

# Prashant Bhushan

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To,  
Mr. Mukul Pande  
Director,  
Rajya Sabha Secretariat  
Parliament House/ Annexe  
New Delhi-110001

Dear Shri Mukul Pande,

I am in receipt of your letter dated 30/8/11 (RS 35/12/2011-L) regarding the complaint of breach of privilege made against me. The complaint against me seems to be that I had made derogatory remarks about members of Parliament and had alleged that laws are passed in Parliament by members taking bribes for them. This is alleged to have been said by me in some television discussion. However, neither the tape, nor transcript of that discussion in which I have allegedly these allegations has been enclosed with the notice sent. I would be grateful if I am provided if a copy of the tape or transcript of the same, so that I can give a detailed response.

However, without prejudice to the above, I would like to say that whatever I have been saying about Parliament, its members and their conduct, is either a statement of fact, or inferences derived from those facts or bonafide comments on those made by me in public interest and to improve the functioning of our democracy. I have said and have been saying that though laws have to be made by Parliament, its members must make those laws by ascertaining the wishes of the people. If they think that by being elected once, they have a license to do as they please during their term and make laws and policies against the wishes of the

people whom they are supposed to represent and if they think that they can do so even by taking bribes, then that is an incorrect understanding of democracy. Here my comments obviously were not intended to refer to all members of Parliament, but only to those who may have come to believe that being elected gives them the right to act as they please in Parliament, even against the wishes of the people. I would like to state that I do believe that several members of Parliament have acquitted themselves with great honour and dignity in their conduct and have faithfully represented their constituencies and public interest. The country can be justly proud of their conduct.

Unfortunately, the behaviour of many members of Parliament in the recent past has done no credit to themselves or to the institution of Parliament. The functioning of the houses of Parliament as well as of state assemblies have been frequently disrupted, often leaving hardly any time for discussing important Bills or other important business of the houses. Many houses have also witnessed assaults by members on other members, throwing of papers, microphones and sometimes even chairs at each other. We have also seen instances where more than a dozen bills have been passed in Parliament without discussion in a matter of a few minutes with few members present in the house. There have also been instances of members taking bribes for asking questions and even voting in Parliament for important issues like even for a vote of no-confidence. It is also a known fact that several MP's are in jail for serious offences and more than a 100 are facing chargesheets for various offences.

In these circumstances, it is not only the fundamental right but also the duty of every right thinking citizen of this country to draw attention to these unfortunate state of affairs and think about ways and means of improving the functioning of our democracy. This is why our Constitution guarantees the fundamental right of

speech which has been held to be part of the basic structure of the Constitution. Reasonable restriction on this right can be imposed by Parliament in the interest of public order, defamation, contempt of court etc. However parliamentary privileges are not a ground on which any restriction can be imposed on the exercise of the right of free speech.

What constitutes a contempt of Parliament or breach of Parliamentary Privilege can be understood in the light of Constitutional provisions, its judicial interpretations,

*“Generally speaking, 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 may be treated as a contempt even though there is no precedent of the offence.”* [Erskine May’s Parliamentary Practice, Twenty first edition, Pg. 115]

The power and privileges granted by Article 194 (3) to the legislatures and in pari materia, under Art 105(3) to the members of Parliament are to facilitate due performance of its legislative functioning and removal of impediments created from inside or outside the walls of the House. In *State of Karnataka v. Union of India* [(1977) 4 SCC 608] decided by a Constitution Bench (seven Judges) of the Supreme Court of India, it was held at Para 63 *“... A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempt of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings.”*

In the UP Assembly Case (In Re Under Art. 143) [1965(1) SCR413, AIR 1965 SC 745] the Supreme Court, while dealing with questions relating to Powers, Privileges and Immunities of State Legislatures, observed as under:-

*"69\_\_\_\_\_ Parliamentary privilege, according to May, is the sum of the 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.*

The Court further observed, *"(T)here is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reserve the term "privilege" to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity [May's Parliamentary Practice, pp. 42-43]."*

The concept of Parliamentary privileges arises from the notion that Parliament must ensure that its members are not prevented or fettered from doing their duty and discharging their responsibilities as members of parliament. These include the right to speak and vote freely in Parliament. Thus, if members are prevented from speaking or voting freely in Parliament either directly (by people physically disrupting the functioning of Parliament as many of its members often do) or indirectly (by threatening or inducing by way of bribes members to speak or vote

in a particular manner) that would constitute a breach of privilege. However the exercise by a citizen of his right of free speech even if it makes derogatory references to members of Parliament cannot be said to amount to restricting the members' right to speak or vote freely in Parliament and cannot thus amount to breach of privilege. In fact, article 105 of the Constitution required Parliament to codify its privileges. Unfortunately even 61 years after the Constitution, this hasn't been done. In any case such codification cannot make a mere defamation of members of Parliament as breach of privilege which could be actionable. Such defamation would be actionable as civil and criminal defamation under the normal law, but not as breach of privilege of Parliament. Any law made by Parliament to define breach of privilege in a manner which restricts a citizens right of free speech about Parliament or its members, would be violative of the Article 19(1)(a) of the Constitution. Even the second exception to the criminal law of defamation allows citizens to make bonafide comments on the functioning of public servants including members of Parliament.

In any case, the notion that allowing citizens to freely make derogatory imputations about Parliament or its members would destroy public confidence in Parliament and would thus lead to a collapse in democracy is a totally incorrect notion, apart from the fact that the law of defamation is a sufficient safeguard to protect the reputation of members. Public confidence in any institution or its members is not engendered by preventing people from expressing their free and frank opinions about the functioning of that institution or its members. The public perception about an institution or its members is created by their conduct and not by what people say about their conduct. If a citizen makes an unfair accusation about Parliament or its members, it is generally seen and perceived to be unfair by the people. Any attempt by the members to use its Parliamentary privileges to

stifle the freedom of speech of citizens who criticize members or their functioning would only reinforce the feeling that there is a serious problem in the functioning of Parliament and instead of rectifying that, Parliament is trying to stifle those who are raising such uncomfortable questions.

It is not out of context to mention an observation of the Supreme Court of India in U.P assembly case speaking of the Judges' power to punish for contempt, *"We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dainty or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislatures."*

I would therefore urge the house and its members not to be so sensitive about criticism and instead reflect upon why public perception about Parliament and its members has come to be what it is and explore ways and means to improve the functioning of our democracy.

Yours Sincerely,

PRASHANT BHUSHAN