

MR. SPEAKER: The only thing that I must get due notice of when he wants to say.

SHRI JYOTIRMOY BOSU: I have written to you already.

MR. SPEAKER: He has written about another item, but now he is referring to potatoes.

SHRI JYOTIRMOY BOSU: I have written about potatoes also.

MR. SPEAKER: Let him not mention Punjab always. We are a wheat-growing people.

SHRI JYOTIRMOY BOSU: You have grown enough potatoes in Jullundur.

MR. SPEAKER: We may have grown potatoes also. But mere mention of Punjab is not going to influence me. I am sitting here as the Speaker, not as a Punjabi or anybody else.

SHRI JYOTIRMOY BOSU: Kindly make some observations so that the hon. Minister can make a statement.

MR. SPEAKER: Surely.

SHRI JYOTIRMOY BOSU: Thank you, Sir.

13.01 hrs.

QUESTION OF PRIVILEGE

REFERENCE OF A PRIVILEGE MOTION AGAINST SHRI G. G. SWELL, DEPUTY SPEAKER, LOK SABHA, TO PRIVILEGE COMMITTEE OF MEGHALAYA LEGISLATIVE ASSEMBLY

MR. SPEAKER: I have received privilege motions from many hon. Members, and I have them in the order in which they were received.

SHRI S. M. BANERJEE (Kanpur): On what?

MR. SPEAKER: Regarding the privilege motion against our Deputy-Speaker, Mr. G. G. Swell in the Meghalaya Assembly where that motion, as we saw in the press, was committed to the Privileges Committee of that House.

SHRI BHAGWAT JHA AZAD (Bhagalpur): Very unfortunate.

MR. SPEAKER: On that basis, Shri V. P. Sathe, Shri B. K. Das-chowdhury, Shri Stephen and Shri Shyamnandana Mishra have sent me privilege Motions. I have also received.....

SHRI S. M. BANERJEE: Against whom?

MR. SPEAKER: Against the Speaker of the Meghalaya Assembly.

SHRI SHYAMNANDAN MISHRA (Begusarai): It is a motion of contempt against the Meghalaya Assembly, because the House had acquiesced in it.

MR. SPEAKER: The next motion is against Shri Radhon Singh Lyngdoh, Speaker of the Meghalaya Assembly, Shillong. That is by Shri S. N. Mishra. That is a very brief one. He has raised a question of privilege or contempt of the Lok Sabha by the Meghalaya Assembly referring it to their Committee of Privileges.

I received a telegram from the Speaker of the Meghalaya Assembly on the 9th and it reads thus:

"A MOTION OF BREACH OF PRIVILEGE AGAINST PROFESSOR G. C. SWELL MEMBER PARLIAMENT FOR DISTORTION AND MISREPRESENTATION OF ASSEMBLY PROCEEDINGS HAS BEEN ADMITTED AND REFERRED TO THE COMMITTEE OF PRIVILEGES OF MEGHALAYA ASSEMBLY TODAY FOR REPORT BY FIFTEENTH MARCH NINETEEN SEVENTY FOUR STOP RELEVANT PROCEEDINGS FOLLOWS SPEAKER MEGHALAYA ASSEMBLY".

So, it is not only a press report, but this telegram also has confirmed that these proceedings did take place and the motion did come up....

SHRI S. M. BANERJEE: The privilege motion is for some statement in the House or outside?

MR. SPEAKER: Let me speak.

So, there is no doubt, because there is a direct intimation also and it is not based only on newspaper reports.

[Mr. Speaker]

These are the four motions on which I allow them to speak. Do all hon. Members want to speak?

SHRI SEZHAYAN (Kumbakanam): I had given a notice under rule 377 on the same matter, and I may be also allowed to speak.

SHRI JYOTIRMOY BOSU (Diamond Harbour): You should get the views of the entire House. We should all be able to speak in this.

MR. SPEAKER: There are two notices under rule 377 also.

SHRI VASANT SATHE (Akola): Sir, under rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha, I hereby give notice to raise a question of breach of privilege and contempt of the House against Shri Radhan Singh Lyngdob, Speaker of the Meghalaya Legislative Assembly, Shillong.

In the newspapers of yesterday—9-12-1973—particularly in the Hindustan Times a cutting from which is enclosed herewith, it has been reported that “a complaint of breach of privilege of the Meghalaya Legislative Assembly by the Lok Sabha Deputy-Speaker, Shri G. S. Swell, for his alleged distortion of the proceedings of the House was referred today by the Speaker to the Privileges Committee. The Speaker, Meghalaya, also directed the Committee to submit its report by March 15, 1974”.

Before I proceed further, I would like to read that part of the letter which was the subject-matter of the breach of privilege raised in the Meghalaya Assembly. (*Interruptions*).

SOME HON. MEMBERS: There is nothing.

SHRI VASANT SATHE: You will see immediately that there was absolutely nothing in it, because what has appeared in the press is this. This was the motion. “Shri Hynniewta said in the leaflet that Prof. Swell has falsely stated that the Meghalaya Government had rejected the unanimous demand of the Opposition in the July

session of the legislature that small farmers and petty traders should be exempted from taxes”.

In the Hindustan Times, it has been stated:

“Moving the motion on a serious breach of privilege of the House by Mr. G. G. Swell, Mr. Hoover, Hynniewta, Independent, alleged that in a letter to the ruling party, the All-Party Hill Leaders' Conference, General Secretary, Mr. P. R. Kyandoh, on October 2, Mr. Swell falsely and maliciously distorted facts about the proceedings of the House concerning the enactment of the Meghalaya Finance Act”.

Now, the letter dated 2nd October refers to this, the relevant portion to which objection was raised is this. It is at page 3 of the letter by Mr. G. G. Swell to the General Secretary.

“Over and above by having the Meghalaya Finance Act through the Assembly in its March-April session this year and by rejecting the unanimous demand of the Opposition parties in the Meghalaya Assembly in the July session of this year that petty farmers and traders of Meghalaya should be exempted from tax on agriculture and purchase, the State Government has placed the last straw on the back of the people.”

This is the portion to which objection has been taken. Any man with common sense will see that there is absolutely nothing wrong. There is nothing against the Assembly; not a word mentioned against the Assembly. All that he has said is that by getting the Bill through, the Government has placed the last straw on the back of the people. Objection was taken that there was no unanimous demand by the Opposition parties and this is a misstatement. Nothing turns on this, whether it is a unanimous demand or whether some people opposed or not. The fact is, the Bill was gone through. (*Interruptions*).

Can any person with an iota of judicial sense say—

AN HON. MEMBER: Common sense.

SHRI VASANT SATHE: "Common sense" is a strong word—be able to say that this amounts to a breach of privilege of the House? Yet, the Speaker, Meghalaya, remarked that as the motion is supported from both sides of the House, he was referring it to the Privileges Committee. "As the motion is supported from both sides of the House, the Speaker Shri Radhan Singh Lyngdoh referred it to the Privileges Committee saying that it is a ticklish issue, since it concerns the Presiding Officer of the Lok Sabha, but it is a fit case." He already gave his decision also, that it was a fit case.

Sir, this raises a very fundamental question of relationship in our federal set-up. Ours is a young parliamentary system comparatively, and therefore the fundamental question of a relationship of the Houses, not only between Parliament and the State Legislatures but between one State Legislature and another State Legislature arises. Unless we lay down what is the real law and practice of parliamentary work in this country, this will lead to an extraordinary situation in the country.

Today the speaker of the Meghalaya Legislative Assembly has summoned the Deputy-Speaker of the Lok Sabha; tomorrow it may be you; or even our House may summon some Speaker from the State Assembly to appear before us for privilege proceedings and it will lead to an extraordinary result. Let us consider dispassionately what is the actual procedure. It is not as if we are ignorant of procedure; it is also not as if such a thing has happened for the first time. As back as 1955, the issue had arisen, particularly in relation to Rajya Sabha; this was raised by Shri N. C. Chatterjee and it was referred to the Joint Committee of both Houses and the Joint Committee recommended a certain

procedure. This was in 1954. In connection with the point of privileges raised by Shri N. C. Chatterjee in the Lok Sabha, the Speaker observed on the 14th May that the Committee of Privilege of both the Houses might meet and examine the procedure that should be followed in cases where breach of privilege or contempt of the House was alleged to have been committed by a Member of the other House. The Chairman of the Council of States to whom the Speaker forwarded a copy of the relevant proceedings of the House concurred in this view in the sitting of the Council of States held on 15th May. Accordingly, three joint sittings of the two Privileges Committee were held on 15, 18 and 21 May 1954 and the question was examined in all its aspects.

The report says that the Prime Minister was good enough to record a note for the use of the Committee. The Committee had given due consideration to the views expressed therein. The Committee say that they were anxious that whatever procedure was decided upon should be such as would lead to mutual understanding, harmony and goodwill between the two Houses and the procedure should be so devised that possible conflict or friction between the two Houses was avoided, and at the same time the respect due to each House and the independence of each House were fully secured. The Committee quoted article 103 of the Constitution, under which the powers, privileges and immunities of each House of Parliament and the members and the Committees of each House shall be such as may from time to time be defined by Parliament by law and until so defined shall be those of the House of Commons, United Kingdom and of the members and the Committees thereof, at the commencement of the Constitution.

The Committee say that after having fully considered all these matters including the views expressed in the Prime Minister's note referred to in their report, para 4, they were of the opinion that the following procedure should be followed in cases where a

[Shri Vasant Sathe]

Member or officer or servant of one House was alleged to have committed breach of privilege or contempt of the other House; when a question of breach of privilege was raised in any House in which a Member, officer or servant of the other House is involved, the Presiding Officer should refer the case to the Presiding Officer of the other House unless a hearing the Member who raised the question and seeing the documents, he was satisfied that no breach of privilege had been committed and the matter was too trivial to be taken notice of in which case he might disallow the motion for breach of privilege.

This was the recommendation in relation to the two Houses of Parliament. This very principle has also been adopted by the Presiding Officers' Conference held in 1957.

That was in Shillong. This is what they adopted. Meghalaya is the successor of the previous State and they cannot plead ignorance saying "We are a new State and we do not know". This is what they adopted;

"The Committee feels that although the legislature concerned can punish an offending Member of Parliament or Member of another State legislature, a convention should be developed to the effect that when a breach of privilege is raised in any legislature in which a member of another legislature is involved, the Presiding Officer should refer the case to the Presiding Officer of the legislature to which that member belongs and the latter should deal with the matter in the same way as if it were a breach of privilege of that House. The Committee suggests that an identical resolution on the lines of the draft given in Appendix D may be adopted by the various Houses. The resolution will serve as Directions of the Houses and will be binding on the members...."

This resolution was adopted by the Assam Legislature. The Meghalaya Assembly Speaker may be new and

may be ignorant of this, but they must be having their Secretaries, their Shakhders and Patnaiks to advise them. They cannot say, "We were not advised properly and we were ignorant of this practice and procedure". This is a healthy practice and anyone with a little parliamentary knowledge can appreciate it.

May I quote from page 262 of Practice and Procedure of Parliament by Kaul and Shakhder?

"According to Hatsel, the leading principle which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other; and that they shall be in every respect totally independent one of the other. From hence it is that neither House can claim, much less exercise, any authority over a member of the other. Neither House of Parliament can take upon themselves to redress any injury or punish any breach of privilege offered to them by any member of the other House."

There is another well-known practice and it is this. After the Deputy-Speaker gets notice from the Privileges Committee of the Meghalaya Assembly, which is asked to report by March 1974 on the privilege issue, he will have to go there to appear before the privileges committee that is the law on this? This is what Erskine May says—this has been adopted by us here:

"Attending as a witness before the other House or committee thereof without the leave of the House of which he is a member or an officer is regarded as contempt of the House."

The Committee of Privileges of Lok Sabha in 1958 went into this question and in their Sixth Report presented to the House on 25th November 1958 recommended that the House should not permit any one of its members to give evidence before the

other House of Parliament or a committee thereof without a request desiring the attendance and without the consent of the member whose attendance is required: Further, such requests from the other House of Parliament of Committee thereof ought to express clearly the purpose for which the attendance of the member is desired. The Committee further recommended that no Member shall give evidence before either House, or a Committee thereof, or before the House of a State Legislature, or a Committee thereof, without the leave of the House being first obtained. This recommendation was adopted by this House. Therefore, it is the recommendation of the Committee that whenever a question of breach of privilege is raised involving the Member or officer of a House, the Speaker of the House where this question is raised has to refer the matter to the Speaker of the House to which that particular Member belongs: In this case, unfortunately, the State Legislature of Meghalaya has got itself involved by proposing a resolution. I do not know, at least from the newspaper cutting it is not clear, whether the motion has been adopted. The newspaper report says:

"The 'Swell' episode today entered a new phase when the Meghalaya Assembly took up the breach of privilege motion against the Lok Sabha Deputy-Speaker and referred it to the Privileges Committee, reports the PTI.

The motion moved by the opposition Member Shri Henry Hynnevta said Professor G. C. Swell had falsely and maliciously distorted the proceedings of the House in a leaflet containing criticism of the APHLC Government....

As the motion was supported from both sides of the House, the Speaker Shri R. S. Lyngdoh referred it to the Privileges Committee, saying that it is a ticklish issue since it concerns a Presiding Officer of the Lok Sabha, but it is a fit case." •

It does not say whether the motion was adopted by the House, but I am not on that point now.

My short point is this. The Speaker of Meghalaya, by referring this case to the Privileges Committee, has committed a breach of privilege of this House. I do not want to precipitate matters and create a sort of crisis; that would not be right. So, I would request that you may point out all these things, convey the feelings of the members here and point out all the points of law and precedents that we have quoted here to the Speaker of Meghalaya. If after pointing out all these things he is good enough to correct himself, the matter should end there, because we do not want to raise a crisis here. But if he does not correct himself, if he persists in his present course then, of course, the matter will have to take its own course. We have to consider this matter in all its seriousness so that we do not create a bad precedent in this House.

MR. SPEAKER: The motion of Shri B. K. Daschowdhuri is identical to that of Shri Sathe except that there is one extra paragraph at the end which says "...the question of breach of privilege against Shri Henry Hynnevta, Member, Meghalaya Legislative Assembly, for having raised the question of privilege against...."

SHRI B. K. DASCHOWDHURY (Cooch-Bihar): Sir, I fully agree with the view expressed by my friend Shri Sathe, that it is a fit case to be considered by this august House. Nobody in this House either on this side or on that side, will have any difference of opinion when I say that it is really a matter of contempt of this very august House. Along with this, I have also stated in my motion that the mover of this privilege motion in the Meghalaya Assembly, Shri Henry Hynnevta, has committed a contempt of this House.

SHRI H. N. MUKERJEE (Calcutta-North-East): On a point of order. Is it in order for this House to say that

[Shri H. N. Mukerjee]

a member of the State Legislature, speaking in his House, had committed some offence of which we have to take note? I had an idea that Members of Parliament as well as of the State Legislatures have the freedom to speak what they like in their own forum irrespective of goodness or badness or rightness or wrongness. I am distressed as much by what the Meghalaya Assembly did as by certain things which I have heard in this House so far. What Mr. Daschowdhury has said goes against the grain of the whole Parliamentary proceedings.

MR. SPEAKER: I have not made any observations on it, nor do I have any idea to judge it on the spot. Because he had added a new para in an identical motion—his other paras are similar to that of Mr. Sathe but he has added a new para—I have asked him as to what it is. As to how far it is the correct procedure or not, I am not going to make any observation....

SHRI JYOTIRMOY BOSU (Diamond Harbour): You have to.

MR. SPEAKER: Not at this stage, but at the end. Now I want to listen as to what he wants to make out by this para.

SHRI B. K. DASCHOWDHURY: I make a reference to rule 352 of the Rules of Procedure and Conduct of Business in Lok Sabha. Clause (v) of rule 352 specifically says:

“reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms;”

It is said about our House, about a Member of this House. I have nothing to say against any hon. Member of this Legislative Assembly; I have nothing to say that there should be any confrontation between an hon. Member of this House and an hon. Member of any other House of State Legislature. But here the point is ‘persons in high authority’....

MR. SPEAKER: You are basing

your observations on our own rules, of procedure that a Member of the Meghalaya Assembly in his Legislative Assembly reflected on the conduct of Prof. Swell which, according to you, he could not do because of his being a person in high authority. I think, this is what you mean. You are basing your observation on our own rule, ‘persons in high authority’, etc.

SHRI B. K. DASCHOWDHURY: Yes. Again, Sir, the position of Speaker or Deputy-Speaker is guaranteed constitutionally. A person occupying the chair of Deputy-Speaker is a person in high authority. It would have been better, I respectfully submit that there ought to have been a substantive motion even in their own House to go through a *prima facie* case of that. Even without making any substantive motion, they have raised the name of Deputy-Speaker. Mr. Swell is not only a member of this House but, as they know very well, he is also the Deputy-Speaker of Lok Sabha.

About the other points, my hon. friend, Mr. Sathe, has already summarised. On four counts, that should be considered....

MR. SPEAKER: He has already mentioned....

SHRI B. K. DASCHOWDHURY: It is better that we have this issue settled once and for all. There should not be any confrontation between this House and any other House of State Legislature. But the matter has come up like that. This is a well known convention. “Where a contempt or breach of privilege has been committed by a Member of Parliament against a State Legislature or by a member of a State Legislature against Parliament or the Legislature of another State, a convention is being developed to the effect that, when a question of breach of privilege is raised in any Legislature in which a member of another Legislature is involved, the Presiding Officer refers the case to the Presiding Officer of the Legislature to which that member be-

longs and the latter deals with the matter in the same way as if it were a breach of privilege of that House...."

MR. SPEAKER: He has already mentioned that in his motion.

SHRI B. K. DASCHOWDHURY: Sir, that is an established procedure or convention. Now I find that this convention has not been maintained duly by the Meghalaya Assembly. I would submit to you, Sir, that you may make a reference to the Meghalaya Assembly and have this issue settled once and for all.

MR. SPEAKER: Then, there is the motion by Mr. Stephen—same wording, same paragraphs as Mr. Sathe's motion. Mr. Sathe has already spoken.

SHRI C. M. STEPHEN (Muvattupuzha): I do not want to add much to what the hon. Members have said. Several authorities have been quoted. I only want to underline one or two matters.

There are two matters of practical importance which are coming up immediately. One is, how the Deputy Speaker of Lok Sabha, it appears, will be summoned before the Privileges Committee of Meghalaya. It has been referred to the Meghalaya Privileges Committees. Therefore, the proceedings may start. The convention here is that no Member of this House shall appear before the committee of another House as a witness. Here, the distinction is as a counter-petitioner. Nevertheless, the effect will be the same. This is an important matter that is coming up.

Secondly, the law, the practice and everything which is being followed here or in the UK is that the jurisdiction on a member of a particular House is reserved exclusively to that House wherever the offence has been committed. That is the principle on which the Privileges Committee has ruled and the convention has been followed that if a breach of privilege motion is allowed in a particular House, the matter must be referred

to that House to which the Member belongs. That exclusive jurisdiction of this House on a Member of this House is being violated by a proceeding in the Meghalaya Assembly. This is a violation of the privilege of this particular House. Therefore, it is not merely a contempt of a member, it is a contempt of the entire House, a violation of the jurisdiction of this House. It is a violation of that. That way also, it has got to be looked at. Therefore, it is amply clear that there is a violation of the privilege. There is a contempt committee, may be without full knowledge. Therefore, it becomes a ticklish question because another Legislative Assembly is involved.

Therefore, I would submit that, rather than proceeding under the Rules of Procedure and immediately referring the matter to the Privileges Committee for a decision, if the House feels that there is a violation of the privileges of the House and a contempt has been committed, you may kindly take up the matter with the Meghalaya Assembly and evolve a procedure whereby the Deputy Speaker of this House may not have to appear before any other committee. If necessary, a direction may have to be issued. It will be a very unfortunate thing if the Privileges Committee of Meghalaya happens to issue a summons to the Deputy Speaker of this House. Let it be noted that the Speaker of the Lok Sabha and the Deputy Speaker of the Lok Sabha have got a status of their own. They, in their official capacity, represent the entire House. Therefore, so long as any particular person occupies that position, to be summoned up by any other body means in a way summoning up the entire House. Therefore, it is certainly a violation of the privilege of this House.

On these three grounds I submit that a contempt has been committed. The only question is: how to proceed with it. I would submit that rather than proceeding technically, some method may be evolved and the matter

[Shri C. M. Stephen]

may be taken up with the Speaker of the Meghalaya Assembly, and the rules of procedure may be brought to his knowledge so that a confrontation may be avoided and the jurisdiction of this House preserved inviolate as it was.

MR. SPEAKER: There is another one by Shri Shyamandan Mishra. Its difference from the other motions is that he has raised this question of contempt of the Lok Sabha by the Meghalaya Legislative Assembly.

SHRI SHYAMNANDAN MISHRA (Begusarai): I have sought your permission to raise a complaint. I am underlining the word 'complaint', because I have not asked for reference to the Privileges Committee. Let that distinction be made absolutely clear. I have only asked for....

MR. SPEAKER: But it is under Rule 222.

SHRI SHYAMNANDAN MISHRA: Rule 222—I am only at that stage. I am making a fine distinction.

Let me make it clear just now. If the House comes to concur with me that there is a complaint and if it refers it to the Privileges Committee then this House should also be committing contempt against the other House. Therefore, I have stopped short of doing that. That is what I am seeking to establish, that is the question that no House can take unilateral action.

Now, Sir, why have I thought it necessary to raise a question of contempt of the House by the Meghalaya Assembly? There are two facts before us. One is that the matter has been referred to the Committee of Privileges by the Meghalaya Assembly. That cannot be done under the conventions that we have been following, nor can it be done in accordance with the construction of Article 105(3) and Article 194(3) of the Constitution. And, secondly, another fact is that the telegram was sent to you after the matter had been committed to the care of the Privileges Committee. The telegram was received by you on the 9th

of December. Had the telegram been sent to you before committal to the Committee of Privileges, that is if the communication were sent to the Presiding Officer of our House before committal, then, there would not have been any cause for contempt against the other House. So, these are the two facts on which I am basing my submissions.

Sir, as you know, our rights, privileges, powers and immunities arise from Art. 105(3) of the Constitution. According to Art. 105(3) of the Constitution, unless our powers, rights and privileges and immunities are codified by laws passed from time to time, they would be governed by the practices that prevail in the House of Commons of the United Kingdom. And that is also the connecting link so far as the powers, rights and immunities of a State Legislature are concerned. Therefore, I am bringing in both the Articles of the Constitution, Art. 105(3) and Art. 194(3). That is the connecting link if you like.

Many hon. Members have asked: Could the two Houses be equated? Can the two Houses of British Parliament be on par with the Parliament and the State Legislature, I say, because the connecting link is the privileges, powers and immunities of the House of Commons. That is the important link. And then there are conventions laid down that, the same rule should govern the relationship between our Parliament and the State Legislature, as governs the relationship between the two Houses of Parliament in the U.K., These conventions, which have developed, are important.

So, both on Constitutional grounds and also on the grounds of conventions the two Houses, that is, the State Legislature and our House, have to be treated in the same way for the matter of interpretation of the relevant constitutional provisions as the relationship between the two Houses of the British Parliament.

Now, what does May's *Parliamentary Practice* say when such a situation arises? That should be the matter

clusive importance in this regard. I am quoting from the latest while Mr. Shakdher in his book has quoted from an earlier edition. So, he refers to page 145; I refer to page 169 of the latest edition of May's *Parliamentary Practice*. This is Complaints against Members or Officers of either House. I am not quoting the same text which Mr. Sathe quoted; I would try to avoid any repetition.

"The leading principle which appears to prevail on the proceedings between the Houses of Parliament is that there shall subsist a perfect equality between them and they shall be in every respect totally independent of one another."

So, I am coming to this point.

The procedure followed in such cases in the British Parliament is somewhat different from the procedure followed in the Indian Parliament and yet, the substance remains the same. This has been described by May as under:

"If any complaint is made against any individual Member or against any of the officers of the other House, the usual mode of proceeding is to examine into the fact and then lay a statement of that evidence before the House of which the person complained of is a Member or Officer. When a Member, Officer or servant of either House has been guilty of any offence either against the House or against any Member which would be punishable by the law, if committed by one of its Members, officers or servants, it is the duty of the House to which such officer belongs, upon being apprised of the fact, to take proper reason to inquire into and punish the offender in a proper manner."

Now, three things clearly arise from this.

The duty of any legislature, where the complaint has been made, is to examine first into the fact. That is

the first duty cast upon it, and then lay a statement of that evidence before the House of which the person complained of is a Member.

Final action has then to be taken and punishment meted out by the House to which the offender belongs. So, there are three conclusions arising from this. No action can be taken in the House where the complaint had been made about a Member of the other House. That is clear. Action has to be taken by the House to which the hon. Member belongs. So, this cannot be referred to the Privileges Committee of that House. Why? It is a very healthy principle. That must be so. If any breach of privilege had been committed against the other House, then we have to take it as a breach of privilege against our House. If that spirit of fraternity does not prevail, then our parliamentary functioning would become difficult.

Mr. Swell, is a respected colleague of ours. We are proud of him because of his objectivity, independence and impartiality. Even if he had committed a breach of privilege, and, if this matter were placed before us, we would treat it as if an offence had been committed against our House. So, this must be absolutely clear in our minds that no action can be taken by the other House and the preliminary duty of that House is to examine into this fact and then to lay evidence before the House. That has not been done. So this is a violation of Article 105(3) of the Constitution. Under Article 105(3) of the Constitution, we have got the same privileges and powers and immunities as the House of Commons. Mr. Speaker, you might also recall that in the year 1958, when the Search light case was before the Supreme Court, the Supreme Court had decided that these powers were almost like the fundamental rights. These constitutional powers cannot be violated. And so, my humble submission is that a contempt had been

[Shri Shyam Nandan Mishra]

committed. Earlier, hon. Members have cited the conventions and the practices evolved by the Presiding Officers of all the Houses of the country. They have decided on certain conventions to be followed in this matter. In fact, if these conventions are violated, in a federal structure that we have and if we go on wrangling, there would be unhealthy consequences. We must have these clearly in our mind. We have to see that there is closer relationship between the State Legislatures and Parliament and therefore, my humble submission is that both in accordance with article 105(3) and in accordance with the conventions and practices that have developed in this country rightly so and keeping in view the federal structure, if there had been a contempt of our Lok Sabha, then you have to examine into it, into the violations of the conventions which they have violated, and after examination, lay the evidence before the House. I am not asking for the committal to the Committee on Privileges and so on.

Finally, it is my anxiety to avoid saying anything which will hurt the feelings of the Members of the other House that is, the Meghalaya Assembly or the feelings of the presiding officer of that House. We want to function in an atmosphere of perfect harmony, amity and friendliness. Let there be absolutely no doubt about it, and we do not want to encroach upon the legitimate domain of the other House too. But since the Constitution is absolutely clear on this point, I think the other House will come to realise that they have indeed committed a contempt of our House.

SHRI SEZHIYAN: Under rule 377 I had also given a notice.

MR. SPEAKER: Should we take up all of them?

SHRI SEZHIYAN: I have got a point of view to present to the House, because I have been very careful in giving my plea or notice under rule 377, that I want to raise a grave and

serious matter deserving immediate attention of this House. The other motions have been given under rule 22, and a specific request has been made to refer this matter to the Committee of Privileges, but subsequently they have amended it.

In regard to this, I want to make one thing very clear, namely that it is very unfortunate that a motion should have been made and passed in the Meghalaya Assembly and I personally, may not approve of that, but on that score, I do not want to indulge in any criticism of the proceedings of that House or of the other Legislature or the merits of the question. I am also not concerned with the Mover or the Speaker, because that is the concern of that legislature. We are concerned here about the outcome of the motion passed there and how far it impinges on the privileges and rights of a Member of this House.

Very many instances were quoted and reference was made to the procedures of the House of Commons and the House of Lords and also to the recommendations of the joint sitting of the Privilege Committees of both Houses of this Parliament. The House of the People and the Council of States are parts of Parliament, a single entity here. But here we are confronted with a motion moved by a State Legislature against a Member of Parliament.

I would like to invite the attention of hon. Members to a similar instance that had happened in this House. About two years ago, Shri Shivappa made some remarks which were resented by the Members of the Tamil Nadu Assembly, and this issue was raised in the Tamil Nadu Assembly on a privilege motion, but that was not allowed to be discussed, by the Speaker of the Tamil Nadu Assembly who wrote to you, Sir, and wanted you to take a decision on that case and refer it back to them. They accepted your decision on the question whether he had committed a breach of privilege or not.

Therefore, we should be very clear in seeing that we do not comment on whether they have made a right decision or not, whether the Mover of the motion in the Meghalaya Assembly moved a proper motion or not. We are not concerned with those things. We are only concerned to the extent of the motion impinging on the rights of a Member of this House. We should concern ourselves only to that extent.

Therefore, my suggestion will be that the Speaker may kindly write to the Speaker of the Meghalaya Assembly inviting his attention to the accepted procedure of referring the matter, wherever a privilege question is raised against a person who is not a Member of that legislature to the presiding officer of that House of which he is a Member, in this case, to the Speaker of this House. In light of his reply, we can take further action in this matter.

SHRI VASANT SATHE: That is what we are also asking.

SHRI H. N. MUKERJEE: I am very unhappy that the Meghalaya Assembly has proceeded in a certain fashion, particularly because it affects our Deputy-Speaker whom we all like and respect, but I have also been very unhappy over the many observations made in this House which have become public property and might very well exacerbate the relations between our Parliament and the Meghalaya Assembly. I do wish I had an expectation from responsible Members of this House that they would deal with this kind of delicate subject with greater tact and discretion. I was astonished, for instance, when my friend, Shri Shyamnandan Mishra, who is so adept in constitutional argumentation, was suggesting as if this House being the Parliament of India had a supervisory jurisdiction over the State Legislatures—

SHRI SHYAMNANDAN MISHRA: No, no. It is very unfair.

SHRI H. N. MUKERJEE: It is completely fair; it is their sense of fairness.

SHRI SHYAMNANDAN MISHRA: Please protect me at least in this matter. I have never done that.

MR. SPEAKER: He says he has not done it.

SHRI H. N. MUKERJEE: He might have a different connotation of the words "fairness" and "unfairness" in his vocabulary.

SHRI SHYAMNANDAN MISHRA: I have not said anything to that effect.

SHRI H. N. MUKERJEE: He said that their interpretation and application of the law of privileges pertaining to their Assembly was wrong and that, therefore, this House has got to come into the picture.

SOME HON. MEMBERS: No, no.

SHRI H. N. MUKERJEE: In so far as we are concerned, we are a quasi-federal set-up if not a completely federal set-up and certain conventions are there, and we cannot deny to that State legislature whatever rights they have under the Constitution. In regard to the substance of the matter, I have no manner of doubt in my mind that it was a petty political vindictiveness against Mr. Swell that has led to the kind of proceedings which have taken place. (*Interruptions*). But I am absolutely sure that in so far as the invocation of privilege was concerned the legislature was within its rights.

I know that in 1954 and again in 1958 certain conventions had been adopted. I have no doubt about it. I know at the same time that the Meghalaya Assembly as a responsible body should have taken note of the conventions which have been adopted by the Parliamentary community in this country. I know, also, at the same time, that a convention of this sort is perhaps an arguable proposition in so far as its enforceability by

[Shri H. N. Mukherjee]

a new reborn State legislature is concerned. I cannot go into the matter at this present point of time. What I can expect is that good sense will dawn on the Meghalaya Assembly, and it is a happy accident that in the Parliamentary recess which is soon to come there is going to be a meeting of the Speakers and the Presiding Officers of the different legislatures when there would be an opportunity of discussing this matter informally; there would be an opportunity of coming to some kind of understanding, but, unfortunately, some of the dirty linen has been washed and some observations have been made and unnecessary exacerbation of sentiments has taken place, and that has made the task of the meeting of the other presiding officers more difficult.

Therefore, I say that in view of the 1958 convention which all legislatures would consider to be binding, it is for them to decide according to their light, and in view of this convention, this particular case should be drawn a veil over, but that can only be done by negotiation behind the scenes. In so far as the Maghalaya Assembly and its jurisdiction about the privilege is concerned, we unfortunately have no hand in that matter.

In so far as the Deputy-Speaker being immune,—a man for whom I have a personal liking—I would have to say this. Normally, a Speaker goes into retirement in so far as his political personality is concerned; he puts his political personality either in retirement or in temporary hibernation. But the Deputy-Speaker is under no such obligation. I am very happy that our Deputy-Speaker, who is a vibrant personality, who has been elected Deputy-Speaker from among the Members of the Opposition, has got his own political ideology and he is pursuing that ideology in his own way, right or wrong, in that part of the country to which he belongs. Even though he is a very highly respected individual, holding a very dig-

nified and important and elevated office, there cannot be any very special immunity. Anybody, Member of the House or not, as citizens we are liable to be hauled up by another State legislature, unless we wish to go and give evidence before a court or before a committee of another State legislature—that is a matter on which we can as Members of the House refer to you and to the House and get our directions. That is all the immunity we have got; we have got no other immunity. Therefore, I feel that something very unfortunate has happened on account of the peculiar political set up in Meghalaya. Something very unfortunate has taken place, but that misfortune will not be corrected by the kind of proceedings which were very irresponsibly suggested, that is referring to the Committee of Privileges... (*Interruptions*).

SHRI VASANT SATHE: I object to this.

SHRI H. N. MUKERJEE: A complaint is brought at the expense of the time of the House; it is not a matter for which permission had to be given. We are not here to bring a complaint before you; there must be some objective, some idea behind it. If they were only to give a complaint, they can give it to you in your room... (*Interruptions*).

MR. SPEAKER: Some Members had sent me these motions.

SHRI JYOTIRMOY BOSU: You should allow me also to say a few words because the motions have come up before the House. You have allowed so many Members and I want to make an observation that should go on record.

MR. SPEAKER: If I go beyond the list of names, it means I am allowing a debate. When a debate is allowed, I will not listen to one but many other Members. I have not allowed a discussion at this stage. What is being suggested is that the

procedure suggested should be followed. You can speak on many other things.

Now this is a very difficult situation. The motions tabled by hon. Members are a bit different from one another and I will have to see whether anyone is to be allowed and which one is to be allowed after due consideration. If we allow any motion at a later stage, Mr. Bosu would be amply accommodated. Mr. Daschowdhury raised some points of procedure and Shri Shyamnandan Mishra referred to article 105 (3) along with 194, applicable in the case of States; that of course leads us only to the point where we have to allow a Member to appear as a witness or give evidence.

14.00 hrs.

Shri Sathe referred to the decision of the Conference of Presiding Officers in 1957. I am a party to that decision. I participated in all those conferences—about 11 of them from 1952, onwards—and I am a party to that. It was discussed, and after a lot of discussion, this procedure was adopted. There is also a similar procedure laid down by a joint committee of this House and the Rajya Sabha in 1954 and repeated later on also. These are the procedures definitely fixed and followed. In the present case, the Meghalaya Assembly or Meghalaya Speaker should have followed them. This is my own opinion. Rather than complicating it and getting involved in a rigmarole of constitutional and procedural issues, the very clear indications given in these decisions should have been followed. Prof. Mukherjee said, we should refer it to the Committee of Presiding Officers which is meeting immediately after this session is over. In my opinion, the Presiding Officers Conferences have laid a very clear procedure on that. This decision was endorsed by 13 Legislative Assemblies, and Assam is one of them. In my opinion, Meghalaya inherits that

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part of the resolution. When Punjab was partitioned in 1974 and again later when Haryana was formed, the new States always provided that the old rules of the joint States would be followed to the extent they did not change them by a procedure laid by the House. I presume this is true in the case of Meghalaya also. But I will not allow the discussion, because what we are objecting to is, without referring to us, they have admitted this privilege motion. If we admit the same, we are doing what we are advising others not to do. The Speaker of Meghalaya has already sent me a telegram which I received on Saturday....

SHRI SHYAMNANDAN MISHRA:
That is *ex-post facto*.

MR. SPEAKER: One thing is clear from the papers. They have already admitted it. If they had awaited our reply, the situation could have been avoided. Whether it was adopted before or after the telegram makes no difference, because it is already admitted there.

Another point that was raised was that before adopting this procedure, the whole situation was discussed and statement prepared and then sent to the House to which the "offender" belongs. In our legislatures, we have this procedure that this is not gone into. This is not discussed. It is sent to the House to which the offender belongs.

SHRI SHYAMNANDAN MISHRA:
If a complaint is made about breach of privilege or contempt having been committed by a member of the other House, what would be the duty of the Chair? The Chair's duty will be to examine into the facts and then lay such evidence as is available before the other House.

MR. SPEAKER: It is for the Speaker to satisfy himself, but not get the issue judged first and then put it to the other House.

SHRI SHYAMNANDAN MISHRA: We must be very sound in these matters. So far as a member of your House is concerned, you can decide about it. But so far as a member of the other House is concerned, you have to examine it and lay whatever evidence is available before the other House.

MR. SPEAKER: I am quoting from this book of our Secretary-General.

SHRI SHYAMNANDAN MISHRA: Where does it say something which goes contrary to what is said in May's *Parliamentary Practice*?

MR. SPEAKER: I do not want to enter into an argument over this.

SHRI SHYAMNANDAN MISHRA: This must be made clear for the future.

MR. SPEAKER: In view of the consensus of opinion—I think Shri Sathe said the same thing, which was supported by Shri Stephen, Shri Sezhiyan and Professor Hiren Mukerjee—we should leave the matter as it is. I will take it up with the Speaker of Meghalaya. If it is not resolved at that level, then I shall come before this House for a suggestion as to how to proceed with it. I hope all of you agree to this procedure.

SOME HON. MEMBERS: Yes.

SHRI JYOTIRMOY BOSU: Certain remarks have been made here which might not create good feelings between the two Houses. Sir, I would expect you to kindly go through the records before they are finalised.

MR. SPEAKER: I will go through it. If there is anything objectionable, certainly I will see what can be done about it. We must remember there is freedom of speech in both the Houses.

14.06 hrs.

PAPERS LAID ON THE TABLE

REVIEW & ANNUAL REPORT OF HINDUSTAN SHIPYARD LTD. FOR 1972-73, NOTIFICATIONS UNDER A.P. MOTOR VEHICLES TAXATION ACT, 1963 AND A STATEMENT

THE MINISTER OF SHIPPING AND TRANSPORT (SHRI KAMLAPATI TRIPATHI): I beg to lay on the Table:—

- (1) A copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619(A) of the Companies Act, 1956:—
 - (i) Review by the Government on the working of the Hindustan Shipyard Limited, Visakhapatnam for the year 1972-73.
 - (ii) Annual Report of the Hindustan Shipyard Limited, Visakhapatnam for the year 1972-73 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon.

[Placed in Library. See No. LT-5945/73].

- (2) (i) A copy each of the following Notifications (Hindi and English versions) under sub-section (2) of section 9 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963, read with clause (c) (iii) of the Proclamation dated the 18th January, 1973, issued by the President in relation to the State of Andhra Pradesh:—
 - (a) G.O. Rt. No. 2880 published in Andhra Pradesh Gazette dated the 2nd November, 1972.
 - (b) G.O. Rt. No. 3194 published in Andhra Pradesh Gazette dated the 7th December, 1972.