

HOUSE RULES AND THE WEAPON OF EXPUNCTION

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The Lok Sabha Speaker, Om Birla | Photo Credit: KAMAL NARANG

The expunction of portions of the speeches made by some Opposition politicians in Parliament recently is an issue that has sparked off a debate on an action taken by the Speaker (in the speech by Congress leader Rahul Gandhi), and the Chairman of the Rajya Sabha (in the case of the speech made by Congress President and Leader of Opposition in the Rajya Sabha Mallikarjun Kharge). Mr. Gandhi and Mr. Kharge were both speaking on the Motion of Thanks to the President of India for her address to the Members of Parliament of both Houses. This is customary practice although the Constitution does not provide for any such motion, except direct that each House shall discuss the matters contained in the address. This is a practice adopted from the British Parliament.

When such a motion is discussed, MPs are generally permitted to speak on anything under the sun. It is an occasion to point out lapses on the government's part and discuss the gamut of issues that concern the governance of the country. Speeches are generally political and the Chair never insists on relevance. Since the Council of Ministers is collectively responsible to Parliament, MPs have the right to critically scrutinise the performance of the government. Accountability to Parliament requires the government to respond adequately to the questions raised by MPs in the debate. Under the Rules of the House, it is the Prime Minister who replies to the debate in both Houses.

Article 105 of the Constitution confers on members, freedom of speech in the House and immunity from interference by the court for anything said in the House. Thus, freedom of speech in the House is the most important privilege of a Member of Parliament which is subject only to the other provisions of the Constitution relating to the running of the House and the House Rules. Rule 380 of the Rules of procedure of the Lok Sabha and Rule 261 of the Rules of the Rajya Sabha give the power to the presiding officers of these Houses to expunge any words used in the debate which are defamatory, unparliamentary, undignified or indecent. Once expunged they do not remain on record and if anyone publishes them thereafter, they will be liable for breach of privilege of the House.

There are also occasions when an MP may, during his speech, make an allegation against a fellow MP or an outsider. Rule 353 of the Lok Sabha regulates the procedure in that regard. Under this Rule, the MP is required to give "adequate advance notice" to the Speaker as well as the Minister concerned.

It may be noted here that the Rule does not prohibit the making of any allegation. The only requirement is advance notice, on receipt of which the Minister concerned will conduct an inquiry into the allegation and come up with the facts when the MP makes the allegation in the House. In this case, it may be noted that the allegation which necessitates advance notice, etc. is of a defamatory or incriminatory nature. It means that if the allegation is neither defamatory nor incriminatory, the above rule would have no application.

The rule does not obviously apply to an allegation against a Minister in the government. Since the Council of Ministers is accountable to Parliament, the Members of the House have the right to question Ministers and make imputations against their conduct as Ministers. All that is a part of their duty to ensure the government's accountability to Parliament. Article 105 gives them the freedom to discharge their duty fearlessly.

However, a Member of Parliament needs to follow a certain procedure while making an allegation against a Minister. Such a procedure has been laid down by Speakers in the past. Making an allegation against a Minister or the Prime Minister is considered to be a serious matter; therefore, the presiding officers have carefully laid down a stipulation that the MP who makes an imputation against a Minister of the government should be sure about the factual basis of the allegation, and that he must take responsibility for it. If the MP complies with this stipulation, then the allegation will be allowed to remain on record. There have been many instances in the Lok Sabha when MPs have made allegations against Ministers. Here are two rulings made by the Speakers on such occasions.

On September 2, 1965 when Prakash Vir Shastri, MP, made personal allegations against Humayun Kabir, the then Minister for Education, the Minister refuted the allegation but the MP reiterated his allegation and referred to press reports. In his ruling, the Speaker, Sardar Hukam Singh, said, "I wish to inform all the Honourable members with great respect that a mere report in a newspaper about anything does not give you the privilege to raise it in the House. I know that normally the source of information available to members is newspapers. But that is not a sufficient basis for a member to make an allegation against a Minister, member or other dignitaries. It is necessary to probe it further and satisfy oneself about it... Even if the allegation is proved wrong, it will[,] after all, affect the reputation of the person."

On December 21 1981 in the Lok Sabha, Bapusaheb Parulekar, MP, made a reference to an allegation published in the Sunday (a weekly) against the then Railway Minister, Kedar Pande, and his family members in connection with permanent railway card passes. The Deputy Speaker, G. Lakshmanan, who was in the chair gave the following ruling: "The member should, before making an allegation in the House, satisfy himself after making enquiries that there is a basis for the allegation. The member should be prepared to accept the responsibility for the allegation and the member should be prepared to substantiate the allegation."

However, a careful reading of the Rules of the House would reveal that the axe of expunction can be wielded only when the allegations mentioned therein are of defamatory or incriminatory character. Under Section 499 of the Indian Penal Code (Second exception), any statement respecting the conduct of a public servant in the discharge of his public function or his character (so far as his character appears in that conduct) is not defamation. If such a statement is made in the House against a Minister who is a public servant, it does not come within the 'mischief' of Rule 353 or Rule 380.

Therefore, it does not afford an occasion for the presiding officers to expunge words in or portions of a speech on the ground that they are defamatory. It is thus clear that before the weapon of expunction is wielded, it needs to be ascertained whether the speech contains defamatory or incriminatory statements or only critical comments (which a Member of Parliament

has the right to make). It also needs to be ensured that the freedom of speech enjoyed by the Members in the House is not needlessly curtailed.

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