



## CORRESPONDENCE

### Parliamentary Privilege

TO THE EDITOR :

I am directed to refer to the comments on the case of *M.S.M. Sharma v. Sri Krishna Sinha and others* (A.I.R. 1959, S.C. 395-422), published in the July 1959 issue of the Journal of the Indian Law Institute in the section "Cases and Comments" under the caption "Freedom of Speech and Privilege of Legislatures" on pages 578-587 of the Journal, particularly the following passage appearing on pages 586-87 thereof:

"Permission of the House was needed even to publish true reports. But with the change of conditions in England in modern times, for nearly over a century this ancient privilege which was claimed by the House has fallen into disuse. Parliament represents the people of England and the proceedings of the agent has necessarily to be made known to the principal, the people. And as could be expected, the privilege has never been used for about a century till 1950 when Art. 194 (3) refers to the English practice. This logic of facts and march of events apparently have not been given their due consideration by the majority. If the above delineation is sound, then, the words in Art. 194(3) 'at the commencement of this Constitution' were inserted to refer to the privileges of the House of Commons as they existed in fact, according to Subba Rao J., in 1950. Viewed in this light, there would not appear to be any conflict between Arts. 19(1) (a) and 194(3)."

2. In this connection, I may point out that as recently as in 1939-40, 1940-41 and 1951-52, the House of Commons (U.K.), reaffirmed that "the right to publish debates which take place" in the House "has never been conceded by the House" and "that the publication of the debates at all is a breach of privilege." The following rulings of the Speaker and the observations made in the Report of the Committee of Privileges in the *Observer* case<sup>1</sup> (1941) clearly establish this point:

(i) On the 12th December, 1939, the Speaker observed in

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1. H.C. 94 (1940-41), P. iii



the House of Commons:—

“.....the right to publish debates which take place here has never been conceded by the House and it is only by the sufferance of the House that they are published in the ordinary course. Many Orders forbidding the publication of debates remain on the journals, and the House has expressly refused to waive this prohibition [Parliamentary Debates (1875) 224, columns 48 and 1165]. Some of these orders are cited in *Erskine May*, thirteenth edition, page 82 and others are referred to in footnote 3 on the same page.”<sup>2</sup>

(ii) On the 20th November, 1951, the Speaker observed in the House of Commons:

“The hon. Gentleman will find that my predecessor, Mr. Speaker Fitzroy, gave a considered Ruling [See (i) above] on this matter on the 12th December, 1939, to which I would refer him.”<sup>3</sup>

(iii) The Committee of Privileges of the House of Commons in their Report on the *Observer* case (1941) observed, *inter alia*, as follows:

“The House has of course for a long time refrained from any attempt to prevent the publication of newspaper reports of its ordinary debates, and indeed encourages such publication. The orders, however, are regarded as still in force and available should occasion demand it. The House has, for example, on occasions taken action when debates have been wilfully distorted or misrepresented. In such cases, ‘the motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege’.”<sup>4</sup>

This Report of the Committee of Privileges was considered and adopted by the House of Commons on the 10th September, 1941.<sup>5</sup>

3. In this context, your attention is also invited to the editorial footnote to the relevant portion of the dissenting judgment of Mr. Justice Subba Rao published in the *Privileges Digest*, Vol. III, No. 1, page 65.

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2. H.C. Deb. 1939-40, Vol. 355, Cols. 1031-32.

3. H.C. Deb. 1951-52, Vol. 494, Col. 224.

4. H.C. 94 (1940-41), p. iii

5. H.C. Deb. 1940-41, Vol. 374, Cols. 203-207.

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## TO THE EDITOR :

Thanks for sending me a copy of Shri Avtar Singh's letter to you.

The issue that arose for the decision of the Supreme Court in the case and was commented upon by me was the nature and the extent of the privilege of a House of Legislature in India given in Article 194 of the Constitution *vis-a-vis* the freedom of the press under Article 19.

In the light of the explicit language of Article 194 what was discussed in the Comment was :

- (1) The power to proceed for alleged contempt for publication of its proceedings claimed by the House of Commons in the United Kingdom being an *ancient, judicial and extra-legislative* privilege, can such a privilege exist in the light of the words of Article 194 in a legislature created with purely legislative functions?
- (2) When it was conceded that a legislative enactment of such a privilege by a legislature in India is subject to Part III of the Constitution, can an unenacted expression of a privilege by a single house of legislature claim freedom from any constitutional limitation?
- (3) The significance of the words relating to privilege in Article 194 (3), namely, "those of the House of Commons... at the commencement of this Constitution" [emphasis added] may be noted in the context of the Report of the Committee of Privileges of the House of Commons in 1941 in the *Observer* case : "The House has, of course, for a long time refrained from any attempt to prevent publication of newspaper reports of its ordinary debates and indeed encourages such publication." Cannot the courts of law take judicial notice of the prevalent practice in 1950 in considering the extent of the privilege claimed in view of the aforesaid words in the Article when a claim of a fundamental right is involved ?

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