per the rules. A short while after, the hon'ble Member contacted us on telephone and told that our DSP was unnecessarily arresting him, and he asked us to direct him not to take such action. I urged the hon'ble Member that we are now engaged in complying with the orders of the Election Commission of India regarding conducting of election and if I issue any direction from such a distance, it will be construed as intervention in the legal action and this will put a question mark on my impartiality. The DSP is also a gazetted officer and competent to initiate legal action at that place and if he has any doubt he may contact me on telephone. I am not in a position to direct him on your phone. After that neither the DSP contacted me nor he sought any directions from me. The DSP had intimated me regarding the detention of the member on wireless at 5.30 hrs. and he had mentioned that Model Code of Conduct and section of IPC, in force there, have been violated. We noted down that information and since we were to notify the detention of the hon'ble Member within 24 hrs., we intimated the hon'ble Speaker regarding this matter and sent a fax message too. We also intimated the Election Commission and all the Senior officers in this regard...Section 126 of the Representation of Peoples Act, 1951, provides that any kind of electioneering or public meeting is prohibited post 48 hours from the hour fixed for the close of poll. The hour fixed for close of poll was 4 p.m. on 13th November...The DSP had reported that he (the member) was involved in public meeting. He was talking about votes. He had mentioned that in his report. Because of the violation of that provision of Election Commission and the prohibitory orders issued by the sub-Divisional Officer there, section 144 was promulgated in that area. Any kind of gathering of more than five persons or electioneering within 48 hours was prohibited.”

21. When asked what role he had to play with regard to action of police force as a DM, with reference to the guidelines issued by the Election Commission at the time of election, Shri Atish Chandra replied, “My duties about the police force are that when the elections are announced by the Election Commission, I convene a district-level joint meeting of all the police officers and the polling officers of the District and apprise them about all the rules of Model Code of Conduct and clear their doubts, if any, in this regard...After the notification of the elections, the Civil Officers as well as

police officers are deputed under the Election Commission and they function directly under the control of SP.”

22. On being asked whether the police officers are competent to initiate action at their own level or they have to take his permission before taking any action, Shri Atish Chandra replied “No Sir,... during the last Assembly elections, there were 63 incidents of violations of Model Code of Conduct or the violations related to election against members of various political parties against candidates and against election agents. FIR was registered but in such cases, there is neither any need of direction from any officer nor do I interfere in such cases. It is beyond my jurisdiction to intervene in such cases...”

23. When the Committee asked whether the DSP simply informed him about the matter in which the action was taken against Shri Devendra Prasad Yadav, MP, Shri Atish Chandra stated, “He reported that Model Code of Conduct has been violated and since the hon’ble member was involved in that case, he must have thought it better to inform the District Election Officer regarding this matter. Since there is a statutory provision *vide* which the DM and SP have to jointly brief the press regarding the violations of Model Code of Conduct and due to this reason all the officers engaged in election related duties keep us informed about such violations but there is no need of any direction or the permission for detention.”

24. On being asked why the member’s car was taken to the police station, Shri Atish Chandra replied that as per the Representation of People Act, 1951, section 126 provides that any kind of electioneering or public meeting is prohibited from 48 hours preceding to the hour fixed for the close of poll. The hour fixed for close of poll was 4 p.m. on 13th November.”

25. When the Committee asked Shri Atish Chandra to apprise them about the exact permission given to the member and his security personnel to use their vehicles on 12 and 13 November, 2005, Shri Atish Chandra stated:

“Shri Vishnudev Bhandari, representative of the member R/o Head Post Office Road, Ward No. 14, Jhanjharpur Lok Sabha Constituency had requested for extension of permission granted earlier on the basis of his application dated 9.11.2005, *vide* this office order No. 1323 dated 23.10.2005 regarding using Tata Spacio Car No. BR-32 B7001 and Sumo Car No. BR-32 A-6087 from 25.10.2005 up to 4 o’clock on 11.11.2005 as escort to all the candidates of RJD and hon’ble Member

Shri Devendra Prasad Yadav, in 14th Lok Sabha Constituency for campaigning and to hold the meetings, to use the vehicle in the Assembly Constituency No.74 Bisfi,/78 Madhepura, 79 Pandol, 80 Jhanjharpur also due to postponement of election up to 16.11.2005. Hence, the permission to use both the above vehicle as escort for hon'ble Member for campaigning in the Assembly Constituency no. 73, Benipatti, 75, Harlaki, 76 Khajauli, 77 Babubarhi, 81 Phoolparas, 82 Lauka and 83 Madhepura, where polling is scheduled to be held in the second phase up to 4 o'clock on 14.11.2005 with the following conditions:

'In case the vehicle is found being used for campaigning in those Assembly constituencies, the vehicle will be impounded and the action will be taken as per the law. The expense incurred on these vehicles during the course of visits shall be borne by the party itself. The Model Code of Conduct shall not be violated in any circumstances. The original copy of this permission shall be displayed by affixing it on the front wind screen of the vehicle. If the permission letter is not displayed, the vehicle shall be impounded.' In this, I state that the permission for the first phase of election in seven constituencies was only till 4 p.m. on 11.11.05 and for the second phase of election for the four constituencies till 4 p.m. on 14.11.05. So, the first phase of election stopped on 11.11.05. He was there on 12.11.05 in the area of first phase of election'."

26. When asked whether he ascertained the fact regarding member's holding a public meeting and violating the Model Code of Conduct as reported to him by the DSP, Shri Atish Chandra replied, "Sir, the DSP at the spot is also aware of all the election rules. He has taken a decision on his own. I have no business at the time of filing of FIR to interfere and tell him whether to file a FIR or not."

27. On being enquired whether any special videographer was appointed by the District Returning Officer for filming the entire episode, Shri Atish Chandra answered, "We had not appointed any videographer for the purpose. It was Election Commission's instructions that only shadow videography would be undertaken of all the reputed leaders and candidates of the political parties so that it could be observed that rules and regulations are not being violated. Those steps were taken in all the districts.

Photography was performed and digital cameras were installed at the booths.”

28. When asked whether he had assured the member that he would talk to DSP and SP and whether he spoke with DSP or SP, Shri Atish Chandra replied, “Sir, he had asked me to instruct the DSP to release him. I told him that DSP is a Gazetted Officer and that under the law he was competent to take action, and that he was aware of the election laws. If the DSP has got any difficulty or any misgivings, he can call me up and ask me, and I will clarify all his doubts...”

29. When asked whether he was aware that the FIR had been concocted as in the first FIR there was no charge against the member for having violated the Model Code of Conduct and that charges under section 188 read with section 171(f) IPC and section 133 of the Representation of People Act, 1951 were an after thought, Shri Atish Chandra replied, “ I am not aware of these facts. I base my information on the FIR that is before me. As per my knowledge, there is only one FIR. There are station diary entries. Station Diary entries and FIR have got some differences. I hold the view that the hon’ble Member is talking about those differences. He is not talking about two FIRs, as I see... Sir, section 133 was subsequently omitted after investigation. In the final report, section 133 had been dropped because it was not applicable.”

30. On being asked whether he was present at the press briefing along with the SP, Shri Atish Chandra said, “Yes, Sir, that was a statutory press conference that both of us were supposed to hold. It was done under the instructions of the Election Commission.”

31. When further asked whether pictures of a member can be taken at the place where he is casting his vote in the polling station and if so, whether the same would not amount to total breach of secrecy of balloting, Shri Atish Chandra answered, “Sir, if his casting of vote had been captured on camera, it would constitute a serious breach of secrecy and the officials responsible for it should be fixed and would be fixed.”

32. When asked whether sitting in a private house of a teacher would constitute violation of Model Code of Conduct, Shri Atish Chandra replied,

“A meeting at a private house will not constitute a violation under section 144, but the investigation reveals that there was a big gathering which came on to the road as well. That’s why they must have applied that section. It has come out clearly during the investigations by the DSP. He had taken the evidence of people also. It is a recorded evidence.”

Evidence of Smt. Anupama Neelekar, Superintendent of Police, Madhubani, Bihar.

33. During her evidence before the Committee on 6 July, 2006 when Smt. Anupama Neelekar, the Superintendent of Police, Madhubani was enquired whether she had given any instructions to the DSP, Madhubani to arrest Shri Devendra Prasad Yadav, MP on 12 November, 2005 for allegedly violating the Model code of conduct of elections, Smt. Anupama Neelekar stated that,

“ SDPO, Phoolparas informed me on telephone that the hon’ble Member is organizing a meeting . He was not walking on the road. In that case Model Code of Conduct was violated. He asked me as to what action should be taken? I told him to take action as prescribed under the rules.”

34. On being asked which rule of the Model Code of Conduct was violated when the member was sitting outside somebody’s house and was not holding any meeting, Smt. Anupama Neelekar replied, “He was organizing a meeting and canvassing for elections. They were talking about votes and elections. It is mentioned in the statement that he was sitting, but it is not mentioned there that he was organizing a meeting.”

35. When asked if some people are sitting in a private house and talking to some persons, can it be construed as a meeting and whether she asked the SHO as to why he used the improper words in his statement stating that the member was holding a meeting there, Smt. Anupama Neelekar replied, “ After supervision, the SHO told that they were holding a meeting and were canvassing. Officer-in-charge, who is a complainant in this case told that they were holding a meeting and canvassing.”

36. When her attention was invited to the fact that there are two contradictory statements, as according to the member, he was not holding

any meeting whereas according to the DSP, he was holding a meeting, Smt. Anupama Neelekar replied, "We did not notice any contradiction with regard to what DSP stated on phone and what he recorded in the supervision note. As far as the difference in the terms 'Baithe' or 'Baithak' is concerned, it was written in brief in the FIR and eventually in course of investigation and Station Diary also revealed the same thing that he was canvassing and was talking about elections and votes."

37. On being asked why the vehicle of security personnel of the member was seized and brought to the police station on 12 November when he was going to cast his vote, Smt. Anupama Neelekar replied, "The member was not going to cast his vote at 4:30 p.m. on 12 November. He was arrested when he was holding a meeting at a place. The vehicle was seized because it had permission till 11th of November whereas the hon. Member had his own vehicle which had permission from the Chief Electoral Officer for the whole of Bihar till the end of November 2005, so the member's vehicle was not seized."

38. When asked what is the rationale of use of section 188 IPC and 171 (f) of IPC against the member, Smt. Anupama Neelekar replied as follows:-

"Section 188 IPC is a violation of public order promulgated by a public servant. It says assembly of 5 or more persons would be construed as breaking law. This assembly would lead to undue influence on voters. So, I feel the sections are justified. It is also mentioned in the SDPO's Supervision Note that they were gathering at different places on the roads also. It implies that may be they had already planned them and that there would be meetings in future also. In this I would like to clarify that the meeting would not be in the technical sense of holding a meeting in a public ground. It would be door to door canvassing or gathering of more than five persons, talking about elections and talking about votes. That also implies canvassing and hence, it is done like that. We have investigated the matter on those lines."

39. When enquired whether the allegation of member's violating the Model Code of Conduct has been mentioned in the diary and that a few people were standing by the roads with whom the member was talking, Smt.

Anupama Neelekar replied, “ it has not been mentioned in the case diary. It has been mentioned in the SDPO’s Supervision Note.”

Evidence of Shri Vishwajit Dayal, Deputy Superintendent of Police, Madhubani, Bihar

40. Shri Vishwajit Dayal, the Deputy Superintendent of Police, Madhubani, Bihar during his evidence on 6th July, 2006, *inter-alia* stated as follows:

“I was patrolling along with an Inspector and a Sub-Inspector to verify the deployment of the forces. Suggapatti is a big village. When we were passing from there, we saw a vehicle on which the sticker of hon. MP was pasted. There were two or three more vehicles. People were standing along the road. When we enquired from the security personnel, they told us that hon. M.P. was there. Hon. MP was sitting in the verandah of Shri Bhindwar and there was a big crowd...We waited for a while and then he came out. We extended full courtesy to him and said that election campaign was over and his vehicle was there after the period of canvassing was over, which was illegal. After saying this, we proceeded with him (the Member). He (member) said nothing and sat in his vehicle. We followed him. He stopped at one place. His vehicle stopped opposite the residence of one Shri Krishna Lal Kiwad. We also got down from our vehicle. He talked to DM. We did not listen to their conversation as he was at some distance from us. There was a crowd and the member asked them to be ready for tomorrow’s election. After saying this he sat in his vehicle.”

41. On being asked whether the member was really holding a meeting, Shri Vishwajit Dayal stated, “ Yes Sir, people were sitting there. The member was sitting on a low stool. His (Krishna Lal Kiwad) house was on the roadside. There was a big crowd. The meeting was planned at his house...”

42. When asked if the member was sitting with some friends and party workers at some private house whether the same would be construed by him as canvassing or campaigning, Shri Vishwajit Dayal stated, “Under the

Model Code of Conduct, section 188 was imposed throughout the constituency. Wherever the meeting was held the member told the gathering to vote for a particular candidate...Hence the sections imposed were justified...During supervision, statements of some people present there were recorded. These statements were not recorded immediately during the incident...I went there after the incident for supervision, statements of some of the people were recorded. I would like to read out some of the extracts. The first statement is of Shri Anil Kumar Bhindwar. In his statement he has stated that on the said day the hon. Member was scheduled to attend a programme in the village. At 4 p.m. the member presided over the meeting at the entrance of residence of Shri Dhaneshwar Bhindwar. The member told the people to prepare themselves for the next day's polling. He told those present to vote for the lantern symbol...All the statements were recorded of the people present at the place of meeting."

43. On being asked whether he was directed by the District Magistrate or by the Superintendent of Police to arrest the member, Shri Vishwajit Dayal replied, "No Sir, I had informed the DM and the SP in this regard. They said action should be taken as per rules. I too passed on this message to my subordinates."

44. When enquired whether any videography was done of the member in the police station, when he was released, Shri Vishwajit Dayal replied in negative.

45. When further asked whether due courtesies were not extended to the member at the police station, Shri Vishwajit Dayal replied, "It is not so. I was also present there and I had instructed that no compromise should be made while extending courtesy to the MP. He was extended all facilities and nothing was done to hurt his feelings."

46. On being enquired when the police undertakes supervision or investigation, does it have the power to record written or oral statements, Shri Vishwajit Dayal replied, "We also record oral statements. There is no legal validity of the statements made/recorded before the police. The statements recorded by the police have no legal value."

Evidence of Shri Kamod Prasad, officer-in-charge, Phoolparas Police Station, Madhubani, Bihar.

47. When asked about the difference between section 188 and section 171(f) of IPC, Shri Kamod Prasad, during his evidence on 13 September, 2006, replied, “ We apply section 188 when Government orders under section 144, are violated whereas section 171(f) is imposed for undue influences or persuasion of voters during elections.”

48. On being asked why section 144 was invoked when the member was sitting in a private house and whether such orders were issued by the District Magistrate or Superintendent of Police, Shri Kamod Prasad answered, “ During that meeting, a large number of people were present on the road outside the house and around 40-50 people were inside. Neither the DM nor the SP gave any orders to impose sections 188 and 171(f) of IPC.”

49. When enquired whether he is aware that security vehicles of a member do not need any permission, however, the permission is required only for a private vehicle of a member, Shri Kamod Prasad replied, “ We did not have any such instructions that those vehicles do not require permission, since the permission for those vehicles was up to 11th November which had since expired.”

50. When asked, why videography was done when the member was casting his vote, Shri Kamod Prasad replied, “I was not there.”

51. On being asked whether whatever action he took was on the directions of his senior officers, Shri Kamod Prasad stated that, “I was posted as SHO there. I was deputed there on duty along with DSP, Inspector and other police force. We felt that it was a violation of law and I took action as per rule/law. Whatever I saw there, I wrote it down in my statement. Then investigation took place. After arriving from there, I made an entry in the Station diary which contains all the details.”

52. On being enquired whether he visited the place after filing the FIR, Shri Kamod Prasad replied, “ I was present there at the time of lodging of FIR. I recorded my statement there.”

53. Shri Kamod Prasad was repeatedly asked that when in his Self - Statement he did not mention the fact about holding a meeting by the member, how this fact came to be mentioned in Supervision Note. He, however, chose to remain silent and did not give any reply.

IV. Letters received from Shri Devendra Prasad Yadav, MP

54. After the matter was referred by the Speaker to the Committee for examination, investigation and report, Shri Devendra Prasad Yadav, MP addressed three letters dated 10 July, 2006, 10 August, 2006 and 17 August, 2006 to the Chairman of the Committee raising therein several points on the issue of his unjustified arrest on 12 November, 2005 for the consideration of the Committee.

Shri Devendra Prasad Yadav *vide* his further letter dated 9 April, 2007 addressed to the Chairman, Committee of Privileges *inter alia* intimated that the Hon'ble High Court of Patna, on a petition moved by him in the High Court, had quashed the order of the Additional Chief Judicial Magistrate, Jhanjharpur whereby cognizance had been taken by that court of Police Station Phoolparas case no. 257 of 2005 under Sections 188 and 171(F) of the Indian Penal Code. The member also enclosed a photocopy of the said court order.

V. Findings and Conclusions

55. The Committee note that the thrust of Shri Devendra Prasad Yadav's allegations is that:-

- (i) He was arrested and detained on 12 November, 2005 by the Deputy Superintendent of Police (SDPO, Phoolparas) while he was on his way to his village Siswabarhi;
- (ii) His arrest was without any genuine grounds and had been made in furtherance of a conspiracy by the DM and SP, Madhubani to tarnish his image as a member of Parliament; and

- (iii) as a result of his detention he was prevented from discharging his parliamentary duties.

56. The Committee note that the crux of the pleas taken by the DM, SP and DSP before the Committee as well as in their written submissions is that:-

- (i) The member was addressing a public meeting and canvassing for votes after the electioneering had officially come to a close;
- (ii) This act amounted to a violation of law as well as Model Code of Conduct;
- (iii) The police authorities, therefore, took action as per the law and arrested the member;
- (iv) As the offence was bailable, the member was released on bail and escorted by the police to his residence; and
- (v) This was not a part of any conspiracy to tarnish the image of the member nor was the member ill-treated or misbehaved with in any manner.

57. The point at issue is whether, as contended by Shri Devendra Prasad Yadav, he was sitting (*baithe the*) in the courtyard of a villager's house by the roadside, or, as contended by the police authorities, he was holding a meeting (*baithak kar rahe the*) at the relevant point of time.

58. A gathering of persons at the scene of the occurrence is admitted by both the sides. While Shri Yadav contends that they had gathered there on hearing about his impending arrest, the police authorities claim that the gathering was being addressed by the member and he was canvassing for his party for the Assembly elections to be held the next day.

59. In support of their contention that the member was addressing a meeting, the police authorities produced before the Committee, statements of three persons recorded by them who were said to be eye-witnesses of the incident. These persons have corroborated, in their statements, the police version that the member was addressing a gathering of villagers and canvassing for his party.

60. According to Shri Devendra Prasad Yadav, these persons were coerced by the police authorities to make statements as dictated by them.

61. The Committee would like to analyse this aspect of the matter in greater detail as the Committee are convinced that the whole case hinges on this one issue – whether the member was addressing a public meeting at the relevant point of time or not.

62. Before analysing the evidence and material having a bearing on this point, the Committee wish to bring it on record that the D.M. and S.P., Madhubani admitted before the Committee that use of security escort vehicles is permitted even on the day of polling up to a certain distance from the polling booth and no permit or authorization slip is required for plying these vehicles for escorting the person who has been given security. They also admitted that use of such vehicles for carrying security personnel does not violate the Model Code of Conduct nor is it an offence under the law.

63. The material on record that can help the Committee in deciding the issue is – (i) Self Statement (*Fard Bayan*) of Shri Kamod Prasad, Officer-in-charge, Phoolparas Police Station; (ii) FIR lodged in Phoolparas Police Station by Shri Kamod Prasad; (iii) Supervision Note of DSP, Madhubani and (iv) Evidence of DM, SP and DSP, Madhubani and Shri Kamod Prasad before the Committee.

64. The Committee feel that out of the three documents mentioned at S. Nos. (i) to (iii) above, the first, namely, the Self-Statement of Shri Kamod Prasad is most crucial, as it was the first written official document recorded by a police officer, namely, Shri Kamod Prasad at the place of occurrence immediately after he noticed the vehicles of the member parked by the roadside. The act of recording this document was so proximate to the actual incident that the time of incident and the time of recording the Self-Statement both have been indicated as 4 PM. The Committee are, therefore, convinced that the Self Statement ought to be considered as the most accurate and authentic version of the sequence of events on that day.

65. The Committee, therefore, gave a very close scrutiny to the Self-Statement. What strikes the Committee at the outset is that it is not a hastily written two line note on a scrap of paper devoid of details as the DM, SP and DSP would like the Committee to believe. On the contrary, it is a very detailed handwritten note running into one and a half page containing minute details like vehicle numbers, names of drivers, etc.; in other words, the handiwork of a professional doing a thorough job.

66. Now what does this detailed Self-Statement tell us ? It says:-

“Today on 12-11-05... I reached Sugapatti village along with the P.S. reserved police force at 16 P.M. I found three vehicles bearing Registration No. (Bolero Jeep) DL-2CV/0015, (2) Tata Spacio No. BR-32B/7001, (3) Sumo No. BR-32A/6087 were standing on road. On checking of aforesaid vehicles, it was found that Bolero Jeep No. DL-2CV/0015 was permitted for Assembly election till November, 2005 in the name of hon’ble member of parliament, Shri Devendra Prasad Yadav which was pasted on the aforesaid vehicle though the other two vehicles respectively Tata Spacio Gold No. BR-32B/7001 and Sumo No. BR-32A/6087 were permitted only till 11-11-05 and permit was pasted on the aforesaid vehicles. It was stated by the drivers of both vehicles (1) Ajay Kumar S/o Pitambar Mandal...and Brahmdev Kumar S/o Ram Nirikshan Chaudhary...that both the vehicles are with hon’ble M.P. Shri Devendra Prasad Yadav and were used for the security of hon’able M.P. Hon’ble M.P., after alighting from the vehicle, was sitting in Sugapati village. On being asked, hon’ble M.P. replied that his own vehicle Bolero is under permit and other two vehicles were permitted for Phoolparas Assembly Election till 11-11-05.

Use of vehicles without permit for election purposes is violation of Indian election rules and punishable under sec. 188/171 of I.P.C. and sec. 133 of Peoples Representation Act.

My charge against the drivers and owners of both the vehicles along with hon’able M.P. Shri Devendra Prasad Yadav is violation of Model Code of Conduct which is a cognizable offence under sections 188/171F IPC and 133 P.R. Act. Therefore, I arrested hon’ble M.P. Shri Devendra Prasad Yadav S/o late Chandan Yadav, Village Siswbarhi, P.S. Phoolparas and drivers (1) Ajay Kumar S/o Pitambar Mandal village Naur, P.S. Kaluahi, (2) Brahmdev Kumar S/o Ram Nirikshan Chaudhary village Paliwal, P.S. Rajnagar, Distt. Madhubani and seized both the vehicles having no permit and prepared the seizure list and obtained signatures of both drivers on the seizure list respectively.”

67. As against this very detailed and meticulously drafted Self-Statement, painstakingly recorded at the scene of occurrence, immediately after the incident, we have the Supervision Note of the DSP. Supervision was done by him on 4 December, 2005, *i.e.* 22 days after the incident and the Supervision Note recorded by him on 15 December, 2005, *i.e.* 33 days after the incident.

68. It is an established fact that human mind retains minutest details while the memory is fresh. As time passes by, a person is more likely to forget matters of minor details. From the methodical manner in which the Self-Statement has been recorded, the Committee are convinced that the Officer-in-charge was not a person to have missed making a mention of a public meeting being addressed by the member had one actually taking place at that time. The Committee are totally disinclined to buy the story fabricated by the SP and DSP that the Self Statement was a brief account of the incident and details came out in the Supervision Note. Details such as geographical location of the scene of occurrence, persons present at the scene of occurrence, etc. are, no doubt, such matters which can always be missed in the Self-Statement but not such a major detail as to whether a meeting was being addressed by the member or not. The Committee are, therefore, convinced that the mention of the meeting being addressed by the member in the Supervision Note of the DSP was nothing short of embellishment and interpolation.

69. The question before the Committee was why did the DSP behave in such unprofessional manner? When the Committee tried to fathom the reason for such behaviour, it became apparent to the Committee that the turn of events on that day was something like this:-

‘The Police patrolling Party led by DSP, on seeing three vehicles parked by the roadside proceeded to investigate. In the course of investigation, they inspected the authorization slips pasted on the windscreens of the three vehicles. On finding that the authorization for two escort vehicles was only up to 11 November, 2005 and in the mistaken belief that use of vehicles without authorization was not permitted, they came to a conclusion that an offence had been committed and the Model Code of Conduct was violated. Since the matter involved a member of Parliament, the DSP contacted DM and SP who were together in a meeting, on phone, informed them about the violation of Model Code of Conduct and sought directions from them. Busy as they were in a meeting, the DM and the SP perhaps had no patience to hear the DSP in detail nor bothered to know as to

in what manner the Model Code of Conduct had been violated. The moment they heard about violation of Model Code of Conduct, they asked the DSP to take action as per law whereupon Shri Yadav was arrested. When Shri Yadav gave notice of question of privilege and a factual note was called for from the Bihar Government by the Lok Sabha Secretariat, the concerned officers were asked by the Bihar Government to furnish their comments. It was then that the realization dawned upon the officers that the arrest of Shri Devendra Prasad Yadav was a mistake as no offence had in fact been committed. In order to cover up this lapse, the offence of holding a meeting (which is an actionable offence) was added through the Supervision Note of DSP, which, it may not be forgotten, was in all probability recorded after the officers concerned were asked by the Bihar Government to furnish their comments.’

70. The Committee feel that the Supervision Note of the DSP and the evidence of DM and SP before the Committee are nothing but a pathetic “operation cover up”.

71. This view of the Committee is reinforced by the evidence given by Shri Kamod Prasad, Officer-in-charge Phoolparas Police Station, before the Committee. His discomfiture before the Committee was speaking volumes about his dilemma. On the one hand, he was being confronted with his own Self-Statement (*Fard Bayan*) and on the other with the DSP’s Supervision Note. He was not in a position to disown his own Self Statement nor could he say before the Committee that his senior officer, viz., the DSP had made embellishments in the Supervision Note. Consequently, he adopted a policy not to answer questions and remain silent. He had to be cautioned at least thrice by the Committee that he should answer the questions being asked. On being repeatedly asked as to why did he subsequently add the charge of holding a meeting when in his Self-Statement he had made a mention only about the use of vehicles without authorization, truth slipped out of his mouth at one place “I wrote in the (Self) Statement what I saw there”.

72. The Committee are not unmindful of the fact that during elections, officers deployed on election duties, particularly junior level officers, are mortally afraid of wittingly or unwittingly committing a breach of Model Code of Conduct or allowing such a breach to take place in their area of duties. The tendency on such occasions is to err on the safe side so that they do not later on face the wrath of the

Election Commission. There is no gainsaying the fact that for ensuring free and fair elections, the Model Code of Conduct, enforced by the Election Commission of India, needs to be strictly enforced. The Committee, however, feel that at the same time there is an onerous responsibility upon the concerned executive and police functionaries not to be overzealous and to judiciously oversee the enforcement of the Model Code of Conduct. The prevalence of Model Code of Conduct does not confer an all enabling right upon such functionaries to act in haste and injudiciously.

73. The Committee feel that it was ignorance of law on the one hand and over zealousness to enforce the Model Code of Conduct on the other, on the part of DSP and Officer-in-charge which was responsible for hasty action in arresting the member. The Committee would have appreciated, had the officers who appeared before the Committee candidly accepted the mistake made and expressed regret for the same in a straightforward manner.

74. As regards the other main allegation of Shri Devendra Prasad Yadav that there was a conspiracy to malign his reputation there is nothing on record to substantiate the claim made by him.

75. The Committee have given a very careful thought to the allegation made by Shri Yadav that due to his arrest, he was prevented from discharging his parliamentary duties. The Committee note that the contention of the member was that due to confiscation of his security vehicles on 12 November, 2005 and non provision of alternate arrangements for him, he could not reach Delhi on time as a result of which tabling of the Reports of the Standing Committee on Food, Consumer Affairs and Public Distribution on the Standards of Weights and Measures Enforcement (Amendment) Bill, 2005 and the Standards of Weights and Measures (Amendment) Bill, 2005 in Parliament was delayed. The member therefore, alleged that he was obstructed in performance of his parliamentary duties.

76. The Committee note that the member was arrested and released on 12 November, 2005. Assembly election for which he had gone to his village was on 13 November, 2005. Parliament was not in session at that time and the winter session commenced on 23 November, 2005. Para No. 1064 published in Lok Sabha Bulletin, Part II on 24 March, 2005 regarding reference of the above said two Bills to the Standing Committee on Food, Consumer Affairs and Public Distribution did not stipulate any time frame for presentation of the Reports of the Committee on the two Bills. Shri Yadav has also not stated that any meeting of the Committee

was scheduled to be held around that time which he could not attend due to his arrest.

77. The Committee concede that the Chairman of a Committee can come to his New Delhi Office anytime to attend to the work of the Committee. That Shri Yadav had any such intention is, however, belied by his notice of question of privilege dated 23 November, 2005 where he has clearly stated that “as per my programme after casting my vote at 7 a.m. on 13 November, I had to leave for the last phase of election campaigning in other Assembly constituencies.”

78. The Committee are, therefore, convinced that Shri Devendra Prasad Yadav cannot be said to have been obstructed in discharge of his parliamentary duties in any way due to his arrest and detention on 12 November, 2005. In any case since the member cannot be said to be discharging his parliamentary duties at the relevant point of time, it is not possible to hold that a breach of privilege had occasioned.

79. Having said this, the Committee would hasten to add that, as already stated, the arrest of the member was unjustified. This may be a case of wrongful arrest and detention for which a remedy definitely lies elsewhere.

80. The Committee would now like to address several other points made by Shri Devendra Prasad Yadav during his evidence before the Committee and through his three letters dated 10 July, 10 August and 17 August, 2006 addressed to the Committee.

81. As regards not making available to the member a piece of paper to write his complaint, the Committee feel that it is too insignificant a matter to attach any importance to it.

82. As regards the allegation of misbehaviour with the member by police, while the member might have, no doubt, felt humiliated by his unjustified arrest, there is nothing to show that he was misbehaved with. As a matter of fact, after his vehicles were confiscated, Shri Yadav was escorted to his residence by the police personnel.

83. As regards the allegation that press conference was held by the DM and SP to malign him, the Committee are convinced with the reply of DM that such conference is to be mandatorily held as per the orders of the Election Commission.

84. As regards the allegation that a video-recording of his voting was done which has violated the secrecy of his ballot, the DM stated that shadow-recording of prominent leaders was done as per the directions of the Election Commission. He, however, clarified that if the actual vote cast by the member was captured on camera, it would constitute a serious breach of secrecy and the official responsible for it would be punished. The Committee find no reason to disbelieve this position.

85. The Committee are, therefore, of the opinion that the arrest of Shri Devendra Prasad Yadav on 12 November, 2005 was not on justified grounds and was a mistake. The Committee are also of the view that when this mistake came to the notice of concerned authorities an attempt was made to cover-up for the lapse by concocting charges against the member in the Supervision Note. The Committee are further of the view that there was no conspiracy to malign the reputation of the member, he was not maltreated and he was not prevented from discharging his parliamentary duties on account of his arrest.

86. The Committee would now like to make a few general observations.

87. There appears to be a lack of understanding and proper appreciation on the part of the officers, particularly junior level functionaries, about the scope and applicability of norms governing the Model Code of Conduct. There is an urgent need to educate the officers at all levels as to what acts actually come under the purview of breach of the Code.

88. Time and again guidelines have been issued by the Government of India impressing upon the executive functionaries and police officers to extend all due courtesies and observe norms of etiquette while interacting with elected representatives. As it is not possible to detail each and every nuance of etiquette, an officer's individual judgement in handling matters tactfully, particularly when dealing with elected representatives, is the hallmark of a good officer. In the case under consideration, had the DM and SP listened patiently to the member's plea on phone this situation would not have arisen. The Committee, therefore, feel that officers, in addition to following guidelines in letter, should be trained to follow them in spirit also. They should be made to realize that their primary job is to serve the people and the MPs being representatives of people deserve respect, patient hearing and dignified treatment at the hands of executive functionaries.

VI. Recommendations

89. **The Committee express their resentment over the conduct of Shri Atish Chandra, the then District Magistrate and Smt. Anupma Neelaker, the then Superintendent of Police, Madhubani and Shri Vishwajit Dayal, Deputy Superintendent of Police, Madhubani and recommend that the same may be conveyed to the Chief Secretary, Government of Bihar for appropriate action in the matter.**

90. **The Committee recommend that the observations made by them in paras 87 and 88 above, may be communicated to the Ministry of Law and Justice and Ministry of Personnel, P.G. & Pensions respectively for appropriate action to prevent recurrence of such incidents.**

91. **The Committee also recommend that the matter may be treated as closed.**

NEW DELHI;
11 April, 2007

V.KISHORE CHANDRA S. DEO
Chairman
Committee of Privileges

MINUTES

MINUTES OF EVIDENCE

APPENDICES
