THE LAW OF PARLIAMENTRAY PRIVILEGES IN INDIA. By V. G. Ramachandran. Lucknow: Eastern Book Co. 1966. Pp. cxiv + 776. Rs. 45/-.

MR. V. G. RAMACHANDRAN, widely known for his books in the field of law, is the author of this treatise relating to the law of parliamentary privileges in India. That the book carries a very learned foreword by one of the most distinguished Chief Justices of India (who has lavishly praised the author for his objective study) is an eloquent testimony to the importance of the subject in India. In this *magnum opus*, Mr. Ramachandran has attempted to gather together the rich literature on the law of privileges and to apply it for the needs of present-day India.

The structure of the book has been planned with considerable care, although according to the author "it was not possible" for him "just now to treat the subject of privileges on a text book pattern."[1] Understandably, the involved nature of a subject makes difficult the neat categorization necessary in a textbook. Nevertheless, it must be said that the book has a wide coverage and a wealth of information. The first three chapters, largely expository in character, deal with the origin and nature of parliamentary privileges, the categories of contempt of legislature, the growth of the law of parliamentary privileges and the modes of action thereon. The subsequent chapters contain an elaborate analysis of judicial precedents and a review of the privileges decisions in practically all the legislative assemblies of the country. The reviewer would be happy to see the author re-arranging the material of this work in subsequent editions so as to make it valuable both as a reference book and a textbook. Since there is no textbook on this subject, Mr. Ramachandran, by virtue of his knowledge of the subject, should now give the benefit of his labours to the student community as well. Actuated by this motivation, the reviewer ventures to offer some pertinent comments.

The author, in the first three chapters, could have conveniently omitted the privileges of the House of Lords. Similarly, while dealing with the precedents relating to privilege and contempt of Parliament and state legislatures in India, a topical arrangement instead of chronological presentation would have been preferred. Also, the substance of the fifth chapter, indicating the modern trends in the law of privileges, could have been better fused into the first three chapters. On the other hand, the subject of codification, recurring throughout the book, could have profitably formed the theme of one separate chapter. The chapter on jurisdiction of courts in privilege matters, wherein the author quotes profusely from the opinions of the Supreme Court, would have been further enriched had it been flavoured with critical appraisals as the author has done elsewhere. Avoiding needless repetitions,

1. Ramachandran, *The Law of Parliamentary Privileges in India* LIII (1966).

besides saving space, would have reduced the chances of discrepancies and contradictions. And for those who seek simplicity and clarity of exposition, the highly metaphorical and colourful language permeating the volume could profitably be excised or minimized.

There is much in this work which provokes thinking on various facets of the subject of privileges. A determined plea is made by the author for an early codification of legislative privileges. He adverts to the transitory character of the adoption of the privileges of House of Commons, and contends that the experience gained during the last "fifteen" years (now seventeen) is sufficient to enable comprehensive codification of the law on the subject. The status quo is assailed primarily for the restrictions it imposes on the fundamental rights of citizens; but this difficulty follows only from the verdict of the Supreme Court in the *Searchlight* case.[2] Since the author himself believes it now to be of doubtful authority in the light of later pronouncements[3] of the Court the argument needs rethinking. Probably, in the *Searchlight* case the Court was much influenced by the absence of any enumeration in article 19(2) of social control over freedom of speech in the area of legislative privileges. The same consideration led to an emphasis on the limited character of that opinion rather than overrule it in the presidential reference because of the advisory character of the latter verdict. The recent decision of the Supreme Court,[4] denying the Parliament any power to amend the Constitution so as to take away or abridge any fundamental right, has added to the complexity of an already difficult situation. But it is relevant to rely on the very provisions in articles 105 and 194 to codify the privileges.

An additional argument is found by the author in the propensities of the exclusion of judicial review which the present state of law entails in matters of privileges of the legislature. The author adverts to the need for creating tribunals in the contemplated code to punish contempts which are not *ex facie*. This, however, needs some more detailed examination at the hands of the suggested parliamentary committee. The author, however, in the body of the treatise confines his plea to the maintenance of a supervisory jurisdiction of the courts for jurisdictional effects. The present position is not much different. The courts can always look whether the privilege claimed in a particular instance existed in respect of the House of Commons in 1950 or not. If the existence of the privilege is established they cannot substitute their judgment for that of the House. Supervisory jurisdiction in the judiciary will not materially alter the situation. The only difference

2. *M. S. M. Sharma* v. *Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.
3. *In re, Under Art. 143, Constitution of India*, A.I.R. 1965 S.C. 756.
4. *Golaknath* v. *Punjab*, Writ Petition No. 153 of 1966, Supreme Court, Feb. 27, 1967.

which codification may make is that instead of turning to the precedents of the House of Commons the courts will have to administer the code. And, although codification will be advantageous in terms of certainty, it has to be weighed against the lack of experience in the use of parliamentary machinery at this time. The last seventeen years, spent as they were with the reins of power in the hands of a single political party, can hardly be expected to provide answers to the peculiarly knotty problems likely to arise in the diverse federation now arising in this country. Ideological differences, party conflicts and personal vendetta may find their echo in privilege motions across state boundaries, raising questions of freedom of speech in the legislature in ways that have hardly been sampled as yet.

The earlier suggestion of the author to have a limited jurisdiction for courts to determine whether a privilege existed or not may perhaps lead to many difficulties. Its implications need careful examination. The procedure to be followed in such cases may raise some ticklish problems. For instance, the provisions of the Indian Evidence Act, 1872,[5] precluding a court from inspecting a document claimed to be privileged on grounds of its relations of affairs of state may cause serious embarrassment in cases of contempt against a minister for misleading the House. The change may also seriously hinder the presiding officer in enforcing obedience to his orders during proceedings, and may involve discussion of his conduct before a court, which is at present prohibited by the Constitution.

The most weighty argument against any such course is the diminution in the legislative image which its implementation involves. Underlying successful working of democratic institutions is a confidence in the chosen representatives and in the means of choosing them. This confidence of the public can hardly be expected by a legislature craving judicial intervention for the smallest of indignities.[6]

Two other grounds used by the author to support his stand are (1) the impossibility of the development of any trial expertise in the legislature and (2) the absence of any machinery to revise the errors of the Houses. The author seems to complain that in times of emotional crises legislatures may not act with compunction and objectivity, but after a protracted examination of legislative precedents he himself has concluded earlier that the Houses have always shown restraint and compunction in these matters. Fear of a remote possibility should not be made the cause for so drastic a change. As an illustration of the misuse of the privilege motion the author has referred to its frequent use to tarnish the image of the ruling party, and has suggested that wilful misuse of this motion must be made punishable. While this

5. Indian Evidence Act, 1872, § § 123, 162.

6. *Cf.* Irani, "The Courts and Legislatures in India," 14 *Int'l & Comp. L. Q.* 960-68 (1965).

reviewer shares the author's anguish, he desires to add that the verbal chicanery indulged into by responsible persons is more often at the root of it. Moreover, implementation of the suggestion may seriously impair the freedom of speech and expression in the legislature and may hamper its deliberative capacities.

The author also makes an emotive appeal to nationalism by exhorting the legislators to throw away a foreign shield. This has been echoed also by Mr. Chief Justice Subba Rao, who added that the courts might force the hands of the legislatures by holding that the transitory provision enacted in articles 105(3) and 194(3) has outlived its character and must be treated as having lapsed. The observations are entitled to greatest respect. The learned author follows the same trend as the Chief Justice. But we hope that the courts shall not lightly rescind their prior stand in favour of immediate applicability of the fundamental rights in parliamentary privileges cases without very carefully weighing the needs of the times and the implications for the working of the legislative system in India.

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