

14.36 hrs.

MINIMUM PRICE OF JUTE BILL*

Shri Jhulan Sinha (Siwan): I beg to move for leave to introduce a Bill to provide for fixation of minimum price of jute.

Mr. Chairman: The question is:

"That leave be granted to introduce a Bill to provide for fixation of minimum price of jute"

The motion was adopted

Shri Jhulan Sinha: I introduce the Bill.

14.37 hrs

PARLIAMENTARY PRIVILEGE BILL

Mr. Chairman: Shri Ram Shanker Lal is absent. So, the House will now take up further consideration of the following motion moved by Shri Naushir Bharucha on the 12th December, 1958.

"That the Bill to define powers, privileges and immunities of Parliament and its Members in certain respects be taken into consideration"

Out of 2½ hours allotted for the discussion of the Bill, one minute was taken on the 12th December, 1958 and 2 hours and 29 minutes are now available. Shri Naushir Bharucha may continue his speech.

14.38 hrs.

[**MR. DEPUTY-SPEAKER** in the Chair]

Shri Naushir Bharucha (East Khadesh): The Bill I propose to discuss today at some length relates to the privilege of this hon House and of the hon Members. An incident occurred in the House of Commons when one MP by name Mr. Strauss wrote a letter to the Minister on 8th February 1957, a letter in which a complaint about the London Electricity Board and its policies in connection

with sale of copper scrap was made. That letter was *per se* defamatory and the London Electricity Board called for an apology from that Member and threatened to prosecute him criminally. Mr Strauss felt that his privilege as a Member of Parliament was in danger and, therefore, he requested the protection of the Chair, and the Chair referred the matter to the Privileges Committee. On the issues before the Privileges Committee its decision was that in writing a letter Mr Strauss was engaged in a proceeding in Parliament within the meaning of the Bill of Rights, 1688

I shall discuss the phrase "proceeding in Parliament" at considerable detail presently. The Privileges Committee also held that the solicitors, by threatening to issue a writ or summons against Mr Strauss committed a breach of privilege of Parliament and, thirdly, the Privileges Committee recommended that the opinion of the Privy Council should be sought on the issue whether the House would be acting contrary to the Parliamentary Privileges Act of 1770 if it were to treat the issue of a writ as a breach of privilege.

The Judicial Committee—the Privy Council—replied in the negative. But in the mean time, probably the solicitors of the London Electricity Board thought it wise to drop the proceedings. Therefore when the matter was referred back to the Privileges Committee, the Privileges Committee recommended that no action may be taken in view of the fact that the threat which was issued had been dropped. At that time there was free vote in the House of Commons and when the report of the Parliamentary Privileges Committee came up, it was not accepted by 213 votes to 218—a difference of five votes, which appears to be more or less a snap vote. The result is that today the position is that any MP, who writes to a Minister

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complaining even about an autonomous body and making allegations against that autonomous body, stands the risk of being prosecuted.

How the Privileges Committee came to its conclusion is a bit interesting. It came to its conclusion because it followed a report made by a committee on privileges in 1939. It discussed the arguments, which I shall mention in some extent. It said that the basic statute, which enshrines the liberty of a Member of Parliament to speak freely with immunity from prosecution, is the Bill of Rights of 1688. Article 9 of the Bill of Rights, from which we today in our House derive our liberty, reads:

"The freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or any place outside the Parliament."

That is the source from which today we MPs derive our immunity from criminal prosecution in respect of anything that we say on the floor of this House.

Now it should be noted that the freedom extends to anything which is said, that is freedom of speech freedom of debate plus freedom in respect of proceedings in Parliament. If I press a button and record my vote that is a proceeding in Parliament. Even that is a proceeding in Parliament, because I vote that a particular motion is a correct motion. Therefore the words 'proceedings in Parliament' have a much wider meaning than merely a speech in Parliament.

The question is what can be 'proceedings in Parliament'. It is a question of law and so far there is no judicial pronouncement as to what 'proceedings in Parliament' means. The Committee of Privileges came to the conclusion that letters written by MPs to a Minister should be protected on the same basis as speeches made in the House because in that particular

case it was felt that the London Electricity Board had responsibility under the Act of Parliament as any autonomous body, for instance, like our steel corporations. It has got responsibility under the Act of Parliament and the Minister is bound to answer criticism relating to the administration of such autonomous concerns.

When the Bill of Rights in 1688 was passed, the system of asking questions and obtaining answers on the floor of the House was not prevalent then. Questions and answers are certainly and admittedly now a part of the proceedings in Parliament but in view of the fact that the amount of Parliamentary work has grown to such an extent a new practice has cropped up in the House of Commons as well as here that instead of asking questions on the floor and getting a reply on the floor one can write to a Minister and obtain his reply with regard to the working of a certain body. In England, I am told, out of 100 in 99 cases a letter is written to the Minister rather than questions asked on the floor of the House. It should be appreciated that in the House of Commons the practice prevails that nobody can ask questions in relation to the working of any autonomous body, that is, about the day-to-day working of an autonomous body. It is ruled out of order. Therefore practically when a Member wants to make allegations against the administration of an autonomous body, he has to write to the Minister. That is the only practical procedure. You must have noticed that repeatedly the Chair advises the Members, when questions are asked, that the hon. Member may write to the hon. Minister. In pursuance of that he writes to the hon. Minister and makes a complaint. Whether that complaint should be protected or whether the Member should continue to be subjected to risk of criminal proceedings is the issue which I am raising here.

It has also been appreciated by the Committee of Privileges which enquired into this incident that suppose

I write a letter to the hon. Minister saying that I propose to raise such-and-such a question in the House and I want information on that—it is now recognised and even the Attorney-General, who otherwise opposed the Report in the House of Commons, stated that—that letter would be a proceeding in the House. The fact must be appreciated that the proceedings in the House do not mean only anything which is done within the four walls of the House. It may be done somewhere outside the House but it may be related to the work in the House. If from Bombay I send a question by post, my letter dropped in Bombay is protected though it is a thousand miles away from the House of Parliament. Therefore the House will bear in mind the fact that when we refer to proceedings in Parliament it does not mean only something which is done while the Parliament is sitting or geographically within the four walls of the House.

How does all this affect us? I shall presently come to that. Under article 105 of the Constitution our powers, privileges and immunities as Members of Parliament are defined as being the same as those of the House of Commons unless we specifically alter them by legislation. The net effect of it is that the decision of the House of Commons is binding on us in the sense that our rights and privileges are regulated by that. Today the position would be that if anybody for instance, take the M. O. Mathai incident, wrote to a Minister saying that Shri Mathai is corrupt, Shri Mathai can prosecute him. That letter would not be regarded as a proceeding in Parliament. The issue then will be: Will you permit MPs at every stage to be faced with threats of criminal prosecution or will you pass legislation such as of the type which I have introduced and protect the MPs so that they can discharge their duties fearlessly? That is the issue that is before the House today.

As the law stands today, that is, the law of libel, under the Penal Code, it

may be argued that MPs have got what is known as a 'qualified privilege'. By 'qualified privilege' it is meant that the section of defamation is defined in the Penal Code and then there are ten exceptions made in favour of anything said or done by anybody in discharge of his duties as a public officer and so forth. These are protected. But then it should also be appreciated that the burden of proving, that the case falls within the four corners of one of these exceptions rests heavily upon the accused who in this case would be an MP. If I write to the Minister saying that Shri Mathai or someone else is corrupt and if that someone else issues proceedings against me, first I will have to defend myself, appear in a Court, incur a lot of expense and then only I may get the benefit of one of those exceptions to section 500 of the Indian Penal Code.

Therefore the question is whether you would expose an MP, who is doing purely his duty as a Member of Parliament, to criminal prosecution. In the present set up we are having so many autonomous bodies and there are so many complaints about those autonomous bodies that repeatedly we will find circumstances arising where an MP will complain about them and thus MPs will get into trouble, all the more for this reason. Suppose, one makes a complaint of corruption to a Minister against an autonomous body in his charge. The Minister will naturally forward it and ask for an explanation from the particular party. Now that particular party will tell the Minister, "I am prepared to clear my character in a court of law. Give me permission to take it to the court." Therefore the meaning of the words 'I will clear my character in a court of law' is that he will prosecute the MP. Ultimately it will boil down to this: Therefore, what are we going to do about it? Are we going to keep the position as it is or are we going to depart from the practice of the House of Commons and confer upon our Members a larger measure of immunity? That is the issue.

[Shri Naushir Bharucha]

When this report of the Privileges Committee was considered in the House of Commons, the Minister-in-charge of the Home Department, Lord Privy Seal, Mr R A Butler, spoke in favour of investing the MPs with this immunity. He was followed by Mr Strauss, who was of course an interested party, but from the perusal of his debate I find that he is an exceptionally able man who could very well take care of himself even in a court of law but all MPs cannot. He also supported it. The Attorney General opposed it on certain grounds which I shall specify here. What I propose to do is to find out what are the possible objections which could be raised to the Bill which I have moved. I found that fifteen of them are noted in the Commons debate and elsewhere. If I answer all these objections satisfactorily, I think I shall have made out a case, not for immediate passing of this Bill but at least for reference to a Select Committee where all these aspects can be considered.

The arguments against the Bill as I could make out from the debates were, first, why should an MP have a greater privilege than an average citizen. The answer is obvious. Because, an MP is charged with an additional duty with which an average citizen is not charged. Therefore, he must have an additional privilege and immunity to perform that duty. An average citizen is not required to write to a Minister or crack open public scandal as it is the duty of an MP. Where an additional duty or a greater duty or responsibility is imposed on an MP, he must have a greater privilege than an average citizen. There is nothing wrong in that.

The second objection is, why should a private party be deprived of his right to resort to law. Private parties are by law, being deprived of much bigger rights than merely resorting to law. If injustice is caused to even half a dozen individuals, it is much

better that private individuals suffer injustice in the larger cause so that an MP can discharge his duties properly. Which is more important, half a dozen private people being denied justice on account of imaginary or real defamation or all the MPs being rendered powerless in seeking redress of grievances in which millions of other people are interested? Therefore, I say that this is a fit answer to that objection.

The third objection is, must an MP write to a Minister any defamatory or malicious thing, and the Bill must seek to prevent it. Of course, a defamatory thing must be written. How is a Minister to know what is the real position? That is the crux of the situation. Because, if I ask for an enquiry from a Minister, I must make a defamatory allegation. Till then I cannot ask an enquiry into corruption for instance. Such occasions would arise and defamatory things may have to be written. Freedom of speech would not be freedom of speech if it did not include freedom to make defamatory allegation against parties, where an MP feels that certain corruption or some sort of grave irregularity has occurred.

The fourth argument is, one can make a complaint to a Minister in a letter in a language that is not defamatory. With great respect, I submit that is impossible. If I want to say that a man is corrupt, that is the essence of my complaint. No amount of mild language that I can use can convey that impression that there is corruption. If I try to tone down my language, then I do not convey my idea. Therefore it is no use. I was surprised to find that argument advanced by no less a person than Mr Morrison who urged that a Member should not use language such as 'scandal' and say that the conduct of the London Electricity Board is open to suspicion. But these are mild terms in themselves. He has said that 'if in the matter of disposal of

scrap copper, I find that gross irregularities are committed which cost millions of pounds to the tax-payers, why should I not say that it is open to suspicion? Therefore, my submission is no amount of mild language can change the meaning. If in essence you want to convey that the complaint is one of corruption then you become immediately open to the charge of defamation.

The next argument is, where will you draw a line in defining 'proceeding in Parliament—only to matters pertaining to autonomous bodies,—or where do you stop? That also can be answered that a line can be drawn like this it must be a matter of public importance. Secondly it must be a matter in respect of which the hon. Minister is responsible under law. Thirdly it must be a complaint by an MP and in the discharge of his duty as an MP. It must be in the discharge of his duty as an MP and as no other. If I write as a lawyer, I need not be protected. Therefore there are well defined limits within which you can contain the phrase 'proceeding in Parliament'.

The sixth argument would be should we elevate our rights and privileges to the extent of denying normal rights to ordinary citizens? This particular privilege is for the benefit of the citizens. Therefore I feel that although our demand may result in denying normal rights to a few citizens it should be denied in the interests of the larger masses. The next argument would be, if we pass this Bill, any member of the Bar, who accepts a summons on behalf of an MP client will be guilty of breach of privilege. This requires some explanation. If we hold that a particular act is a breach of privilege, and if the court issues summons on me, I as an MP must not care for the summons and say I do not accept it. If I accept, I become guilty of breach of privilege by submitting myself to the jurisdiction of the court. Therefore, if that happens, it may be a minor inconvenience. But, if anybody wants

to traverse the privilege of Parliament he must be prepared to take the consequence of it.

The eighth argument would be, why cannot an MP not raise the same issue as the one covered by his letter in other ways at Budget time or at the time of discussing the annual report of that particular body. But supposing the Budget is passed and in April or May and I discover that fraud is being committed, and unless it is stopped immediately, the public will lose a considerable amount of money must I wait till the next Budget or till the next report comes, when we know that reports of autonomous bodies sometimes do not come for two or three years together? Therefore that is not a remedy. This is the argument against those who want to argue against the Bill which course is better from the point of view of private citizens, for whom so much concern is shown? Would it be better that I write privately to the Minister that Mr X is corrupt? Or would it be better that I raise it on the floor of the House, when 400 papers will the next day report it in the newspapers? Taking all these things into consideration, it is obvious that the procedure of writing to a Minister needs protection.

The ninth objection which may be raised is what is the justification for extending the privilege now, it has worked well since 1688. Why not let the sleeping dogs lie? The answer to that is obvious. We are fast moving in a changing world. Today our autonomous bodies really command sources of revenue which are far greater than the Budget itself. Therefore, if in Parliament, the day-to-day working cannot be questioned in the shape of questions and answers, certainly, the new method or practice which we have developed, namely, writing to the Minister requires to be placed on a footing of protection to the same extent as a speech in the House.

[Shri Naushir Bharucha]

Then, it was urged by the Attorney General in the House of Commons that the fears of prosecution are really groundless. In the last 75 years, he said, only three prosecutions of this type have occurred. There are two answers to this. If only three prosecutions have occurred, it really means that if you pass the Bill, only three private citizens would have been denied the right of going to the court of law in 75 years. This is very insignificant compared to the advantage. Secondly, why is it that there are only three prosecutions? Because the immunity was there to that big an extent. Otherwise, there may have been 30,000 prosecutions. Who knows? That is not an argument at all. I was surprised it was advanced by the Attorney General in the House of Commons.

Then, it is argued that a prosecuted M.P. is protected by a qualified privilege and the courts will take a liberal view. Before I establish qualified privilege, what is my position? I may write a letter from Bombay to a Minister who happens to be in Delhi, who sends the letter for enquiry to Calcutta. In law, the publication of defamation may well be at Calcutta. The officer whom I am trying to take to task would take me to task by filing a prosecution or suit in Calcutta and not in Bombay. First, I have got to run about from Bombay to Calcutta several times before my case is taken up. When it is taken up, I have to establish my qualified privilege. Only an M.P. who is either a fool or not a lawyer will fall into that trap. I for one would not fall into the trap because I know what it costs to gain that qualified privilege. Practically the whole case may have to be fought out to the end. Not only I may have to fly from Bombay to Calcutta, but I may have to see that my witnesses also fly with me. It is impossible at times and the expenditure involved may be so great that if once a Member is involved, he will learn the lesson of his life time and

never point out to a Minister that a particular official is corrupt.

Then, another argument that may be advanced is: even if you pass the Bill, can you really prevent any person from taking the M.P. to court? He will have to defend himself even then.

15 hrs.

It is true, but then I can point blank defy the summons of the court and say I am not going to attend. If the law is passed, I can claim the privilege sitting in my house.

Secondly, what is more, if the man applies to a court for issue of summons, the court knowing that the law is there will not issue the summons. They will say that it is an abuse of the process of the court and they will not issue the summons. They will dismiss the complaint straightaway. So, there is a definite advantage in connection with that.

It has been said that no M.P. has ever felt in writing a letter to a Minister that his letter has become a proceeding in Parliament. Of course, we know nobody knows of it, but now that we are faced with a situation, let us make it clear that this type of communication is protected. Otherwise, not only the M.P. is exposed to prosecution, even the Minister will be exposed. Let the Ministers not remain under the impression that they are safe. The law does not make a distinction between an M.P. from the Opposition and a Minister on the Treasury Bench. Therefore, even if I write a letter which is defamatory, and the hon. Minister passes it on to a third party, that third party has the right in law, whether he exercises it or not is a different matter, to prosecute the Minister.

Then it is said, just because the practice obtains of writing letters to Ministers instead of asking questions, have all those letters also to appear

in our minutes of proceedings? They need not appear. Only, what is claimed is immunity for those letters.

The last one is the same, a repetition, which says that we are giving unrestricted right of freedom to injure the reputation of anybody. I think Ministers are fairly sensible people, and they can be depended upon to see that unnecessary publicity is not given to a letter which is otherwise defamatory.

Then, what are the advantages? The advantages are these. What is the use of my freedom of speech in the House if I cannot write a letter to the Minister with immunity from criminal proceedings and tell him that such and such a person is corrupt or such and such an administration is corrupt? If we deny this common freedom to the M.P., the result will be that his so-called freedom of speech will not be worth the paper on which it is written. After all, how many subjects can this hon. House discuss on the floor of the House?—a very limited number, not even one per cent of the entire administration; discussion on 99 per cent of the subjects covered by the administration may have to be carried on in the form of letters to the Ministers or any other form.

Therefore, what does this Bill want? This Bill wants to define what is parliamentary proceeding. It says:

“Without prejudice to the generality of the powers contained in article 105 of the Constitution of India, the following shall be deemed to be a proceeding in Parliament; (and therefore free from any prosecution);

“(a) Letters addressed by a Member of Parliament to the Presiding Officer or the Secretaries of either House of Parliament or a Minister on a public matter in the course of discharge of his duties as such member;

(b) Communication of such letter by a Minister to any person or body of persons or an institution in course of discharge of his duties as a Minister.

(c) Any reply addressed by the Minister to such letter in the course of discharge of his duties as such Minister”

The whole thing is extremely limited, and it is definitely laid down that a letter will be entitled to be considered as a proceeding in Parliament only if it fulfils certain conditions, namely that it is by an M.P., written in the course of the discharge of his duties as an M.P., and to a Minister who has got responsibility for the administration of that particular subject.

I do not say that this thing should be straightaway passed into law. I hope the Government will consider the whole position, because it is a question of privilege and once it becomes known to officers and others in autonomous bodies that they can threaten, and there is nothing to prevent such letters to the Ministers being made the subject matter of a criminal charge in a court, I am sure these people will come out in any number to see that the M.Ps. dare not raise their voice against corrupt administration. This is a very high principle which is at stake, and I would appeal to the Government not to reject this thing off-hand, but if they so choose to refer it to the Select Committee, it can even go to the Privileges Committee if they think so, but any way to see that the subject matter of this Bill is sufficiently discussed and thrashed out so that the hon. Members may perform their duty fearlessly and with immunity.

Mr. Deputy-Speaker: Motion moved

“That the Bill to define powers, privileges and immunities of Parliament and its Members in certain respects be taken into consideration.”

[Mr Deputy Speaker]

May I have an idea of how many Members want to participate in the discussion? Six hon Members, and the hon Minister

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha):
Two of us

Mr Deputy-Speaker: Eight Shall we have a time-limit then for the Members?

Shri Mahanty (Dhenkanal) Let us see what happens?

Mr Deputy-Speaker. We can very well foresee what is going to happen. At least, all those Members who wish to participate must be given some time. So Members will take note of it. Easwara Iyer. I hope he will be content with ten minutes.

Shri Easwara Iyer (Trivandrum) This Bill seeks to protect Members of Parliament from action at law for publishing defamatory matter in a letter addressed to a Minister or to the Secretary of either House of Parliament. Of course, the Mover of the Bill has explained it in detail.

Mr Deputy-Speaker: Also to the Presiding Officer.

Shri Easwara Iyer Also to the Presiding Officer.

The question is whether such privileges from action at law should be conferred upon Members of Parliament because we know that we enjoy such privileges based perhaps on the traditions of the House of Commons or the House of Lords regarding proceedings inside Parliament. Whether letters written to Ministers or other parliamentary officials should be treated as a proceeding in Parliament in order to confer some privilege on Members of Parliament is a different matter. That has to be discussed in detail.

I am not on that question for the moment. We have to consider what, subsequent to the passing of our Constitution, are the privileges of Members of Parliament or Members of the legislatures. We are, I would submit, in a very nebulous state.

Article 105 of the Constitution which my hon friend referred to says that in the absence of legislation, the powers and privileges of Members of Parliament shall be the same as the powers and privileges of the Members of Parliament in England at the date of the commencement of the Constitution. Of course, my friend did not refer to that, that the powers and privileges will be the same as those available in England at the date of the commencement of the Constitution. So, if there is any subsequent change in England regarding the powers and privileges, any modification any alteration subsequent to the coming into force of our Constitution, we may not take note of it. So, whatever was available on the date of the coming into force of our Constitution only will govern us.

Still we are in doubt. We hear of so many breaches of privileges being committed either as against Members of Parliament or Members of State legislatures or against the House itself. I have also thought that it is better for us to know where we are. Quite apart from the Members of Parliament and Members of the State legislatures, it is better for the people to know where they are, where the privilege starts and where it ends. It is of fundamental importance for the purpose to know whether they can comment upon the speeches of Members of Parliament either in this House or outside the House. Where is the drawing line?—because it is one of the rights (I would not say fundamental rights) of persons now in a modern society to make a fair com-

ment upon the speeches made by any Member of Parliament. So, the question is in doubt. Where does the privilege start? On what conduct can they comment? What action can they comment upon—whether it is the press or whether it is the ordinary citizen of India.

So, the question assumes a vital importance, and quite apart from this Bill, I would, personally speaking—I am not voicing the opinion of anybody else, it is my personal view on the matter—have welcomed a Bill which would put down clearly the powers, privileges and duties of Members of Parliament, with more emphasis on the duties of Members of Parliament, to indicate where we stand, so that the ordinary citizen who is outside the four walls of this Parliament may know on what action he can comment. I am referring to this case because we now say that under article 105 of the Constitution, so far as the Members of Parliament are concerned, we have the precedents of the House of Commons. If we refer to another article, namely article 104, we find that it defines the powers and privileges of Members of State Legislatures as equal to those of the Members of the House of Commons. We are in a federal State, and we are now faced with a situation where a Member of a State Legislature is not inferior to a Member of Parliament, and their rights and privileges rank equally. Supposing there is a conflict *inter se* between the Members of a State Legislature and the Members of Parliament, who should take proceedings against a particular person? That is a matter that is to be defined by law. We have no law in this matter.

Let me take, for instance, a case where there is a breach of privilege committed by a Member of Parliament against a Member of another House; let us say that in England, a Member of the House of Commons commits a breach of privilege as against a Member of the House of

Lords, then the question naturally arises which House is to deal with that breach of privilege. There, it has been held—I am subject to correction when I say this—that it is not for the House against which a breach of privilege has been committed to deal with the breach of privilege, but it is for the House of which the offending Member is a Member to deal with the breach of privilege. We must follow that here also.

Supposing a Member of a State Legislature comments upon the conduct of a Member of Parliament, on whom is the right conferred, is it for this House to decide the question as to whether there is a breach of privilege or is it a matter that should be communicated to the State Legislature which ranks *pari passu* with this House on the question of status and other things to deal with the breach of privilege as if it is a State Legislature matter which is in doubt? I would say, following the precedents of the House of Commons, that it may be for the State Legislature of which the offending Member is a Member to deal with the breach of privilege, if it feels that a breach of privilege has been committed.

Personally speaking, a good deal of confusion has arisen between a breach of privilege and a contempt of the House. I am making a nice distinction here. Article 105(3) reads.

“In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.”

So, this article deals with two privileges, privileges of Members of Parliament and privileges of the House. So,

[Shri Easwara Iyer]

a nice distinction has to be kept in view, according to me, between the privilege which a Member enjoys and the privilege which the House enjoys

Now, let us take a case where the conduct of a Member is called into question. Suppose an hon. Member of the House calls another gentleman outside this House a scoundrel—of course, I am not oblivious of the fact that you, Sir, are always there, having the power to pull that Member up, but let us take, for instance, an extreme case where a Member of the House calls another person outside the ambit of this House, a scoundrel, or a thief or a corrupt man, he is protected from the law, he cannot be sued for defamation, because he enjoys absolute immunity by the law of this House. But what is the remedy so far as the other gentleman is concerned? Can he comment upon that and say that in so speaking the Member has reduced himself to the position of a contemptuous liar? Can the other person who is defamed, I would say, not legally but morally stand up on a platform and say that that Member in making a statement in Parliament like that has reduced himself to the position of a contemptuous liar, without exposing himself to the charge of a breach of privilege? Certainly, is this elementary right denied to him? He cannot go to a court of law and sue him for defamation but is it not open to him to vindicate himself by saying that what has been stated by the Member is wrong, that the Member is a liar, and throw the hon. Member who has spoken like that to face the music in a court of law if he wants to vindicate himself?

I am submitting that if breaches of privileges of a Member of Parliament are to be extended to this extreme case, then the ordinary citizens will not be protected. So, I would humbly submit for the consideration of this House that let Members of Parliament

not be too sensitive. It is a case where Members of Parliament have the right by virtue of the position they are enjoying here, but let us not give them absolute immunity to speak anything and everything they like, scurrilously attacking persons without exposing themselves to any action at law, we have conferred upon them this right for the purpose of enabling them to discharge their duties duly. But let the elementary right which a citizen enjoys, to comment upon the conduct of a Member by saying that what he has stated is not correct, and he is a liar in so saying, shall not in any way be infringed.

I am bringing in this analogy for this purpose namely to consider the case where we write to a Minister saying that so-and-so is a corrupt man. Is it absolutely necessary for us to write to a Minister? We have ever so many other methods here by which this could be brought to the notice of the House. If a particular man, I feel, is corrupt or is a bad man, and he should not be entertained in service, I could bring the matter to your notice, and through you to the notice of this House, and I can speak on that, and with the protection that I have got. But is it absolutely necessary for me to write to the Minister and say that he is a bad fellow? If I write to the Minister saying that he is a bad fellow, I must have the material with me, and I must have the courage to write it, and even if I am sued in a court of law for libel, slander or defamation, I must be there ready to vindicate myself.

My hon. friend, the Mover of the Bill, might say that we may not always find time to bring this matter to the notice of the House in the ordinary course of business, and, therefore, we have to write to the Minister concerned. But my respectful submission to this House is this. Why should we deny to that officer concerned the right to vindicate

himself by saying that what is stated in that letter is not correct, and that he may be allowed to sue the Member concerned, so that he may vindicate his honour? This is a matter which I am placing before this House for its consideration

The law of defamation is there, no doubt, but it is not so clear. Suppose I write a letter to the Minister complaining about the conduct of a particular officer and mark it 'confidential', does it amount to publication? Of course, it may, according to some decision, and it may not, according to some other decisions. Supposing the Minister in his turn sends it to his office or to the officer concerned or the corporation concerned, whether he also will be visited with the technical blame of publication is a matter that the law has not yet settled. But it may be said without any doubt, and the balance of opinion is in that favour in the courts of law, that whenever I write a letter to the Minister and mark it 'confidential', and the Minister feels that it has to be enquired into,—it is not a case where the Minister is unaware of his responsibility,—he must see that it is enquired into without making it technically a thing which amounts to publication. So, it is a case where if it is given into the hands of the Minister concerned, the officer concerned cannot rely upon the fact that I have written a letter to the Minister as amounting to publication in law, to sue me for defamation. Take an extreme case. Even if it is necessary that I have to write to the Minister, it may not amount to defamation so as to necessitate legislation of this nature. We have a number of instances where Members of Parliament or of State Legislatures stand up and say 'there is a breach of privilege,' 'there is a breach of privilege.' The question has to be analysed in its fullness, and we would welcome piece of legislation which would deal with it in an all-comprehensive manner. Particularly when we have a Constitution which is of a federal nature, we have to consider

the respective rights, powers and immunities of Members of Parliament and of the State Legislatures and of even Ministers. Supposing a Minister is in the course of an official communication making a comment, will it be a breach of privilege regarding the Member concerned? That is a matter that has to be considered, because the Minister is responsible to his legislature under the provisions of the Constitution. If his collective responsibility and answerability to his legislature is such that he is writing to the Central Minister concerned, could he be hauled up by this Parliament or by any other State legislature which comes in? This is a matter which is still in doubt. I would submit that it is not for this Parliament but for the respective legislature, to which the offending Member belongs, to deal with him effectively.

So we have to consider all these things to determine what should be done. This should be in the nature of a comprehensive legislation. I would have welcomed this Bill, had it contained all these comprehensive matters.

Shri Ajit Singh Sarhadi (Ludhiana) The Bill under discussion is of great importance and calls for dispassionate consideration in all its aspects. It proposes to extend the immunity for Criminal Prosecution to Members of Parliament not only to what they say here in this House but to also what they write in a communication to the Minister, to the Secretary to Parliament and to other office-bearers of this House.

The question at issue is whether the present protection is quite sufficient, secondly, whether the Members are entitled to any immunities. Taking the second point first, that is, whether Members of Parliament are entitled to any immunity I do not think there can be any issue on that. In order to discharge their duties, they are naturally entitled to a certain protection. That protection has already been given to some extent

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under article 105 of the Constitution. They have been protected to the extent of what they say in the House and this immunity is unqualified. This protection has also been extended to what prevails in the House of Commons. Now a certain change has come in that privilege in the House of Commons by a certain decision taken, to which the hon. Mover referred. If hon. Members of Parliament are entitled to certain privileges for the due discharge of their duties—and those duties cannot be discharged unless they are given those immunities which are essential—it is to be seen to what protection they are entitled.

Now the Bill is a very simple one. It only proposes to extend the immunity to the private communications of a Member to the Minister in the discharge of his duties as a Member. The law of defamation is well known. It is certainly defamation if I write a letter to the Minister or dictate a letter to a steno who gets it typed by a typist. It becomes a publication. Even if it is marked 'confidential', though even if it is marked 'secret', the publication is there. The moment the letter is written, the Member who writes it becomes liable to criminal prosecution for the publication of that defamatory allegation.

Not only that. If the Minister replies agreeing with the opinion of the Member, he too becomes liable to criminal prosecution.

There, under the rules of the House, as you are well aware it is necessary that whenever a Member wishes to make a certain defamatory allegation against a public servant, he must necessarily send a communication to the Minister as well as to you as Speaker, to give an opportunity to the Minister to be prepared to meet it or to have a chance to give an explanation. Now, the position is

very anomalous. Under the rules, he must inform the Minister of a certain defamatory allegation which he wants to make in the House in the due discharge of his duties pertaining to an individual. He cannot make it under the rules unless he sends a communication to the Minister. If he makes such a communication, he becomes liable to criminal prosecution. Therefore, the Government and the Law Minister will have to give consideration to the proposal contained in this Bill.

I think this Bill is not comprehensive enough. I would say that it is most necessary that Members of Parliament should have the right of access to information about all individuals. They cannot have this information unless this privilege is extended not only to them but to those who want to inform them about such an allegation against the public servant. So legislation of a comprehensive nature is called for.

Now let us see if the present law is quite sufficient. The hon. Mover has dealt with it to a great extent. I would not repeat his arguments, but I would certainly say that the present law of defamation does not give sufficient protection. It is quite different from what the law of defamation in England is. We have not got an unqualified immunity or unqualified privilege in any thing. Ours is a qualified immunity under the present law, and the onus lies on him; under the exceptions to the law of libel, he has got to prove not only the justification but in some cases, the truth of the allegations. It will be very difficult for Members of Parliament if in the due discharge of their duties, on a certain information which they believe to be true, which is *bona fide* and which has been given to them, they make an allegation and pass information to the Minister concerned, for which they are hauled up for criminal prosecution. And as for the

venue of the prosecution, Heaven knows where the Minister gets the letter

So, my respectful submission to the House and to the Law Minister is to take this aspect into account. Members of Parliament do need this privilege. They do need immunities, not of a qualified nature but of an unqualified nature. How can they have these immunities as the law at present stands? Article 105 has been read by the hon speaker preceding me. By a certain decision in the House of Commons, it is now clear that the privilege no longer extends to us

Those who work on the criminal side know very well how easily criminal prosecutions can be launched and how easily individuals can be harassed. So unless this protection is given I apprehend that it would be very difficult for a Member to discharge his duties. There will be a lot of prosecutions. Of course, we all come by election. There is always partisanship there are opposite blocs. Such things are there. In case protection is not there, how will we be able to discharge our duties? In case Government wants—and I hope it does—that corruption should be eradicated Government should be informed about the corrupt officers, of course in a *bona fide* manner, not maliciously. In this view a certain protection is called for for Members

I commend the principle underlying the Bill and I hope that Government will give due consideration to this Bill and will come forward, if they do not accept this, with a more comprehensive legislation of a kind whereby Members of Parliament could have immunity in the discharge of their duties

Shri Mahanty: Mr Deputy-Speaker, Sir, this Bill is very simple. What it seeks is merely to expand the scope and enlarge the definition of parliamentary proceedings as mentioned in article 105(2) of the Constitution, so

as to include correspondence addressed by Members of Parliament in the due discharge of their duties, to the Ministers and to the Presiding Officers. The genesis of this matter has been dealt with at length by the hon Mover. I do not wish to cover that ground over again.

As it has been made out by my hon colleague, Mr Easwara Iyer, it seems as though it is an issue between a Member of Parliament and any other citizen so far as the immunities and privileges are concerned. To me it appears that it is not an issue between a Member of Parliament and a citizen or a public servant. It is essentially an issue between the due discharge of duties as a Member of Parliament in good faith and the impediment in its way. It will be for this House to consider this in a non-partisan spirit, in a spirit that transcends all partisan considerations. For here, we are addressing ourselves to a momentous issue which relates to the inviolability of Parliamentary proceedings and to the sovereignty of Parliament on which democracy in this country is going to rest. Therefore it is no question of supporting or opposing this Bill.

Here we have even to consider another aspect. Article 105 of the Constitution with the seriousness it deserves. To that extent, I am in perfect agreement with the hon Mover of this Bill. Let not Government reject this Bill outright one way or the other. Let it refer this Bill to a Select Committee of the House or even to the Privileges Committee for their considered opinion. I hope this humble request will not go in vain. The smile of the hon Minister of Parliamentary Affairs encourages me to entertain this hope.

An Hon Member: Very deceptive

Shri Satya Narayan Sinha: Just wait and see

Shri Mahanty: The whole difficulty arises on account of the fact that we and the Government have chosen in

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their wisdom to continue to allow a twilight of uncertainty to hang over the powers, privileges and immunities as mentioned in article 105 of the Constitution. Article 105 of the Constitution was article 85 of the draft Constitution. When it came up before the Constituent Assembly, it was debated at length. Here are some of the authoritative pronouncements which will be helpful in considering this Bill. Never was a doubt left that article 105 was merely a temporary provision and it was assured by no less a person than the then hon. Law Minister himself that in times to come the Indian Parliament will have to codify, define and determine the rights, privileges and immunities of the Parliament and the Members thereof.

The then Law Minister, late Shri B. R. Ambedkar said:

"I may inform my friend Shri Sidhva that since the time when the discussion took place I made a little research and I find that a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. It might be possible later for our Parliament to codify the privileges."

Even though ten years have passed since the Government had made an assurance that in times to come Parliament will codify its own powers, privileges and immunities—the hon. Minister of Parliamentary Affairs will excuse my saying so—he has failed patently in the duties which devolved on him. The President, Dr. Rajendra Prasad had no illusions about the assurance given by the Minister. He said:

"So it is only a temporary affair. Of course, Parliament may never legislate on that. And, it is, therefore, for the Members to be vigilant."

Therefore, the President of the Constituent Assembly had no illusion

about this kind of assurance. He had warned, Parliament was never going to legislate on this. Therefore, he had asked the Members to be vigilant. And I congratulate Shri Bharucha that he has been vigilant and, doubtless, his vigilance will now compensate the indifference of the Government. And, I believe, they will not put up any kind of obstacle in the way of acceptance of, though not of this Bill, at least of the request to refer the Bill to a Committee of the House.

Coming to the main issue, what is the present position of the law? Now, a Member of Parliament can say on the floor of the House that Mr. X is an unmitigated scoundrel, and no action is going to lie against him in any court of law. Of course, if he says something seditious or defamatory, it will be for the Chair to expunge it from the proceedings. But, certainly, the Chair has also no right to take any other action. Also, if his speech is published by a newspaper no action is going to lie against the paper concerned. They are considered privileged statements and privileged publications.

We have promoted a hundred and one autonomous corporations. These autonomous corporations enjoy special privileges to the effect that in their day to day working the Executive will not interfere. Naturally, when they have been registered as private limited companies and constituted as autonomous bodies over which Government has no voice—like the Universities—in their day to day administration, Parliament has got pretty little opportunity to address itself with a certain amount of vigilance to the day to day working of these corporations.

Asking a question on the floor of the House or making mention of it is an inherent right of any hon. Member. But a situation arises when the question may not be admitted, when there may not be any opportunity to

make any reference to any matter concerning any corporation during the course of debates or any other motion. Therefore, if a Member of Parliament, in good faith, addresses a communication to a Minister or to you that he has got strong suspicions about such and such matters, then, certainly, it should be considered a privileged communication.

It is being said that Members of Parliament do not constitute a separate class by themselves. They should not claim special privileges or immunities. True. I have no pretensions to any constitutional knowledge, but those who have got even a cursory knowledge of it know that it is for the supreme and sovereign body itself to determine what should be the special privileges—not as a body itself but—of even of its individual members. It is not either for the government to determine or any court of law to determine whether this is a privilege of the House or whether that is a privilege of any member. It will basically be the power of the sovereign body to consider whether a certain matter amounts to a privilege or an immunity or not.

I am very chary of leaving this matter for either the Government or the court of law to determine. So, I come back to the original request that I have made. It is, therefore, in the fitness of things that this matter about which divided opinions have been expressed even in the U.K. Parliament should be referred to the Privileges Committee, or to a Committee of the House where the matter can be considered and where we will try to define and codify the privileges and immunities and rights of Members of Parliament.

There is another small matter. What is the scheme of our Constitution? In the scheme of our Constitution, Parliament is the supreme, sovereign body. Article 53 of the Constitution though it vests all the executive power, which also includes the functioning of the autonomous corpora-

tions, in the President, in (3) (b) of the same article, Parliament is more supreme than the President himself. It says that Parliament may confer by law functions on authorities other than the President. It can invest certain powers on the President; it can take them away also and confer them on some other authority. Why I am saying this is to show that Parliament is the supreme and sovereign body in this democratic country and as such if Members exercised that supremacy and sovereignty in the due discharge of the duties, it should not be interpreted in any other way, whether it is a speech made or a correspondence addressed. The President even, can be impeached and removed from office under article 61 if he acts contrary to the provisions in the Constitution. Article 70 empowers Parliament to make provisions for the discharge of functions by the President not provided for in the Constitution. Under article 73 it has been acknowledged that the executive power of the Indian Union is coterminous with the legislative jurisdiction of the Parliament. So, there can be no dispute or doubt that Parliament is the supreme and sovereign power in this country and therefore, as Members thereof, in the due discharge of their duties, if any correspondence is entered into with the Minister or any of the Presiding Officers, it should be considered as a privileged document and no case of libel or defamation should lie against that correspondence in any court of law. I believe it is a worthwhile proposition and it deserves all serious consideration by the Government. They have already taken ten years. I have my own suspicion. In the 1935 Government of India Act, a similar provision was there that as long as it was not defined, the powers, privileges and immunities would continue to be those of the House of Commons. We all know that even though the 1935 Act was scrapped and was lost in oblivion, the proposed Bill never came up and even though ten years have passed we have yet to attend to this aspect of the question which is vitally important. Therefore, I once again

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request that the Government, without rejecting it, out of hand, may agree to refer this Bill to a Select Committee.

Shri Jagannatha Rao (Koraput): Mr. Deputy-Speaker, my friend, the Mover of the Bill seeks to extend the powers, privileges and immunities of the Members of Parliament to all communications that they may have to write in respect of any public undertaking. Before we proceed to discuss the merits or demerits of the measure, we shall have to see what exactly are the powers and privileges. Article 105 says:

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

So, it is subject to the provisions of the Constitution. Article 118 gives this power to the Speaker to frame rules. Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. So, even this freedom of speech contained in article 105 is controlled by the other articles of the Constitution. So, even when we make a speech here, we are required according to the conventions to use decent language and observe decorum. Even the freedom of speech is limited. The Speaker can pull up a Member who indulges in indecent language.... (*An Hon. Member: ... sedition*)... (*Interruptions.*) seditious or defamatory speech. We have a responsibility in the discharge of our duties to be more careful and cautious when we make a statement. We should weigh each word that we use and see that we do not hurt or transgress the limits of decency and morality.

What are the fundamental rights of the citizens of this country in respect of the freedom of speech. Article 19(1) gives freedom of expression but that is subject to a proviso. It sets

limits to the freedom of speech. The limitations are the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. That is the freedom of expression that a citizen enjoys. I do not concede the position that Members should get greater freedom for indulging in any one of these acts. Article 105(2) refers to the publication of the proceedings of Parliament. A Member has the privilege to speak whatever he likes within the four walls of Parliament for which if he speaks elsewhere he may be liable under the criminal law of the land and the publisher and printer would also similarly be liable.

We have recently a case of the Orissa High Court. Shri Mahanty initiated proceedings against the Chief Minister of Orissa for contempt of the High Court on the ground he uttered some slanderous statement against the High Court Judges. But the High Court, under article 194, held that he was absolutely privileged in making a speech but the printer and publisher had no right to publish it and they were found guilty. So, this freedom or this immunity which is conferred on Members of Parliament should be used sparingly and cautiously. My friend, Shri Bharucha, envisages a situation where a Member of Parliament in the discharge of his duties *bona fide* may have to make or send a communication in writing to a Minister wherein he may have to use some language which may be defamatory. To appreciate that position we have to consider whether entering into communication with the Minister in writing would come within the definition of proceedings in Parliament. For that we have to refer to article 105(3).

Shri Naushir Bharucha: It does not and hence this Bill.

Shri Jaganatha Rao: Article 105(3)
says

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

My friend has brought forth this measure because of the case of Mr Strauss, a Member of the British House of Commons. He was hauled up for defamation. This matter was brought up before the House of Commons. The privileges committee held the opinion of the judicial committee was received and the House of Commons by a slight majority rejected this case of privilege.

Sir, to envisage such a situation, I would consider that this present moment is not expedient, because we have passed through 11 years after adopting the Constitution and we have been following the conventions and rules and practices established in the House of Commons which is considered the Mother of Parliaments. Any change in the conventional procedure which the House of Commons has adopted or has to adopt after the 26th January 1950 is not binding on us. What has been the established practice and usage upto 26th January, 1950, in England governs us. Therefore, I think we need not get agitated about Mr Strauss's case. So, to have a Bill at the present moment is not necessary.

Apart from writing letters, we have got other remedies such as putting questions, initiating resolutions and motions and so on. If at all we have to write letters to Ministers in the discharge of our duties in respect of any public undertaking, we should be

cautious while bringing forth our complaints, and it does not benefit us to use language which is defamatory. There is also the question of good faith. If we use such a language which may defame anybody, then there is the question of good faith, and it protects us.

Shri Mahanty says that the Bill may be referred to the Committee of Privileges. But I fear that the question of privilege does not come in. Take a particular incident that happens. Supposing a Member of Parliament is held up for defamation by a court. Then, it is open to the Member to raise the question of privilege. Then this House can consider and send the matter to the Committee of Privileges. Then the Committee of Privileges comes to its conclusion and gives its report. Otherwise, the jurisdiction of the Committee of Privileges cannot be invoked.

Secondly, I might say that till today we have not decided exactly what the powers of Parliament are and what the jurisdiction of Parliament is over the public undertakings. In the day-to-day administration of these undertakings has Parliament power and jurisdiction to go into any question? It has to be decided before we think of a situation which may arise where a Member of Parliament may have to write some letters to the Minister concerning any undertaking.

So regarding the conventions and usages, they are well settled. They can be found in May's *Parliamentary Practice* and in Halsbury's *Laws of England*. It cannot be argued or entertained that we are in a state of uncertainty and that the question is nebulous and so we should know where we are. That fear or anxiety does not arise, because the conventions and privileges are well defined in these standard treatises.

As we find from Strauss's case, which is also contained in brief in the *Journal of Parliamentary Information*, the Committee of Privileges in the

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House of Commons held that the writing of a letter would amount to a proceeding of parliament. So, till the decision of Parliament on the 8th July, 1958, the conventions or the practices and usages in England were considered to include even a communication by a Member of Parliament to a Minister in the discharge of his official duties. Therefore, even if such cases arise in future, we are going by this and fall back upon the conventions which prevailed in England and which prevailed till the 26th January 1950. So, at the commencement of our Constitution, the conventions, the practices and usages in England governed the conduct of business of our House. Therefore, I would not share the anxiety or the worry which my hon friend Shri Naushir Bharucha apprehends. Hence, I consider that there is no need for this measure which he has brought forth.

The Minister of Law (Shri A. K. Sen): Mr Deputy-Speaker, Sir, frankly speaking, I have not really followed the relevancy of any reference to article 105 in the Bill. What the hon Member seeks to do is to change the law of libel by making certain communications and publications privileged. So far as the law of libel is concerned, he has tried to cover up this apparent or real purpose of the Bill by trying to attract the privilege which attaches to the hon Members of this House.

After all, it is now acknowledged more or less universally that matters of privilege should be left uncodified rather than codified. I think many, many years ago, a question of privilege arose in England. I was trying to find a reference from Blackstone in which that great jurist had laid down the golden rule to be followed in these matters. I may read out the commentary of Blackstone which was quoted by the Rt Hon Mr Butler in the debate in the House of Commons which was held on the 16th April, 1957. It reads as follows:

"The dignity and independence of the two Houses are in a great measure preserved by keeping their privileges indefinite"

It is all the more so in this country. Though in England, Parliament may, if it so chooses, pass any law concerning privilege without any limitation whatsoever either by way of extending it or restricting it, in this country the moment we think of passing any law we shall have to contend with the limitations which the Constitution imposes upon us. Let us not be deluded into the idea that this House can pass any law concerning its privileges. It is all right to stick to those which have been inherited by reason of article 105 of the Constitution. But the moment we try to legislate, some of the laws we have inherited may be condemned if we try to codify them by passing laws ourselves, for, the whole of the limitations in part III of the Constitution and the other limitations will have full play the moment Parliament seeks to legislate. That matter has been made quite clear in the recent judgment of the Supreme Court in the Patna Searchlight case wherein it appears to have been laid down that if Parliament sought to pass a law seeking to confer some privilege which it now enjoys, it might have been bad in law as well as against the Constitution.

Yet, since no law has conferred it, and it is only a matter of inheritance, we continue to enjoy it. That is the position. Therefore, I think it will be a good rule of caution and prudence if we do not indulge in large-scale legislation or indiscriminate legislation concerning the privileges of this House or of the other House. After all, centuries of experience of other Parliaments have cautioned them against landing themselves into a body of codified laws of privilege. I think we can safely follow it as a rule of caution.

16 hrs.

Apart from that general observation, viz., that we should be very cautious in legislating on matters of privilege, I personally have objection on the merits of the legislation now before us. I agree largely with the views expressed by my esteemed friend, Shri Easwara Iyer. I intend to read to the House extracts from the speech of the Attorney-General on the floor of the House of Commons when the motion of privilege relating to the complaint of Mr. Strauss came up. Hon. Members will possibly recollect—those who may not know the history of this case will take it from me—that that one instance exemplifies the restraint and the self-imposed limitations which the Members of the House of Commons have throughout observed, so that they can enjoy all the better the amenities which centuries of parliamentary life have given them.

It is not by trying to extend our privileges or by making them arbitrary or by trying to curb the rights of the ordinary citizens to seek remedy in a court of law that we sustain the foundations for the privileges which we enjoy, but by imposing on ourselves restraint, caution and prudence that we sustain for ourselves that great body of privileges. After all, on the floor of this House, any Member can indulge in any abuses he likes against anyone in this world and yet, what is the reason which prevents him from doing so? The primary reason is their consciousness that as responsible Members of this House, they must not abuse the privilege which the law grants them; and, that is the surest sanction for the preservation of that privilege.

Though under the law, we enjoy unlimited rights to open our tongue against anyone, yet as a matter of convention, as a matter of prudence, this House does not choose to exercise those unlimited rights in that unguided fashion or in that uncontrolled manner.

What would be the consequence of this Bill? It says that a citizen will have no remedy whatsoever in a court of law against any malicious or premeditated attack which may be canalized through a Member, though such communications may not be part of the proceedings of this House. But undoubtedly, the communications referred to in the Bill are not part of the proceedings of this House; there is no dispute about that, as the Attorney General said and as the House of Commons accepted in England. And yet, just for the purpose of injuring a man, if a Member of Parliament chooses to send a communication without any due care or investigating the truth or otherwise of the contents and the Member of Parliament either by himself on his own motion or being guided by others, chooses to circulate it and publish it among other Members, Ministers and others, the man will be without any remedy whatsoever. This is exactly the point which the Attorney General had placed before the House of Commons and told them that it is not for the House of Commons to rob the citizens of their valuable rights. I intend to read that portion of his speech, for I can do no better. I am reading from page 262 of the *Parliamentary Debates (Hansard), House of Commons, Vol 591, No 137:*

“If the hon. Member is asking for my opinion, I should say without hesitation, on the facts of this case, that the court would hold that the letter written by the right hon. Gentleman was not a proceeding in Parliament.

It is true that the service of a writ upon a Member used to be regarded and treated as a breach of privilege, but the last case that I can find where the House of Commons did that was in 1757, at a time when privileges were treated as being far more extensive than they are now. In that case, the plaintiff, his attorney and another were committed to the custody of the Serjeant-at-Arms for serving a writ for

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trespass. One can find other examples of the lengths to which the House went in those days. In 1700, one Rogers, an attorney was committed for sending an exorbitant bill of costs to the gunners of Portsmouth, and in 1753 some unfortunate person was committed for a breach of privilege of this House for fishing in Mr. Jolliffe's pond. As far as I can find out, for 200 years, this House has not treated the question of legal proceedings as a breach of privilege.

"I submit that we should think long before, by endorsing the conclusions of the Committee, we interfere with and seek to prevent the exercise of what the Judicial Committee described as,

'the inalienable right of Her Majesty's subjects to have recourse to Her Courts of Law for the remedy of their wrongs.'

That statement echoes the address of the House of Lords to Her Majesty in relation to the five men of Aylesbury which said:

'It is the birth right of every Englishman—as it is the birth right of every Indian—who apprehends himself to be injured to seek for redress in your Majesty's Courts of Justice, and if there be any power can control this right and can prescribe when he shall and when he shall not be allowed the benefit of the Laws, he ceases to be a Freeman and his liberty and property are precarious. The Crown lays claim to no such power and we are sure the Law has trusted no such authority with any subjects whatsoever.

If a man mistakes his case, in believing himself to have a good cause of suit when he has not; if he mistakes his Court by applying to an incompetent jurisdiction; he will fail of relief and be liable to costs but to no other punishment. He is not guilty of a crime nor is it a con-

tempt of the Court that has the proper jurisdiction.'

It is for the reasons that I have done my best to make clear that I hold the view that a threat to issue a writ, or the issue of a writ—no matter what the subject-matter of the action may be—cannot properly be regarded or treated as a breach of the Privilege of Parliament. The Bill of Rights says that a proceeding in Parliament may not be impeached or questioned in any court or place out of Parliament. A breach of that privilege, in my view, occurs when, and not before, a court entertains an action brought in relation to our proceedings. That stage is not reached by the issue of a writ, or on its service "

Then, he proceeds further. At page 263, the last paragraph says:

"I began by saying that it was not for us to debate today what should or should not be the Privileges of Parliament, but I think that I should be failing in my duty if I did not point out as clearly as I can what is involved in the decision which the House has to take today. The law of libel recognises, as entitled to qualified privilege the letter which a Member of Parliament writes to a Minister, such as the right hon. Gentleman wrote here "

"There is no doubt about that. That means that, even if the letter be both defamatory and false—and I do not suggest for one moment that it is in this case—the action against the Member cannot succeed if the letter was written in good faith."

That is the greatest protection. So a libel action will not lie when a Member of Parliament is held by a court of law to have acted in good faith. Everyone knows that when one speaks on the floor of the House one cannot be sure or one cannot insure the veracity of everything that he says or writes when he communicates in the course of his duty! But the least that

one expects of a Member of Parliament is that what he does, he does in good faith. Therefore, to try to cover up even bad faith would be robbing the citizens of a very valuable right.

After all, there is a country outside this House, and the citizens' rights are as important as ours, and their rights may be very severely prejudiced if bad faith on the part of Members of this House is sought to be covered by a law passed in this House

I have not gone into the constitutionality of such a provision I doubt, subject to correction, whether a court would sustain a law of this nature which seeks to cover up actions prompted by bad faith and whether or not courts will strike down such a law as an unreasonable restriction on peoples' rights. But I am not raising my objection on the basis of the constitutionality of this Bill. I am opposing it on far wider grounds, on the ground of the more valuable right, which we, as Members of Parliament, must reserve for the citizens outside the House, and on the ground that this House should not be instrumental in protecting acts of bad faith, even if they be of the Members themselves.

Shri D. C. Sharma (Gurdaspur)
On the floor of this House, I have had the honour of listening to discussions many a time on the privileges, amenities and immunities of the Members of Parliament, but I have never had the privilege of listening to any discussion on the duties of the Members of Parliament. I think, instead of looking at this Bill from the constitutional point of view or the legal point of view—they are very necessary, I know; perhaps they are very urgent—we should look at this Bill also from the point of view of our voters, from the point of view of those persons who sent us to this august and sovereign House.

Shri Naushir Bharucha: That you feel only at the election time.

Shri D. C. Sharma: I will come to you, please listen to me. I was submitting very respectfully.

Mr. Deputy-Speaker: Would the hon Member go to another hon. Member while he is speaking?

Shri D. C. Sharma: I was saying that metaphorically I can go there.

Shri Braj Raj Singh (Ferozabad): But only through the Chair.

Shri D. C. Sharma: I was submitting that whenever I go about in my constituency and have talks with the voters, whether they are dwellers in the villages or in the cities, whether they are persons who are following very lucrative professions or who are farmers, I hear from them a great complaint that we are trying to grab this privilege or that privilege, we are trying to have this amenity or that amenity and that we are trying to make use of our privileges in this House for getting so many things for ourselves. At the same time, I hear from them that the quorum bell rings in the House and the Members of Parliament are not there.

Shri Braj Raj Singh. We have no quorum now.

Mr. Deputy-Speaker. Is the hon Member making an enquiry? Is it a question? What is it that the hon Member desires?

Shri Braj Raj Singh. I was wondering whether we have quorum.

Mr. Deputy-Speaker. I cannot answer his wonders. The hon Member might continue.

Shri D. C. Sharma: I do not know whether there are any duties to counter-balance all these privileges, immunities and amenities. This is a question which is put to some of us. It may not be a question which is put to all, but it is a question which is put to us. I think in view of the public opinion, in view of what our voters

[Shri D. C. Sharma]

say, we should be the last persons to ask for anything of this kind. I think a Member of Parliament should bring forward a Bill, if the Minister of Parliamentary Affairs does not do it, regarding the duties of the Members of Parliament. So far as privileges are concerned, I think it is public opinion that should demand from the House an extension or amplification or something of that kind. I think that is the procedure that we should have. But, I am afraid, all the time we are talking about getting more and more for ourselves, and that is not a very healthy democratic practice.

At the same time, I would say that it was said that in the House of Commons this was defeated by a few votes, it was a snap vote and so on. If in the United Kingdom, they have turned down a thing of this kind it shows a sign of maturity, a sign of political judgment, a sign of faith in parliamentary institutions.

Shri A. K. Sen: I forgot to say that it was a free vote.

Shri D. C. Sharma: I think the British House of Commons did very well in not extending the privileges of the members in that respect

Further, we have a federal legislature. There are thousands of legislators in the country. So, I believe that the privileges are bound to be more abused than used properly. I am making this submission with a due sense of responsibility. I believe that this kind of privilege to be given to a parliamentary democracy which is about 12 years' old is not the right kind of thing. We should, first of all, build up traditions in our country, parliamentary traditions in our country, parliamentary conventions in our country, parliamentary procedures in our country. After we have done that, we can go forward asking for more privileges and more things of that kind.

Now, we have privileges here. For instance, point of order. I am not talking of this House. But are we always very careful in making use of the point of order privilege? Then there is the privilege of moving motions for adjournment. Are we always careful in moving motions for adjournment?

Shri Braj Raj Singh: I think it is somewhat unfair, because I think he has never moved any adjournment motion.

Shri D. C. Sharma: I am saying that we have those privileges. We have the privilege for calling for a division. But are we always careful in exercising that right? First of all, we should learn to make use of those privileges carefully, cautiously and dutifully. Then we can try to get more privileges for ourselves. Again, I was going to submit that we have more than a hundred autonomous corporations.

I believe that while we are the mouthpieces of the public we should also remember that the administrator also has a difficult duty to perform. Moreover, what we hear from others is not always the last word on a subject. There are always two sides to a question. There are always two points of view to a question. I would say that instead of making the administration of our country more difficult, more onerous and more full of obstacles, we should try to make the task of our administrators as smooth and as easy as possible.

When we go about our constituencies, we hear of all kinds of things about administration. If we are given this privilege of writing about them to the hon. Ministers, or to the Secretaries, or to the hon. Speaker or to the presiding officers, I do not know where our democracy will land itself and where our administration will land itself. Already, I think, on account of certain things the administrator is not feeling very happy

because he thinks that he is subject to more criticism than is necessary. I do not think that we should try to make his task more difficult by this kind of thing than it already is.

I would again submit very respectfully that we already have so many safety valves for our democracy, for ventilating our grievances, for bringing the wrong-doings of others to the notice of the hon. Ministers and others. We have already got so many things here. While those things have not been made adequate use of, there is no use in getting hold of more privileges in order to add to what we already have.

Shri Naushir Bharucha: On a point of order, Sir.

When my hon friend says that the privileges which are already in existence and are in possession of this House are not being used judiciously or properly, he is really casting a reflection on the Chair that the Chair cannot control the debate properly.

Shri D. C. Sharma: I never used the word judiciously I said 'adequately'. I used the word 'adequately'.

An Hon. Member: It reflects.

Shri D. C. Sharma: This refers as much to me as to others. We do not make use of those things adequately and, therefore, I say that.

Mr. Deputy-Speaker: The hon. Member might be saying this much that hon. Members try that rule but the Speaker keeps them under control.

Shri D. C. Sharma: So, I was submitting very respectfully that we do not need this privilege in this age of our nascent parliamentary democracy. We do not need this privilege.

My hon. friend gave a list of so many objections which were raised and gave his reply to those objections. I congratulate him for giving those

replies. But I think there is one objection—one fundamental objection—which cannot be overruled and it is that this privilege is liable more to be abused than it is used. Therefore, I think that we should not pass this Bill. But I would say all the same that if the hon. Minister of Parliamentary Affairs wants to bring forward a bill covering our privileges, immunities, amenities and also our duties, I will welcome it and, I think, I would support this.

श्री बजराम सिंह : उपाध्यक्ष महोदय, सिद्धांत में श्री मरूचा के विषेयक के खिलाफ होते हुए भी मुझे यह कहना पड़ना है कि मेरे पूर्ववक्ता महोदय ने जिस तरह से पार्लियामेंट के मेम्बरों के विशेषाधिकारों के ऊपर कुछ लांछन लगाने की कोशिश की है वह उचित बात नहीं लगती।

जो विशेषाधिकार अभी सदन के मेम्बरों को शामिल है उनका कहां पर दुरुपयोग हुआ है यह एक देखने की बात होगी और यदि दलील के लिए यह मान ले कि जिस विशेषाधिकार की बात अभी कही जा रही है वह दे भी दिया जाये तो उसके बाद भी यह मान लेना कि उसका दुरुपयोग होगा यह सही बात नहीं है।

मैं निवेदन करना चाहता हूँ कि जहाँ तक सदन का सवाल है, मैं मानता हूँ कि सदन के सदस्यों को कोई विशेषाधिकार प्राप्त करने की कोशिश नहीं करनी चाहिए और इसलिये नहीं करनी चाहिए कि हमारा देश जनतन्त्र है जिसमें हमने हर नागरिक को बराबरी का अधिकार दिया है। मैं तो यहाँ तक सोचता हूँ कि यदि इस तरह का कानून बन जाय तो सम्भवतः वह संविधान की धारा १४ का कहीं तोड़ने वाला न हो जाये, जिसमें दिया हुआ है :

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

[श्री बजरज सिंह]

अब इस तरह का विशेषाधिकार लेकर जो सदन की कार्रवाई से सम्बन्ध नहीं रखता है और जिसको हम सदन की कार्रवाई बनाना चाहते हैं, मुझे स देह है कि इससे कहीं इस तरह की भावना न पैदा हो कि हम देश के नागरिक को जो मूलभूत अधिकार प्राप्त है उसका हरण करना चाहते हैं। तो जहाँ तक इसका प्रश्न उठता है कि इस तरह का कोई अधिकार माननीय सदस्यों को दिया जाना चाहिए या नहीं, सिद्धांत रूप से मैं उसके पक्ष में नहीं हूँ, लेकिन इतना मैं मानता हूँ कि हमारा अब लिखित विधान है, तो लिखित विधान में वे व्यवस्थायें हमेशा लागू नहीं रह सकती जो अलिखित विधान में लागू रहती हैं।

माननीय विधि मंत्री ने जो कुछ भाषण पढ़ा, "पढ़ा" मैं इसलिए कहता हूँ कि उन्होंने अपनी तरफ से कुछ न कह कर ब्रिटेन के हाउस ऑफ कामन्स में जो एटार्नी-जनरल ने भाषण दिया था उसको ही यहाँ कोट करने की कृपा की है। मैं निवेदन करना चाहता हूँ कि हाउस ऑफ कामन्स में एटार्नी-जनरल जा कुछ कहते हैं इसलिये वहाँ लागू हो सकता है क्योंकि वहाँ पर अलिखित विधान है। लिखित विधान में हमेशा वे बातें लागू हो सकती हैं या नहीं जो अलिखित विधान में लागू होती हैं यह भी एक मसला है जिस पर विचार करने की आवश्यकता है।

तो जहाँ तक विधान की धारा १०५ का सवाल आता है उसमें खुद ही उपधारा ३ में यह व्यवस्था की गयी है

"In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law. . ."

तो विधान निर्माताओं का कुछ ऐसा विचार था कि भविष्य में चल कर विशेषा-

धिकारों को निश्चित किया जाना चाहिये कि विशेषाधिकार क्या है।

एक बात मैं जरूर महसूस करता हूँ कि इस सदन के सदस्यों के क्या अधिकार हैं यह न केवल इस सदन के सदस्यों ही को मालूम होना चाहिए बल्कि देश की आम जनता को भी यह मालूम होना चाहिए। मैं यह मानता हूँ कि इस पार्लियामेंट के मेम्बर होने के नाते हमको कोई विशेषाधिकार अपने लिए प्राप्त करने की कोशिश नहीं करनी चाहिए। और इसीलिए मैं याद दिलाना चाहता हूँ पूर्व वक्ता महोदय को कि जिस वक्त कोई इस तरह का सवाल आता है तो हम तो स्थगन प्रस्ताव रखने की कोशिश करते हैं, लेकिन हमारे पूर्व वक्ता महोदय को यह लगता है कि हम स्थगन प्रस्ताव रख कर कोई विशेषाधिकार जो प्राप्त है उनका हनन करते हैं। माननीय पूर्व वक्ता को यह याद होगा कि जब इस सदन के पिछले सत्र में पार्लियामेंट के मेम्बरों के लिए हवाई जहाज की यात्रा की सुविधा प्राप्त करने का प्रयत्न किया गया था तो सिर्फ सोशलिस्ट पार्टी के प्रतिनिधि ने ही यह कहा था कि न केवल हवाई जहाज की सुविधा ही नहीं मिलनी चाहिए बल्कि मेम्बरों को जो फर्स्ट क्लास में रेल में चलने की सुविधा प्राप्त है उसके बदले भी उनको तीसरे दरजे की सुविधा दी जानी चाहिए। मैं पूछना चाहूँगा कि क्या कांग्रेस पार्टी के या किमी और पार्टी के किसी सदस्य ने इस तरह का सुझाव रखा। तो हमसे कहना कि आप विशेषाधिकारों द्वारा अपनी सुविधायें बढ़ाना चाहते हैं गलत है। तो इस तरह की दलील देकर इस बात को टालना मनासिब नहीं है। मैं यह मानता हूँ कि इस सदन में इस तरह का कोई विशेषाधिकार प्राप्त करने की कोशिश माननीय सदस्यों को नहीं करनी चाहिए। लेकिन मैं यह जरूर चाहता हूँ कि सदस्यों के कर्तव्य क्या है और अधिकार क्या है इसकी सीमा निश्चित हो जानी चाहिए। जब तक ऐसी बात नहीं होती

तब तक कुछ खतरे पैदा होने की सम्भावना बनी रह सकती है। यह मैं मानता हूँ कि देश में जनतन्त्र अबतक तभी होगा जबकि देश में संसद् की प्रतिष्ठा बढ़ेगी, उसका सम्मान बढ़ेगा। और मैं यह भी मानता हूँ कि यह कार्य कानून से नहीं बल्कि परम्पराओं से हो सकता है। लेकिन ये परम्परायें किस तरह कायम हो। इसलिये यह बहुत आवश्यक है कि हम इस तरह से कार्य करें जिससे कि देश की जनता में कोई गलतफहमी न फैले। हम विशेषाधिकारों की बातें करके जनता की परेशानी नहीं बढ़ाना चाहते। वह जान लेने से कि अब से हिन्दुस्तान आजाद हुआ है हिन्दुस्तान की सरकार की तरफ से जनतन्त्र पर कुठाराघात करने के लिए एक हजार बार गोली चलायी गयी, जनता में जनतन्त्र के प्रति अविश्वास पैदा होता है। तो ये सब चीजें हमें देखनी पड़ेंगी।

तो जहाँ तक विशेषाधिकार का सवाल है यह तो मैं चाहता हूँ कि वे निश्चित हो जाने चाहिये। पर यह मैं नहीं कहूँगा कि उनके लिए कोई कानून ही बन जाये। कोई कानून बना कर और उसके द्वारा विशेषाधिकार प्राप्त करके हम कोई अपने को विशिष्ट नागरिक बनाने की परम्परा कायम नहीं करना चाहते। लेकिन इसकी तो सीमा निश्चित हो जानी चाहिए कि पार्लियामेंट के सदस्यों के कर्तव्य क्या है और उनके अधिकार क्या हैं। वर्ना देश में हम जो समाजवादी अर्थ व्यवस्था कायम कर रहे हैं और जो निर्माण कार्य कर रहे हैं और जो स्वतन्त्र या आटोनामस मस्याये कायम कर रहे हैं उनमें जो शूबड़ हो सकती है उसमें सदस्य कहा तक हस्तक्षेप कर सकते हैं यह चीज माफ नहीं होगी। हो सकता है कि यह अधिकारों और कर्तव्यों की सीमा निश्चित न होने से पार्लियामेंट के सदस्य इस दिशा में अपना काम ठीक प्रकार से न कर सकें और देश की अर्थ व्यवस्था को ठीक से चलाने में पार्लियामेंट के सदस्य पूरे अधिकार से काम न कर सकें। पार्लियामेंट

एवं सर्व सत्ता प्राप्त मस्या है। इसलिए पार्लियामेंट के सदस्यों को इन मामलों की जाच पड़ताल का अधिकार होना चाहिए। लेकिन यह निश्चित नहीं होगा कि सदस्यों के क्या कर्तव्य है और क्या अधिकार है तो कठिनाई पैदा होगी।

तो जहाँ तक इस प्रश्न का सवाल उठता है मैं श्री अरूबा जी के साथ कानून बनाने में तो सहमत नहीं हूँ। लेकिन मैं यह निवेदन करना चाहूँगा कि मन्दिषान की धारा १०५ में जो व्यवस्था की गयी है उसमें मालूम होता है कि शायद सविधान के निर्माता आधुनिक मनु, अर्थात् डा० ब्रम्बेडकर के दिमाग में यह बात थी कि आगे चल कर संसद् जरूर अपने सदस्यों के लिए कोई विशेषाधिकार का कानून बनायेगी या उनकी कोई सीमा निश्चित करेगी। तो मैं समझता हूँ कि हमें उन अधिकारों को जरूर निश्चित करना चाहिए और इस हद तक मैं इस विचार का समर्थक हूँ कि कोई कमेटी बनायी जाये जो इस चीज को निश्चित करे। उस कमेटी के लिए एक बिल भी लाया जा सकता है या उसको किमी और भी तरह बनाया जा सकता है। लेकिन इस तरह के अधिकारों और कर्तव्यों की सीमा निश्चित अवश्य होनी चाहिये और हमको यह नहीं मान लेना चाहिए कि उन अधिकारों का दुरुपयोग होगा। एक एक माननीय सदस्य को हिन्दुस्तान के आठ आठ लाख नागरिक चुन कर यहाँ भेजते हैं ता वह यह काम पूरी जिम्मेदारी के साथ करते हैं और सदस्यों से आशा करते हैं कि वे अपनी जिम्मेदारी को पूरी तरह निभायेंगे। तो मैं यह नहीं मानता कि यदि सदस्यों को कोई विशेषाधिकार दिया गया तो वे उसका दुरुपयोग करेंगे। लेकिन मैं यह चाहता हूँ कि कोई ऐसी कमेटी जरूर बनायी जाये जो इस बात की जाच पड़ताल करे कि क्या क्या विशेषाधिकार और कर्तव्य होने चाहिये। जहाँ तक कर्तव्यों का सवाल है मैं यह मानता हूँ कि कोई सदस्य जनता की सेवा करके अपने कर्तव्य

[श्री इन्द्रराज सिंह]

को पूरा करने पर ही यहां आ सकता है। अगर उसने धपना कर्तव्य पालन नहीं किया है तो जनता उसको यहां आने का अधिकार ही नहीं देगी। इसलिये मेरा निवेदन है कि इस विषय में कानून न बनाते हुए भी हमें सदस्यों के अधिकारों और कर्तव्यों की सीमा निर्धारित कर देनी चाहिए ताकि जनता को मालूम हो सके कि पार्लियामेंट के मेम्बरों के क्या विशेषाधिकार हैं और क्या कर्तव्य हैं जिससे कि किसी के दिमाग में कोई गलतफहमी न रहे और देश में जनतन्त्र को मजबूत किया जाये सके और बढ़ाया जा सके। देश में जनतन्त्र को आगे बढ़ाने के लिये यह अत्यन्त आवश्यक है कि देश के जीवन पर पार्लियामेंट की छाप होनी चाहिए। तभी देश के नागरिकों पर असर पड़ सकता है। मैं चाहता हू कि देश का कोई नागरिक यह न सोचे कि पार्लियामेंट का महत्व कम है। जब हम ऐसा कर सकेंगे तभी हम अपने उद्देश्य को पूरा कर सकेंगे।

इन विधेयक की आभा—उमके मिद्दाली से सहमत न होते हुए भी मैं इतना चाहूंगा कि किसी प्रकार इस बात का व्याख्या होनी चाहिए कि पार्लियामेंट के मेम्बरों के ये विशेषाधिकार हैं और ये कर्तव्य हैं।

Shri Satya Narayan Sinha: Mr Deputy-Speaker Sir, the intervention in this debate by my hon colleague the Law Minister has made my task very easy. He has very ably dealt with the matter and I hope Shri Naushir Bharucha might have been satisfied by now.

Shri Naushir Bharucha: Far from it.

Mr. Deputy-Speaker: That is only a hope

Shri Satya Narayan Sinha: Therefore, I have not much to say. Before I proceed, I must pay my compliments to the Mover of this Bill, Shri Naushir Bharucha. I have great admiration for his versatility and vigilance. But,

if I can say with all respect, more often than not, both these qualities are exercised or used in a wrong direction, or, at any rate, he tries to overdo it.

I have listened to his speech and also of the other Members who have contributed to this debate. Theoretically the point involved is exceedingly complex and the proposals made in the Bill would, if accepted, be of far reaching significance. In stating my opposition to this Bill, however, my task is greatly facilitated by the Mover himself, who has stated in the Statement of Objects and Reasons attached to the Bill that a proposal similar in content in the House of Commons was rejected by that House. Members have doubtless, read in the Statement of Objects and Reasons that in the House of Commons in the United Kingdom, a question arose recently whether a letter addressed by a Member of Parliament to a Minister containing some defamatory remarks about the London Electricity Board would be completely privileged, denying to the aggrieved person his remedy at law to bring a libel action against such Member. In this particular case, the Member was threatened with a libel action and he claimed protection of the Chair. The Chair felt that there was a *prima facie* case of breach of privilege of the House. The matter was referred to the Committee of Privileges of the House of Commons which held in its report that the letter written to the Minister was a proceeding in Parliament and that the threat by the London Electricity Board to sue, constituted a breach of privilege of Parliament. We are further informed that on 8th July, 1958, the House of Commons considered this report and rejected it by 218 votes to 213 thus exposing the Member in question to legal action on account of libel in a court of law.

Now, let us see what the Constitution of India has to say in regard to the powers, privileges and immunities of Parliament and its Members. Shri

Naushir Bharucha has himself quoted article 105 and I, therefore, do not need to repeat it. Clause (3) of the same article provides that—

"In other respects, the powers, privileges and immunities of each House of Parliament, and of the Members and the committees of each House, shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution."

We have not taken steps yet to pass any law to determine the powers, etc. As the hon Law Minister explained, we have done it deliberately. In the absence of any such law, it follows that these shall be those of the House of Commons of the Parliament of the United Kingdom, as they stood at the time of the passing of the Constitution.

Now, it is somewhat odd that what the House of Commons has recently rejected should be attempted to be given legal sanction by this Parliament. I submit that any attempt to do so would go against not only the spirit but also the letter of article 105 of our Constitution.

Shri Naushir Bharucha: Why? How?

Shri Satya Narayan Sinha: We cannot also proceed piecemeal in this fashion and certainly not in respect of a matter which has been rejected by a Parliament the privileges of which we have adopted as our model.

Shri Mahanty: May I ask him a question—if only he yields. Now, that he is relying on the traditions of the United Kingdom Parliament, may I know from him, in all humility? In the United Kingdom, the Speaker was being tied to the Chair with a rope. Is he going to advise the same thing to be followed here also?

Mr. Deputy-Speaker: That we have not adopted here.

Shri Satya Narayan Sinha: Not that.

There is no other model before us except that, and so far we have been following that. It is so obvious.

Mr. Deputy-Speaker: I do not know whether the hon. Member proposes to bring such a Bill in future!

Shri Mahanty: Since he is relying on U.K. precedents, I mentioned it.

Shri Satya Narayan Sinha: We shall see when it comes.

The Bill apparently aims at removing a threat of criminal or civil action against a Member in the *bona fide* discharge of his duties. Broadly, these are covered by article 105 of the Constitution. But this Bill goes further and would include in *bona fide* discharge of duties, such matters as letters addressed by a Member of Parliament to the Presiding Officer or the Secretary of either House of Parliament or a Minister on a public matter in the course of discharge of his duties as such Member. It would include communication of such letter by a Minister to any person or body of persons or an institution in course of discharge of his duties as a Minister and any reply addressed by the Minister to such letter.

Now, Sir, the general question of legislation apart, and even for the moment setting aside article 105 of our Constitution, let us look at the proposals of the Bill on merits. It appears to seek to invest Members with a privilege which may not always be used in the public interest and which is, indeed, liable to be abused through making use of documents or information of a questionable character, through good intentions or through malice. It may even be

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derogatory to the dignity of Parliament if the privilege is used with questionable motives

An Hon. Member: Why attribute motives?

Shri Satya Narayan Sinha: It is certainly liable to promote irresponsible action at least. It would, moreover, place many other parties at a disadvantage in relation to Members in spheres outside the ambit of their parliamentary duties.

Already, there is a feeling that Members enjoy privileges which can react adversely on citizens without redress. The hon. Mover must be aware of the criticism by the ordinary citizens of this country and also by the press that we are already enjoying powers, privileges and immunities which, in their opinion, are too much. I do not think they are absolutely justified.

I had some discussions with certain friends who hold such view and they cited certain examples. They said that you people, meaning the Members of Parliament sometimes put questions sometimes make remarks in the House against certain individuals outside which are absolutely of a defamatory character, and particularly when those persons are not present in the House. They say there is a tendency growing among the Members of Parliament—that is the criticism—that sometimes at least we become unchivalrous because knowing that the person is not present to hit back we say things against those people. It is human nature to do so when we know that we are protected within the four walls of this Parliament. Perhaps each one of us would think a hundred times before uttering those words outside the House. Therefore, we have to take into consideration that thing also. I do not agree with those people.

Mr. Deputy-Speaker: Again, the same objection might be taken that

the Chair has been slow in checking this. Our rules provide sufficient security.

Shri Satya Narayan Sinha: They may not voice their criticism publicly because you may haul them up here for breach of privilege, but in the private circles where things are not reported, they do not spare the Chair also. Let us be very frank. That is true. They may not dare to say this publicly because of fear.

Mr. Deputy-Speaker: Is the hon. Minister of the same idea?

Shri Satya Narayan Sinha: I do not say, I am just telling you the criticism which is made against us also. They include us, they do not except us. When they speak, they speak of the House generally.

I do not agree with those people who think that the rights enjoyed by Members of Parliament should be absolutely the same as the rights enjoyed by the citizens. In the very nature of our work we must possess certain powers, privileges and immunities which we are having but to try to add to what we have, I must submit in all humility, will be neither desirable nor proper in the present circumstances.

Article 105 of the Constitution provides for adequate protection to Members in the discharge of their duties. During the last nine years, there has not been a single case where any Member has been placed in jeopardy on account of the discharge of his duties as a Member. Before we decide to enlarge upon our present privileges, we must not forget that the privileges should necessarily be privileges of Parliament and not as Members of Parliament. Their purpose should be to protect our great democratic and sovereign institution.

With your permission, Sir, before I finish, I would like to read some extracts from an article which appear-

ed in the *London Times*, which is relevant, after the matter was disposed of in Parliament.

Shri Nanshir Bharucha: That is also hostile.

Shri Satya Narayan Sinha: Anybody who disagrees with you is hostile. That is a very convenient argument.

The article says:

"The historical and continuing justification for parliamentary privilege is to enable Members to speak (I hope hon Members will mark these words) an honest mind without fear of molestation and so vindicate the rights and freedom of the people they represent. For this they need the protection privilege affords, but if the protection is extended too far, there is a danger that corporations and private citizens might suffer damage from an arrangement which is supposed to be to their advantage. And there is reason to suspect that danger might creep in if the report of the Committee of Privileges were accepted.

Privileges are privileges of Parliament and not of Members of Parliament. Their purpose is to protect the institution as an efficient forum for public purposes, not to create a class of citizens with a roving commission above the law. It is well to keep them that way. Privilege should be vested as attaching to the transaction of business in Parliament, not primarily to be exercised, however legitimately, by Members of Parliament in their functions as Members."

I would, therefore, appeal to the hon. Mover to withdraw his Bill, but if he does not, I would appeal to the House to reject it outright.

Shri Nanshir Bharucha: I propose to reply only to the Law Minister and the Minister of Parliamentary Affairs.

The Law Minister advances the argument that the present tendency is to leave the law relating to privileges uncodified. He says it is better to leave it uncodified so that, in the confusion and vagueness that prevails, the hon. Members might enjoy a larger measure of privilege than they would if they try to define it, in which case they might find themselves up against the Constitution, and that a precise definition of such privileges may be against the interests of the Members themselves. The answer to that is very clear. Does this Government, when faced with a legal issue, wish to bury its head in the sand like an ostrich, or does it want to face issues squarely? If not today, a day may come when a Member or anybody may haul up not only a Member of Parliament writing to the Minister but the Minister himself. Let it be understood that the Ministers are not above the law, and if the M. P. is liable, the Minister is equally liable. Therefore, the first point is that to say that the law should be left uncodified, and that that is the best, is even to betray the hope raised under Article 105 of the Constitution which contemplates that at a future date a law relating to privileges will be legislated upon or codified.

The second point is: why should we follow the House of Commons in all matters so very closely? Of course, the House of Commons has experience of democracy for 700 years. But in England there is no written constitution and we did not follow England in that respect and say: let us not have a written constitution as well, otherwise our privileges might be curtailed. No, we took courage, we departed from that practice and we had a written Constitution. If we can have the whole of a written constitution running into hundreds of articles, I fail to see why we should shirk when it comes to defining properly what our privileges are.

The third point is that if we try to codify the law on the subject this is what the Law Minister said, the position will be that we will be up

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against the Constitution. If that is the position, let us not remain under an illusion. If even our present privileges conflict with the Constitution, the law courts have a right to pull us up. That is very clear. This is a legal proposition which nobody can dispute. Therefore, it is much better, if we are going to face difficulty, to face it squarely and legislate on it and finish with it.

He also quoted at considerable length the Attorney-General's argument in the course of the debate in the House of Commons. May I point out that in the past, we, have differed very considerably from the practices in the House of Commons? I do not see what is there in the argument of the Attorney-General which conflicts with the provisions of the Bill. All that the Attorney-General pointed out was let the House of Commons not be under an impression that if they passed that resolution that night, they were enacting anything as a law. But that is an obvious proposition. Nobody disputes it. By passing a resolution accepting the Privileges Committee's report, the House of Commons cannot compel the court to act according to that resolution. That is the sum and substance of it. The writs can be issued still. All that he pleaded was that if the House of Commons wanted to change the law and extend its privilege, it will have to legislate. A mere resolution accepting the committee's report will have no effect. I, therefore, fail to see any objection. Perhaps, the hon. Minister was not here when I advanced my arguments, and that is the reason probably why he has not caught the point I had in mind.

Coming to the hon. Minister of Parliamentary Affairs.....

An Hon Member: Why should you come to him? He would go to you.

Shri Naushir Bharucha:.....
I would like to return the generous

compliment which he paid to me, and I also say that he has got energy and enthusiasm which often he misdirects at different people and at different pieces of legislation. What I was trying to impress upon him was this.

His main argument is that this is a privilege, which, if extended, is more liable to abuse than the existing privilege. I fail to see why when a man speaks in Parliament.....

Shri Jadhav (Malegaon): He is a prudent man.

Shri Naushir Bharucha: He is a prudent man, and the moment he takes his pen in his hand, he becomes so very unwise and malicious that he will write something against which the ordinary citizen has to be protected.

Mr. Deputy-Speaker: There is one difficulty; if the hon. Member would excuse me, I might say this. Really, every Member of Parliament here is a very prudent man, as the hon. Member himself has said, and he remains discreet when he speaks here but there is a check also exercised which is laid down under the rules. It is laid down under rule 352 that no Member shall utter 'reasonable, seditious or defamatory words', and it is for the Chair to see that this rule is enforced. If a Member takes it upon himself to utter such words, the Chair exercises its discretion and at once puts a stop to it. So, there is a wholesome check on the speech of the Member. Whatever he might say, it is not absolute freedom, as perhaps the words that were uttered by the Law Minister might give an impression of. There is a restriction, and there is check, and the Chair is there to exercise that, to see that these limits are not transgressed. Though the Member going beyond the limits cannot be run down in a court of law, yet there is a restraint exercised by the Chair. That check is there.

But if the Member were to write from his house a letter, what is the check or restraint?

Shri Jadhav: His conscience is there.

Shri Naushir Bharucha: I can say that apart from conscience. The argument is very clear, that the Chair undoubtedly exercises a check and limits our so-called absolute privilege, but when a Member writes to a Minister, am I to take it that the Minister is so very unwise that he will not exercise a salutary check and write back to the M.P. and say that 'No, I do not agree with this.' Why should we presume.....

Mr Deputy-Speaker: Whatever mischief was to be done has been done by his writing to the Minister.

Shri Naushir Bharucha: The mischief done in the House is greater. When I speak here, there are five hundred odd Members listening, apart from the visitors in the galleries, even if the remarks are expunged. But when I write, it is only the Minister who gets it, and he exercises that same salutary check by writing back to me.

Mr. Deputy-Speaker: If it is only the Minister that gets it, then there is no defamation at all. Only when it is published, it will become actionable. If it is between a Member and the Minister only, it would not expose itself to any action in the court of law. It is only when it is published—the hon. Member knows it much better than I do—that it becomes actionable.

My object was this, that there is a distinction here. Here is some check exercised by the Chair and by the rules that are there. The Members know those rules; they themselves exercise a restraint on themselves, but when this House is not there, and this is a correspondence that is to be carried on by the hon. Member with the Minister, and he is going to write

it, then these rules do not apply to him; he would not be bound down by those rules; those rules obtain only here inside the House, and the Chair has to see that they are really observed, but there will be no check when a letter is written. That was what I wanted to point out.

Shri Naushir Bharucha: With regard to the question of publication, it is an erroneous impression, if I may submit with great humility. In the Penal Code, the word 'publication' has got a technical meaning. If I write to you or to a Minister saying that officer X is corrupt, and only the Minister gets it and reads it, it is a publication, in the eyes of the law, to the Minister, and, therefore, it renders me criminally liable.

Mr Deputy-Speaker: But then, there are those exceptions.....

Shri Naushir Bharucha: There may be exceptions, but then

Mr. Deputy-Speaker: . . . when it is written to the Minister who has authority to deal with it.

Shri Naushir Bharucha: So far as those exceptions are concerned, I have got to go to a court of law and defend myself, and be put to the expense of defence and the worry of the defence. That is exactly the point that I am making.

If we do not confer this immunity upon Members whom often the Chair invites to write to the Minister, then corruption cannot be controlled at all; corruption cannot be brought to the notice of the Ministers. That is the biggest issue we have got to face.

What is the use of talking of the right of a few people who cannot go to a court of law? Half a dozen people may not get justice; assuming that, is that much more important or the fact that corruption should be eliminated from the administration? The letter is undoubtedly more important. If today I cannot write openly and

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frankly to the Minister that so-and-so is corrupt, how will the Ministers come to know of it? Is the Minister omniscient? It will be tantamount to the fact that we shall have to connive at corruption and keep quiet for fear of being prosecuted.

If I write today, as I said in my speech, that Mr Mathai has accepted illegal gratification, with a view to helping the Minister in an enquiry, still, I am open to prosecution. Though the Minister passes on to someone else that letter for enquiry, he is open to prosecution as well. It may be that in fact, the Minister may not be actually hauled up in a court of law, but that is a different matter.

There is just one more word which I would like to say with regard to the comments of *The Times*. The feud between Members of Parliament—with regard to the privilege of Members of Parliament—and the Press is a historical one. Ever since nearly two hundred years ago when the agitation was started, the press has always taken up that attitude, and in the present circumstances, the remarks of *The Times* are peculiarly inept. It says 'privileges of the Parliament, and not of the Members'. But article 105 definitely says, of the members of the Parliament and of the committees.

Shri Jadhav: Which shall be defined

Shri Naushir Bharucha: Therefore, I say that those remarks do not apply.

It is up to this House to reject this Bill if it likes, but I thought that here was a very important question of privilege involved, and I thought that it would be better that this House should concentrate its attention and in its wisdom to take whatever line of action it wants to take. I can only say that it will be a sad day when Members of Parliament are deterred from freely making complaints of corruption to the Minister. One hon. Member asked, 'If this privilege is

granted, what will become of democracy? I ask, 'What will become of democracy, if it is not granted?' Democracy will be corrupt to the core. Your administration will be corrupt to the core. No Member of Parliament will dare to point out to the Minister any corruption for fear of prosecution saying here is corruption right under his nose. If you think that the purity of administration is something less than the rights of half a dozen Members to go to a court of law, you are welcome to reject it. Otherwise, I think this is a Bill on which Government must bestow their attention, and even if they want to reject it, they must see to it that they bring forward some other legislation to safeguard the position of the Members of Parliament, so that they can discharge their duties fearlessly and freely.

Mr. Deputy-Speaker: The question is

"That the Bill to define powers, privilege and immunities of Parliament and its Members in certain respects be taken into consideration"

The motion was negatived

17 hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL

(Amendment of sections 56 and 123)

Mr Deputy-Speaker: We shall take up the next Bill—Shri Ram Krishan is absent. Shri Radha Raman

Shri Radha Raman (Chandni Chowk) I beg to move.

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration".