

Media freedom and Legislative Privilege: A Case study in Karnataka*

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I. INTRODUCTION

The conflict between media freedom and legislative privilege came to the forefront on June 21, 2017 when editors of two Kannada tabloids Ravi Belagere and Anil Raju of *Hi Bangalore* and *Yelahanka Voice*, were sentenced to a one-year prison term and a fine of Rs 10,000 by the Karnataka assembly headed by the Speaker K.B Koliwad, on a recommendation of the House Privileges Committee of Karnataka State Assembly for allegedly publishing defamatory articles against a few of its members.

This was for publishing an allegedly defamatory article by Ravi Belegere on Koliwad, than just a Member of Legislative Assembly of Congress Party, (it could also raise questions of conflict of interest in Koliwad, who himself had moved the breach of privilege in 2014, presently as Speaker, pronouncing the verdict in 2017) and a fellow Congress Member B.M.Nagaraju, who had moved a breach of privilege motion, before the former Speaker Kagodu Thimappa in 2014, against Belegere, alleging that the articles published in his Tabloid *Hi Bangalore* had defamed them and breached their privileges. Similarly, S R Vishwanath another Baratiya Janatha Partys Member of Legislative Assembly had filed a breach of privilege to the speaker against Anil Raju for publishing a defamatory article against him in his Tabloid *Yelahanka Voice*. The explanation given by the speaker for this extreme act was because both the editors ignored repeated summons from the House Privilege Committee and the house was left with no choice but to recommend the sentences.

The first ones to condemn the sentencing of *Hi! Bangalore* editor **Ravi Belagere** for alleged breach of privilege was **Asmita Basu**, Programmes Director at Amnesty International India and human rights organization who noted that 'Journalists must have the freedom to write critical articles, and politicians must be able to tolerate criticism,' and 'If individuals feel that their reputations have been affected, they can take recourse to civil defamation remedies in court'."

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Committee to Protect Journalists (CPJ) Asia Program Coordinator Steven Butler said from Washington, D.C. (the New York-based media advocacy group) that the elected assembly of India's Karnataka state should revoke one-year jail sentences it imposed on its two editors in Bangalore, and further stated that 'It's ridiculous that a journalist should go to jail for mocking a politician,' 'We call on the Karnataka state assembly to reverse the sentences it imposed on Ravi Belagere and Anil Raju immediately and should cease abusing press freedom.'

The Editors' Guild of India joined Amnesty International and Committee to Protect Journalists in condemning the jail sentence awarded to two tabloid editors in Bangalore by the Privileges Committee of the Karnataka Assembly. It was of the firm view that journalists must have the freedom to write critical articles against all such elected representatives of the country and hold them accountable to their actions without fear or favour.

The Guild pointed out that the 'right to try and sentence journalists for defamation vest's with the courts of law and the Karnataka Legislative Assembly cannot and should not misuse its powers and privileges to conduct a trial and sentence any member of the press for libel and If individuals of the legislature feel that their reputations have been affected, they are free to take the matter to court against the journalists or publication and not act as complainant, prosecution and judge as they did in this case' and hoped that wisdom will prevail and the Karnataka Legislative Assembly so that it will take corrective measures immediately and withdraw its pernicious resolution against the two journalists.

History of Legislative Privilege

Across the world, the law-making bodies and their members, enjoy certain Constitutional privileges, powers and immunities collectively known as “The Parliamentary or Legislative Privileges”. These privileges are framed to help the legislature and its members to discharge their constitutional obligations in an independent and effective manner without any disturbance. These privileges has been taken by the framers of our constitution from the United Kingdom, from both the Houses of the Westminster Parliament i.e. House of Lords and House of Commons and there members enjoy certain ancient privileges as an essential quality of the authority which comes with being elected or nominated to the Parliament. The framers of the Indian Constitution expressly provided for these two privileges to the Parliament and State Legislatures and their members under clauses 1 and 2 of Articles 105 and 194 respectively-(1) freedom of speech and; (2) immunity from any proceedings in any court in respect anything said or vote given in the House or any publication by or under the authority of the House. The Constituent Assembly did not expressly enumerate the ‘other privileges’ in the Constitution but, under Clause 3 of Articles 105 and 194 authorized the Parliament and State Legislatures respectively to codify them. Until the Parliament and State Legislatures chose to codify such other privileges, the privileges enjoyed by the British House of Commons and its members at the commencement of the Indian Constitution, were to apply in India purely as a transitional and temporary measure. There was criticism from some members in the 140 Constituent Assembly with regard to the reference made to the foreign legislature in the Constitution of our country and they were of the opinion that until they were expressly codified by the legislatures, they should be clearly defined in the form of a Schedule to be appended to the Constitution. Ultimately, in 1978, the Parliament took note of this and deleted the reference made to the House of Commons by only making a superficial change in Clause 3 of Articles 105 and 194 by way of 44th Constitutional Amendment; but in the absence of any codified law, the law relating to the privileges in India is being still governed by the English law which prevailed on 26th January, 1950.

Contempt of the House: This is defined as "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty or which has a tendency, directly or indirectly, to produce such results". Only with the consent of Speaker a member can raise a question involving a breach of privilege or contempt in either house.

II. REVIEW OF LITERATURE

Josh Chafetz in his work, ‘Democracy’s Privileged Few : Legislative privilege and Democratic Norms in the British and American Constitutions’ while drawing comparisons cites with relevant case studies and covers topics such as free speech in the House, freedom from civil arrest for legislators, and breach of privilege on which American law differs from British law. He mentions that even Australia has codified parliamentary privileges. And mentions that Neither House of the British Parliament has imprisoned anyone since 1880. He further points out that since the 1950s, the power to punish for breach of privilege has been sparingly exercised. He also mentions also that a Joint Parliamentary Committee on privilege recommended in 1999 that the Parliament should codify the law of parliamentary privilege – Article 105 of our Constitution was modelled on Section 49 of the Commonwealth of Australia Constitution Act 1900.

In the book “ Parliament: Powers, Functions and Privileges”, Dr K.S. Chauhan makes an in-depth analysis of the origin, purposes and constitutional practices of Parliamentary Privileges outlining the height of tension between the office of the Speaker, Lok Sabha and the Supreme Court in Cash for Query case (2007). In the chapter on ‘Privileges and Media’ the author examines the role of media vis-a-vis parliamentary privileges with a special mention to sting operations with examples from relevant case studies.

According to Erskine May, “Parliamentary privilege is the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals”.

Erskine May’s Parliamentary Practice is a classic exposition and the source book of knowledge with regard to the law, privileges, proceedings and usages of the British Parliament. The book finds mention in the Constituent Assembly Debates and speeches made by Dr. Ambedkar in the Drafting Committee. It would be an exercise in futility to attempt to deal with the question of powers, privileges and immunities of the Parliament without referring to ‘May’. This book is considered as a sure guide in Indian Legislatures to ascertain the privileges of the English Parliament. The Supreme Court itself has made detailed reference to the book while deciding cases relating to Parliamentary Privileges like Keshav Singh, P.V. Narsimha Rao and Raja Ram Pal. The book extensively deals with the historical development of the law relating to Parliamentary Privileges in U.K. with reference to records pertaining to the proceedings of Parliament, reports of the Privileges Committees of the Houses and decisions of the English Courts.

However, Erskine May's book on Parliamentary Practice is a foreign publication, which essentially deals with the origin and development of Parliamentary Privileges of the United Kingdom. It merely help one understand the privileges enjoyed by the British Parliament at the commencement of the Indian Constitution. It does not deal with the actual application of these privileges to the Indian legislative bodies. The problems arising out of the application of the English law relating to the Parliamentary Privileges in India by virtue of the transitory provisions of the Indian

Constitution, i.e. Articles 105 (3) and 194 (3), cannot be completely understood by referring to May's work. Myth and Law of Parliamentary Privileges by Hardwari Lal, Former Vice Chancellor of Maharshi Dayanand University, Rohtak and Former Education Minister of Haryana, is a well-documented book about the unexplored area of real role and precise scope of Parliamentary Privileges in India. It is an outstanding contribution to the literature relating to Parliamentary Privileges and the working of the Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament (23rd edn, Lexis Nexis, U.K. 2004) Hardwari Lal, Myth and Law of Parliamentary Privileges, (Allied Publishers Private Limited, New Delhi 1979) parliamentary form of government in India. The author was himself expelled from the Haryana Assembly in 1975 and he challenged the resolution passed by Haryana Assembly before the Punjab and Haryana High Court. He personally argued his case before the court and secured a favorable judgment that Indian Legislatures have no power to expel a duly elected member. This book meets the need of the researchers, lawyers, legislators and political commentators. Though this book is certainly useful in understanding the historical and theoretical background of the law concerning Parliamentary Privileges in India and its early development till 1979, it is not updated to incorporate the recent trends in this area of law. The recent Supreme decisions in **P.V. Narsimha Rao v State and Raja Ram Palv**. The Hon'ble Speaker, Lok Sabha are not discussed and analyzed. It also fails to take note of the related developments in commonwealth countries like Australia, which has codified the Parliamentary Privileges in 1987. The book does not give any guidelines for the codification of Parliamentary Privileges in India as mandated under part 2 of Article 105 (3) and 194 (3) of the Indian Constitution.

Parliamentary Privileges: An Indian Odyssey, by Justice V. R. Krishna Iyer and Dr. Vinod Sethi is comparatively more recent work on Parliamentary Privileges in India. This book gives an overview of the historical perspective of Parliamentary Privileges in United Kingdom and their application in India up to 1996. The authors have also successfully dealt with the problems arising out of the non-codification of Parliamentary Privileges in India and the conflicts between the Press and the Parliament. However, this book does not extensively deal with certain important powers and privileges like freedom of speech and immunity from any judicial proceedings of the members of Parliament and State Legislatures. It also fails to consider and discuss the controversial power of the Parliament and State Legislatures to expel their own members. The book does not provide any guidance as to the codification of privileges in India. The book was published in 1996 and hence it omits AIR 1998 SC 2120 30(2007) 3 SCC 184. Justice V. R. Krishna Iyer and Dr. Vinod Sethi, Parliamentary Privileges: An Indian Odyssey, (Capital Foundation Society, 1995 certain landmark judgments of the Supreme Court like **P. V. Narsimha Rao v State and Raja Ram Palv**. The Hon'ble Speaker, Lok Sabha.

The Lok Sabha Secretariat has published a book in 2002 namely Parliamentary Privileges Court Cases which deals with the summary and compilation of judgments delivered by the Supreme Court and various High Courts on 'privilege' related matters. The book enables us to appreciate the ratio adopted by the Court on arriving at its final verdict, the arguments put forth before the Court and the line of argument followed by it. It is very useful reference tool as well as a ready reckoner to those interested in the subject. Another publication of the Lok Sabha Secretariat-Parliamentary Privileges, Digest of Cases 1950-2000, Vol. I and II, in which summaries of privilege cases in the two houses of Parliament from 1950 to 2000, has also proved to be helpful as a reference tool to analyze the practices and procedures followed by the Parliament in dealing with the privilege related matters. Both these publications are not standard commentaries on the Parliamentary Privileges but they are compilations of court judgments on 'privilege' related matters and summaries of privilege cases in the two houses of Parliament. These publications do not provide any insight into the theoretical analysis of law relating to Parliamentary Privileges.

An authoritative commentary, written by eminent Constitutional expert and Former Secretary General of Lok Sabha Dr. Subhash Kashyap, Parliamentary Procedure, Law, Privileges, Practice and Precedents has proved to be a reliable guide and a ready reckoner on Rules of Procedure and Conduct of Business of both the Houses of Parliament. It is not comprehensive book dealing exclusively with Parliamentary Privileges and related case laws. It has limited use merely to understand the rules and practices followed by both houses of Parliament. AIR 1998 SC 2120 (2007) 3 SCC 184, Parliamentary Privileges, Digest of Cases 1950-2000 (Vol. I & II, Lok Sabha Secretariat, New Delhi, 2001) Subhash Kashyap, Parliamentary Procedure, Law, Privileges, Practice and Precedents (2nd edn., Universal Law Publishing Co. 2006).

The existing literature on the Parliamentary Privileges reiterates the need to codify law does not throw any light on the recent trends relating to the area of this research and it fails to visualize the future of the law relating to the Parliamentary Privileges in India.

Hazare in his thesis “The law of parliamentary privileges in India: problems and prospects” has discussed elaborately relevant Constitutional Provisions, Statutes, Constituent Assembly Debates, Parliamentary Debates, Case Laws, Books, Law-Journals, Magazines, Newspapers, notes that the power to punish for contempt is essentially a judicial power and Parliament and State Legislatures are required to follow the principles of natural justice under Article 21 of the Constitution. Unfortunately, they have not established any set procedure, incorporating the principles of natural justice, under their rule-making power. In The President’s Reference No.1 of 1965 popularly known as Keshav Singh’s Case 270, the Supreme Court has held that the House cannot be the sole and exclusive judge in defining its own powers and privileges and the courts have the constitutional power to interpret the scope of Article 194(3) as the Courts are duty-bound to uphold the supremacy of the Constitution. The penal powers of the House are controlled by other constitutional provisions like 121 and 211 which prohibit any discussion as to the conduct of any Supreme Court or High Court Judge in the Parliament and State Legislatures, respectively. Consequently, the judges cannot be held guilty of contempt of the House of legislature. The penal power of the House is also controlled by fundamental right under Article 21 and entitles the court to issue a writ of habeas corpus against the House for releasing a person wrongfully imprisoned in violation principles of natural justice implicit under Article 21. In appropriate cases, the court can also award damages against the House for improper use of the penal power. *The Hindu’s* editorial of November 12, 2003 titled ‘Press Freedom Vs Its Adversaries’ stated that the newspaper based its action on its firm conviction in the truth of three basic propositions: Freedom of the press is an inalienable fundamental right; This right, which comes under reasonable restrictions, is highly valued by both constitutional and political India and The Constitution, not any legislative body, is supreme.

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Past Examples: Rajan Hunaswadi, group editor of the Loka Shikshana Trust, that publishes the 86-year-old Kannada daily *Samyukta Karnataka* and some Kannada magazines, had twice appeared before the privileges committee in 2009 for its description of then Assembly Speaker K.G. Bopiah. In his case the committee warned and eventually dropped the case.

The Hindu’s editor, N. Ravi, and four others – S. Rangarajan, Publisher; Malini Parthasarathy, Executive Editor; V. Jayanth, chief of the Tamil Nadu Bureau; and Radha Venkatesan, Special Correspondent to 15 days of simple imprisonment for breach of privilege, by the Tamil Nadu Assembly on November 7, 2003. The paper approached the Supreme Court which issued the Stay to the warrants issued by the Speaker of the Tamil Nadu Assembly. After getting the stay N. Ram said: “Two things stand out. First, our confidence in the Supreme Court as the upholder of freedom of the press stands vindicated. Secondly, how much the press and news media mean to the system is centre staged.”

III. CONCLUSION

As noted by British Constitutional theorist Erskine May, these privileges were necessary to protect the House of Commons and its members, not from the people, but from the power and interference of the King and the House of Lords. As discussed earlier various media bodies have condemned the punishment, and have clearly advised to go for defamation rather the privileges, irrespective of the merits of the case. It is also time to critically examine the dominance of ruling government be it at centre or state on media which started from the time of Press Censorship during Emergency in 1975, and to the introduction of Defamation Bill in 1989 by then Prime Minister Late Rajiv Gandhi’s Government, to the present times now when media is made vulnerable in the form of these Privileges, gagging order or be it blacking out of TV Channels.

It is time for us to seriously act on the suggestions of the National Commission to Review the Constitution (2003), which noted “The only idea behind parliamentary privilege is that members who represent the people are not in any way obstructed in the discharge of their parliamentary duties and are able to express their views freely and fearlessly inside the Houses and Committees of Parliament without incurring any legal action on that account”. And further it opined the “Privileges of members are intended to facilitate them in doing their work to advance the interests of the people. They are not meant to be privileges against the people or against the freedom of the Press. The Commission recommends that the time has come to define and delimit privileges deemed to be necessary for the free and independent functioning of Parliament.” Even the recommendations of The Second Press Commission, the Press Council of India, the Indian Newspaper Society and the Editors’ Guild of India to codify the privileges has gone on deaf ears.

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