

COMMITTEE OF PRIVILEGES

SIXTH REPORT

(SECOND LOK SABHA)

(Laid on the Table on the 12th December, 1958)



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LOK SABHA SECRETARIAT

NEW DELHI

December, 1958

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PERSONNEL OF THE COMMITTEE OF PRIVILEGES

1. Sardar Hukam Singh—*Chairman.*
2. Shri Satya Narayan Sinha
3. Shri Asoke K. Sen
4. Pandit Munishwar Dutt Uppadhyay
5. Dr. P. Subbarayan
6. Shri Nemi Chandra Kasliwal
7. Shrimati Jayaben Vajubhai Shah
8. Shri N. M. Wadiwa
9. Shri Sarangadhara Sinha
10. Shri Shivram Rango Rane
11. Shri Hirendra Nath Mukerjee
12. Shri Indulal Kanaiyalal Yajnik
13. Shri Bimal Comar Ghose
14. Shri Shraddhakar Supakar
15. Shri Hoover Hynniewta.

Members

SECRETARIAT

1. Shri S. L. Shakhder—*Joint Secretary.*
2. Shri Avtar Singh Rikhy—*Deputy Secretary.*

SIXTH REPORT OF THE COMMITTEE OF PRIVILEGES

(SECOND LOK SABHA)

I—Introduction and Procedure

I, the Chairman of the Committee of Privileges, submit this report to the Speaker on the following question:—

Whether the Parliamentary practice obtaining in the United Kingdom, according to which one House of Parliament does not permit one of its members to be summoned by the other House, without a message desiring his attendance or, without the consent of the Member whose attendance is required, is applicable in India, in terms of Article 105(3)/194(3) of the Constitution, to a case where a Member of Parliament is required to give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof.

The above question of principle had arisen in connection with the consideration by the Committee of a request made by the Secretary of the Bombay Legislature Department for permitting Shri L. V. Valvi, Member, Lok Sabha, to appear before the Committee of Privileges of the Bombay Legislative Assembly to give evidence. In that case, the Committee had recommended:

“ . . . that as in the present case the Secretary, Privileges Committee of the Bombay Legislative Assembly, has formally requested the Speaker, Lok Sabha, to permit Shri L. V. Valvi, M.P., to tender evidence before the Committee of Privileges of the Bombay Legislative Assembly, Shri Valvi may be permitted to appear before that Committee if he thinks fit.”

[Third Report of the Committee of Privileges (Second Lok Sabha)—Laid on the Table of Lok Sabha on the 24th and adopted by the House on the 25th April, 1958.]

The Committee, however, desired* that the question of evolving a procedure in such matters might be examined in greater detail

*Minutes of the sitting held on the 23rd April, 1958, para 4.

and the opinion of the Attorney General be taken in the matter, if necessary.

2. The Committee held two sittings.

3. At the first sitting held on the 19th November, 1958, the Committee considered the matter in the light of the opinion* of the Attorney-General on the question and came to their conclusions.

4. At the second sitting held on the 25th November, 1958, the Committee deliberated on the draft report.

II—Findings of the Committee

5. Under Article 105(3)/194(3) of the Constitution, the powers, privileges and immunities of each House of Parliament/State Legislature and of the members and the Committees of each House have been equated, until defined by Parliament/State Legislature by law, to those of the House of Commons, U.K., and of the members and the Committees thereof, at the commencement of the Constitution, that is, on the 26th January, 1950. Since no legislation on the subject has so far been enacted either by Parliament or by the State Legislatures, their powers, privileges and immunities continue to be equated to those of the House of Commons, U.K.

6. In the United Kingdom, "attending as a witness before the other House or any committee thereof without the leave of the House of which he is a member or officer" would be regarded as a contempt of the House. (May's Parliamentary Practice, 16th Edition, page 117).

The following procedure has to be followed if the witness, whose attendance is required, is a Member of the other House:

"If the attendance of a Peer should be desired, to give evidence before the House, or any Committee of the House of Commons, the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or Committee, as the case may be. If the Peer should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, his lordship consenting thereto; if the Peer be not present, the House gives leave for his lordship to attend 'if he thinks fit'. Exactly the same form is

* See Appendix II (pp. 14—19).

observed by the Lords when they desire the attendance of a Member of the House of Commons." (May's Parliamentary Practice, 16th Edition, p. 669).

As to the extent and nature of the Privilege or immunity of the Member the practice has been summarised thus in Hatsell:

"The result of the whole, to be collected either from the Journals or from the History of the Proceedings in the House of Commons, is, 1st, That the Lords have no right whatever, on any occasion, to summon, much less to compel the attendance of, a Member of the House of Commons. 2ndly, That, in asking leave of the House of Commons for that attendance, the message ought to express clearly the 'cause' and 'purpose' for which the attendance is desired; in order that, when the Member appears before the Lords, no improper subject of examination may be tendered to him. 3rdly, The Commons, in answer to the Lords message, confine themselves to giving leave for the Member to attend, leaving him still at liberty to go or not, 'as he shall think fit'. And, 4thly, the later practice has been, to wait until the Member named in the message is present in his place; and to hear his opinion whether he chooses to attend or not, before the House have proceeded even to take the message into consideration."

(Hatsell's Precedents, Second Edition, Vol. III, pp. 20-21)

7. The reasons for this practice in British Parliament have been described in some detail by Hatsell in the following terms:

" . . . the Commons have been always extremely jealous of admitting any proceeding which might seem to allow an authority in the Lords, to command the attendance of any of their Members, for any purpose whatever. They have therefore always required, that the Lords should, in their message, express the cause for which the attendance is desired; and even then the House proceed no further than to give leave for the Member to attend; and he is still at liberty to attend or not, as he shall think fit. . . . One object of the jealousy of the House of Commons, and which has made them particularly careful that the Lords should express in their message the cause for which the Member is desired to attend, has been that the Lords might not, on any

pretence, call a Member before them, to give an account either of the vote he had given in the House of Commons, or the motives that had inclined him to take a part in any Bill, or other matter, then pending in Parliament . . . The Commons, on the 18th of May, 1675, resolved, 'That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the sitting or privilege of Parliament.'

(Hatsell's Precedents, Second Edition Vol. III, pp. 18-19).

Hatsell further states:

"The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, that there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other. From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but if there is any ground of complaint against an act of the House itself, against any individual Member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed any other proceeding would soon introduce disorder and confusion; as it appears actually to have done in those instances, where both Houses, claiming a power independent of each other have exercised that power upon the same subject, but with different views and to contrary purposes."

(Hatsell's Precedents, Second Edition, Vol. III, pp. 61-62)

8. The Attorney-General, who had been requested* to communicate his opinion on the subject for the information of the Committee, has *inter alia* stated‡:

✓ "The . . . position would seem to divide itself into two parts.
 ✓ First, a Member of one House is not bound to attend

*See Appendix I (pp. 10—13).

‡See Appendix II (pp. 14—19.)

the other House or its committee to give evidence. Secondly, even if he is willing to give evidence he cannot do so without the leave of the House of which he is a Member and the House may or may not permit him to attend to give evidence. The first part is thus a privilege or immunity of the Members of the House. The second part would seem to be a privilege of the House itself

. . . it would appear that having regard to the principle on which this immunity or privilege is based, namely, that of the preservation of the independence of the House the immunity and privilege would seem to be absolute so that the House and the member would be entitled to claim them whether the House is or is not in session . . .

The immunity and privileges mentioned above would clearly apply in the case of a Member of the Rajya Sabha or the Lok Sabha being required to give evidence before the other House or its committees. . . . The paramount principle underlying the privileges both of the Member and of the House is, as already stated, the independence of a House and its Members. This principle would, I think, be equally applicable in a federal structure where there is a Central legislature consisting of two Houses and several State Legislatures consisting of one or two Houses. If these privileges are applicable, as they undoubtedly are, as between the Rajya Sabha and the Lok Sabha or between the Upper and Lower Houses of the State Legislatures in States where there are two Houses there appears to me no reason why the same privileges should not apply as between these legislatures and their Members *inter se*."

9. The Committee express their agreement with the views of the Attorney-General.

III—Recommendations of the Committee

10. The Committee are of the opinion [that the House should not permit any one of its Members to give evidence, before the other House of Parliament or a Committee thereof or before a House of State Legislature or a Committee thereof, without a request desiring his attendance and without the consent of the Member whose attendance is required. Further, such requests from the other House of

Parliament or a Committee thereof or by a House of State Legislature or a Committee thereof ought to express clearly the cause and purpose for which the attendance of the Member is desired.

11. The Committee recommend that no Member of the House should give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, without the leave of the House being first obtained.

12. When a request is received seeking leave of the House to a Member to give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, the matter may be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman or a Member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

NEW DELHI;

The 25th November, 1958.

HUKAM SINGH,

*Chairman,
Committee of Privileges.*

SPEAKER'S ORDERS

Speaker's Orders on the Report of the Committee of Privileges

Seen. The Report may be laid on the Table of the House.

Sd/- M. ANANTHASAYANAM AYYANGAR,
29th November, 1958.

MINUTES

I

First Sitting

New Delhi, Wednesday, the 19th November, 1958

The Committee met from 15.30 to 16.00 hours.

PRESENT

- | | | |
|--|---|----------------|
| 1. Sardar Hukam Singh— <i>Chairman</i> . | } | <i>Members</i> |
| 2. Shri Satya Narayan Sinha | | |
| 3. Dr. P. Subbarayan | | |
| 4. Shri Shivram Rango Rane | | |
| 5. Shri Hirendra Nath Mukerjee | | |
| 6. Shri Shraddhakar Supakar. | | |

SECRETARIAT

Shri Avtar Singh Rikhy—*Deputy Secretary*.

2. The Committee considered the opinion of the Attorney-General on the question whether the Parliamentary practice obtaining in the United Kingdom, according to which one House of Parliament does not permit any one of its Members to be summoned by the other House, without a message desiring his attendance, or without the consent of the Member whose attendance is required, is applicable in India, in terms of Article 105(3) | 194(3) of the Constitution, to a case where a Member of Parliament is required to give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof.

3. The Committee expressed their agreement with the views of the Attorney-General and decided to recommend that the practice obtaining in the United Kingdom should be followed in such cases.

4. The Committee decided to meet again at 16.00 hours on Tuesday, the 25th November, 1958 to consider the draft report.

The Committee then adjourned.

II

Second Sitting

New Delhi, Tuesday, the 25th November, 1958

The Committee met from 16.00 to 16.15 hours.

PRESENT

1. Sardar Hukam Singh—*Chairman*.
 2. Dr. P. Subbarayan
 3. Shri N. M. Wadiwa
 4. Shri Sarangadhara Sinha
 5. Shri Shivram Rango Rane
 6. Shri Hirendra Nath Mukerjee
 7. Shri Bimal Comar Ghose
 8. Shri Hoover Hynniewta.
- } *Members*

SECRETARIAT

Shri Avtar Singh Rikhy—*Deputy Secretary*.

2. The Committee deliberated upon the draft report and adopted it.

3. The Committee authorised the Chairman to present the report on their behalf to the Speaker and to recommend that it may be laid on the Table of the House.

The Committee then adjourned sine die.

APPENDIX I

(See para 8 of Report)

No. 797-CI/58-V

June 26, 1958.

OFFICE MEMORANDUM

SUBJECT:—*Attendance of a Member of Parliament to give evidence before the other House or another Legislature or a Committee thereof.*

The Committee of Privileges, at their sitting held on the 23rd April, 1958, on a suggestion made by the Minister of Law, Shri A.K. Sen, decided that the opinion of the Attorney-General of India might be sought in regard to the following question:

Whether the Parliamentary practice obtaining in the United Kingdom, according to which one House of Parliament will not permit one of its members to be summoned by the other House, without a message desiring his attendance, or without the consent of the Member whose attendance is required, is applicable in India, in terms of Article 105(3) | 194(3) of the Constitution, to a case where a Member of Parliament is required to attend for giving evidence before a State Legislature or a Committee thereof.

2. The Committee agreed that the above Parliamentary practice obtaining in the United Kingdom would undoubtedly be applicable to a case where a Member of one House of Parliament was required to appear before the other House of Parliament or a Committee thereof for giving evidence. They were, however, not sure whether this requirement of obtaining permission of the House should apply with the same force to a Member of Parliament who is requested to appear before a State Legislature or a Committee thereof to give evidence.

3. A note prepared by this Secretariat which sets out the position at some length, is enclosed.

4. The Attorney-General is requested kindly to communicate his opinion on the subject for the information of the Committee of Privileges. It might be added that the Committee of Privileges will

hold a sitting to consider this subject sometimes during the next session of Lok Sabha which is scheduled to commence on the 11th August, 1958.

Sd.|-
(M. N. KAUL)
Secretary.

The Attorney-General of India,
New Delhi.

Enclosure to Appendix I

LOK SABHA SECRETARIAT

(Committee Branch—I)

SUBJECT:—*Attendance of a Member of Parliament to give evidence before the other House or another Legislature or a Committee thereof.*

On the 18th April, 1958, the Speaker received a communication from the Secretary of the Bombay Legislature Department, requesting him to permit Shri L. V. Valvi, Member of Lok Sabha, to tender his evidence as a witness before the Committee of Privileges of the Bombay Legislative Assembly, in connection with a case of alleged breach of privilege of that Assembly. The Committee of Privileges of Lok Sabha, to whom the matter was referred by the Speaker for examination and report, in their Third Report (see Appendix), have *inter alia* recommended:

“That as in the present case the Secretary, Privileges Committee of the Bombay Legislative Assembly, has formally requested the Speaker, Lok Sabha, to permit Shri L. V. Valvi, M.P., to tender evidence before the Committee of Privileges of the Bombay Legislative Assembly, Shri Valvi may be permitted to appear before that Committee if he thinks fit.”

The Committee, however, felt that the Parliamentary practice in the U.K., according to which “attending as a witness before the other House or any Committee thereof without the leave of the House of which he is a member or officer”* would be regarded as a contempt of the House, was applicable in India, in terms of article 105(3) of the Constitution, to a case where a Member of Parliament was required to attend as a witness before the other House of Parliament or a Committee thereof. The Committee desired that the opinion

*May's Parliamentary Practice, 16th Ed., Page 117.

of the Attorney-General of India might be obtained in regard to the question whether any such formal permission of the House was necessary in a case where a Member of Parliament was required to give evidence before a State Legislature or a Committee thereof, in his capacity as a citizen and not as a Member of Parliament.

2. In a nut-shell, the issue raised is whether Article 105(3) of the Constitution contemplates that the powers, privileges and immunities of each House of Parliament in relation to the various State Legislatures in this country should be the same as those of the House of Commons, U.K., in relation to the House of Lords, U.K.

3. The general privilege of exemption of a Member from attending as a witness in the other House of Parliament or a Committee thereof or in a Court of Law has been stated thus:

“... the privilege of exemption of a Member from attending as a witness has been asserted by the House upon the same principle as other personal privileges *viz.*, the paramount right of Parliament to the attendance and service of its Members, and in certain cases on the matter being raised by the Member concerned the Speaker has communicated with the Court drawing attention to this privilege and asking that the Member should be excused. On other occasions, the Commons have granted leave to their Members on the ground that their attendance as witnesses was required. ... As regards attendance in the other House, one House will not permit one of its Members to be summoned by the other, without a message desiring his attendance or without the consent of the Member whose attendance is required.”

[May's Parliamentary Practice, 16th Ed., p. 77]

4. The reasons for this practice in British Parliament have been described in some detail by Hatsell in the following terms:

“...the Commons have been always extremely jealous of admitting any proceeding which might seem to allow an authority in the Lords, to command the attendance of any of their Members, for any purpose whatever. They have therefore always required, that the Lords should, in their message, express the cause for which the attendance is desired; and even then the House proceed no further than to give leave for the Member to attend; and he is still at liberty to attend or not, as he shall think fit...One object of the jealousy of the House

of Commons, and which has made them particularly careful that the Lords should express in their message the cause for which the Member is desired to attend, has been that the Lords might not, on any pretence, call a Member before them, to give an account either of the vote he had given in the House of Commons, or the motives that had inclined him to take a part in any Bill, or other matter, then pending in Parliament.... The Commons, on the 18th of May, 1675, resolved, "That it is the undoubted right of this House, that none of their Members be summoned to attend the House of Lords, during the sitting or privilege of Parliament'."

[Hatsell's Precedents, Second Edition, Vol. III, pp. 18-19]

Hatsell further states:

"The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament, is, that there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other. From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but if there is any ground of complaint against an act of the House itself, against any individual member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. Indeed any other proceeding would soon introduce disorder and confusion; as it appears actually to have done in those instances, where both Houses, claiming a power independent of each other have exercised that power upon the same subject, but with different views and to contrary purposes."

[Hatsell's Precedents, Second Edition, Vol. III, pp. 61 & 62]

6. The powers, privileges and immunities of each House of Parliament and State Legislatures in India have been provided for in identical terms under the Constitution [See Articles 105(3) and 194(3)]. It would, therefore, be in keeping with the spirit of these provisions in the Constitution if the relations between the Houses of Parliament, both among themselves as well as with the Houses of State Legislatures in the country, are determined on the basis of equality so as to ensure mutual understanding, harmony and goodwill between the various Legislatures in the country.

APPENDIX II

(See paras 3 and 8 of Report)

ATTORNEY GENERAL, INDIA,
1, Race Course Road,
New Delhi,
October 22, 1958.

Dear Shri Kaul,

Referring to your letter dated the 26th June, 1958, I send herewith my opinion on the question raised. I regret the delay in sending it.

Yours sincerely,

Sd/-

(M. C. SETALVAD)

Shri M. N. Kaul,
Secretary,
Lok Sabha,
New Delhi.

Enclosure to Appendix II

No. AGF-(31)/58-4672/15

OPINION

1. The question raised refers to "the *Parliamentary Practice* obtaining in the United Kingdom". Articles 105(3) and 194(3) lay down that in the absence of a definition by Parliament or by the State Legislature by a law *the powers, privileges and immunities* of each House of Parliament or a House of a legislature of a State and of the Members and the committees of such Houses shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and committees at the commencement of the Constitution. We are therefore concerned not so much with Parliamentary practice as with the powers, privileges and immunities of each House of Parliament and of its Members and committees.

2. The question raised may be examined under three heads. First, whether the Parliamentary practice referred to in the question

is one of the powers, privileges and immunities of each House of Parliament or of its Members. Secondly, if so, the extent and nature of the power, privilege or immunity and the principles on which it is based. Thirdly, whether the power, privilege or immunity in question would be applicable as between a Member of Parliament on the one hand and the State legislature or its committee on the other.

3. In the United Kingdom the House of Commons or a committee thereof has the power to summon any person to attend as a witness before them. If the witness does not obey the order for his attendance he may be ordered to be sent for in custody of the Serjeant-at-Arms and Mr. Speaker may be ordered to issue his warrant accordingly; or he may be declared guilty of a breach of privilege, and then ordered to be taken into the custody of the Serjeant. (May's Parliamentary Practice, 16th Edition, pages 668-669). It is thus the privilege of Parliament and its committees to compel the attendance of a witness.

4. If the witness whose attendance is required by a House or a Committee of the whole House happens to be a Member of the House, he is *ordered* to attend in his place on a certain day. But if the attendance of a Member as a witness is required before a Select Committee, the Chairman sends to him a written *request* for his attendance. If the requested Member should refuse to come to give evidence the Committee has to acquaint the House of that fact and not itself summon such Member to attend the Committee. The House would thereupon *order* the Member to attend the Committee. (*ibid.*, pages 668-669). Thus the procedure for securing the attendance of a Member of a House before the House or a committee of the whole House is slightly different from the procedure for securing his attendance before a committee of the House.

5. The following procedure has to be followed if the witness whose attendance is required is a Member of the other House:

"If the attendance of a Peer should be desired, to give evidence before the House, or any Committee of the House of Commons, the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or Committee, as the case may be. If the Peer should be in his place when this message is received, *and he consents*, leave is immediately given for him to be examined, his lordship consenting thereto; if the Peer be not present,

the House gives leave for his lordship to attend 'if he thinks fit'. Exactly the same form is observed by the Lords when they desire the attendance of a Member of the House of Commons." (*ibid*, page 669).

6. It will be observed that the consent of a Member of a House to appear before the other House to give evidence is essential. If the Member is present in the House and expresses unwillingness to appear before the other House or its committee, presumably the question of the House giving him leave will not arise for consideration. That the consent of the Member is essential is also indicated by the fact that if a Member is not present in the House and the House chooses to give him leave to appear before the other House or its committee such leave is given by permitting the Member to attend "if he thinks fit".

7. The House of Lords has by Standing Order No. 22 provided that a Member of a House attending as a witness before the other House or any of its committees without the leave of the House of which he is a Member will be guilty of misconduct which would be regarded as Contempt of the House to which he belongs. (*ibid*, page 117). Though a corresponding standing order of the House of Commons cannot be traced the position, it appears, would not be different in the case of a Member of the House attending as a witness before the House of Lords or its committee.

8. The resulting position would seem to divide itself into the two parts. First, a Member of one House is not bound to attend the other House or its committee to give evidence. Secondly, even if he is willing to give evidence he cannot do so without the leave of the House of which he is a Member and the House may or may not permit him to attend to give evidence. The first part is thus a privilege or immunity of the Members of the House. The second part would seem to be a privilege of the House itself.

9. As to the extent and nature of the privilege or immunity of the Member the practice has been thus summarised in Hatsell (Volume III, pages 20 and 21).

"The result of the whole, to be collected either from the Journals or from the History of the Proceedings in the House of Commons, is, 1st, That the Lords have no right whatever, on any occasion, to summon, much less to compel the attendance of, a Member of the House of Commons. 2ndly, That, in asking leave of the House

of Commons for that attendance, the message ought to express clearly the 'cause' and 'purpose' for which the attendance is desired; in order that, when the Member appears before the Lords, no improper subject of examination may be tendered to him. 3rdly, the Commons, in answer to the Lords message, confine themselves to giving leave for the Member to attend, leaving him still at liberty to go or not, 'as he shall think fit.' And, 4thly, the later practice has been, to wait until the Member named in the message is present in his place; and to hear his opinion whether he chooses to attend or not, before the House have proceeded even to take the message into consideration."

10. The principle on which Members of the United Kingdom Parliament are exempted from compulsory attendance in obedience to legal process generally is stated by Hatsell at pages 1 and 2 of Volume I:

"As it is an essential part of the constitution of every court of jurisdiction, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruptions from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not entrusted with this most valuable franchise, are by law obliged to pay obedience."

At page 121 of the same Volume, he points out that it is necessary "that the minds of the Members ought to be free as well as their bodies".

11. In regard to the attendance by a Member of one House of the Parliament before another Hatsell puts the principle thus:

“As it is essential to the House of Commons, to keep itself entirely independent of any authority which the Lords might claim to exercise over the House itself or any of the Members, they ought to be particularly careful, on this and on all similar occasions, to observe and abide by the practice of their predecessors.” (Vol. III, page 21).

12. A question may be raised as to whether having regard to the principles stated in Hatsell, the privilege and immunity of the individual Members from being required to give evidence before the other House or its committees and the privilege of the House itself not to permit its Members to give evidence before the other House or its committees unless it so chooses are absolute and irrespective of the consideration whether the attendance of the Member to give evidence is required by the other House or its committee during the sitting of the House of which he is a Member. Though no clear statement in regard to this question is to be found in the books it would appear that having regard to the principle on which this immunity or privilege is based, namely, that of the preservation of the independence of the House the immunity and privilege would seem to be absolute so that the House and the Member would be entitled to claim them whether the House is or is not in session. The privilege of freedom from arrest stands on a different footing. It extends only “for 40 days after every prorogation, and 40 days before the next appointed meeting”: (May, page 74). That privilege and other analogous privileges being based on the principle that the House cannot perform its functions without unimpeded use of the service of its Members (May, page 42) are limited to a period comprised by the duration of the session together with a convenient and reasonable time before and after the meeting of Parliament.

13. The immunity and privileges mentioned above would clearly apply in the case of a Member of the Rajya Sabha or the Lok Sabha being required to give evidence before the other House or its committees. Would the same principle be applicable when the attendance of a Member of the Rajya Sabha or the Lok Sabha is required as a witness before a State Legislature or its committee? In the United Kingdom no such question can arise for the obvious reason that it has only a Parliament consisting of two Houses and there are no State legislatures. The paramount principle underlying the privileges both of the Member and of the House is, as already stated,

the independence of a House and its Members. This principle would, I think, be equally applicable in a federal structure where there is a Central legislature consisting of two Houses and several State legislatures consisting of one or two Houses. If these privileges are applicable, as they undoubtedly are, as between the Rajya Sabha and the Lok Sabha or between the Upper and Lower Houses of the State Legislatures in States where there are two Houses there appears to me no reason why the same privileges should not apply as between these legislatures and their Members *inter se*.

14. The answer to the question raised, therefore, is in the affirmative.

NEW DELHI;
The 20th October, 1958.

Sd/-
(M. C. SETALVAD),
Attorney-General of India.

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