



Media **Reporting** Courts and Legislature in India

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Contempt of Court & Legislature

- 2 Major limitations on freedom of press are:
- **Right to reputation** (wrong of Defamation) or individuals including legislators and judges
- **Right to independence and dignity** of legislators and judges protected by powers to punish for contempt.
- **Legislature and Judiciary** are two Constitutional institutions/ Estates, their credibility should not be destroyed.

Journalists v Supreme Court

[http://www.legallyindia.com/
Supreme-Court-Postcards/i-
hate-you-like-i-love-you-or-
the-torrid-love-between-
journalists-and-the-30-
headed-supreme-court-hydra](http://www.legallyindia.com/Supreme-Court-Postcards/i-hate-you-like-i-love-you-or-the-torrid-love-between-journalists-and-the-30-headed-supreme-court-hydra)



I hate you (like I love
you) or the torrid love
between journalists
and the 30-headed
Supreme Court hydra

Madrid Principles

- The Madrid principles on the relationship between the media and judicial independence 1994 expressly allow for legal measures for the preservation of secrecy during investigation of crimes even when such investigation forms a part of the judicial process.
- To preserve presumption of innocence.
- Siracusa principles 1984 says all trials should be public unless court determines otherwise.

Independence of Press

- We have no control over the press. We only have control over proceedings in the court. Everybody is expected to know what they should do and what they should not,” said a bench led by Justice H L Dattu. The Supreme Court on Thursday rejected CBI Director Ranjit Sinha’s plea to restrain the media from reporting on the contents of the visitors’ logbook at his residence, which showed frequent visits by some of the accused in the 2G and coal block cases among others.



Privacy v. Free Press

[SC notice to CBI chief **Ranjit Sinha** for 'protecting' coal scam ...](#)

Times of India - 9th Sept 2014

NEW DELHI: In a setback for CBI director **Ranjit Sinha**, the Supreme Court on Tuesday issued a notice to him on a plea seeking his removal ...

- The bench told Singh that while it agreed that the issue involved a person's reputation, it also acknowledged freedom of the press and would, therefore, not pass any order, while expecting the media to act responsibly.

Reporting Rape

- **Rape cases can't be swayed by emotions, media reporting: Delhi Court**
- Monday, 16 June 2014 - 4:44pm IST | Place: Mumbai | Agency: PTI
- Deprecating the hue and cry over acquittals in rape cases, a Delhi court has said that judiciary cannot be swayed by emotions or media reporting and has to limit itself to the ambit of law, testimonies of witnesses in deciding such cases.
- In this case the girl retracted from her earlier statement given before the police and told the court that she had come in contact with one of the accused through social networking site and had developed physical relationship with him on her own consent. she also told the judge that she had lodged the case at the instance of her well wishers. <http://www.dnaindia.com/india/report-rape-cases-can-t-be-swayed-by-emotions-media-reporting-delhi-court-1995897>



Delhi HC bans 400 websites

- The first half of 2014 saw the blockade of TV channels in several states.
- Delhi High Court on June 4, 2014 directed to ban over 400 unauthorised websites from broadcasting FIFA World Cup matches, after a petition was filed by Multi Screen Media (MSM), formerly known as Sony Entertainment Television India. It is an intellectual property rights related petition. The MSM owns all rights related to live, delayed and repeat telecast and streaming of 2014 world cup matches in Indian subcontinent. also directed the various Internet Service Providers (ISPs) to block the websites mentioned in the petition of Multi Screen Media (MSM) as well as any other portals which are later found to be violating the rights of the official broadcaster of FIFA 2014 in Indian subcontinent.



J & K bans cable TV

- The news and current affairs operations on all cable TV channels had been 'banned' till elections were over 2014, in the Jammu and Kashmir due to the violent political turmoil of 2010. Chief Minister told the Assembly some text data and communication services were also suspended so as "to prevent breach of peace and any law and order situation." He said that the private TV channels had violated the Cable Television Network (Regulation) Act. The SMS on the pre-paid mobile phones were also restricted for spreading "false and frivolous rumours which have a potential to incite violence."

UP Govt Bans two channels



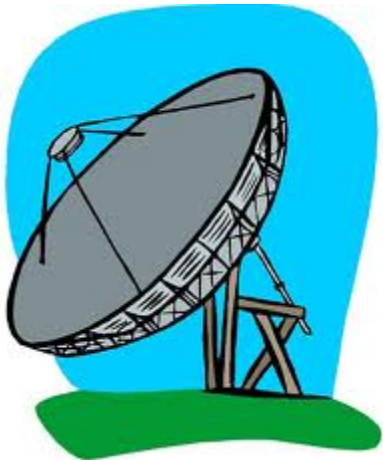
The CM of UP called the media "anti-Urdu" and opponents of "Lucknow's tezheeb" for criticizing actors who were "promoting Awadhi culture through their films". The furious Akhilesh Yadav sarkar has allegedly caused blockade of two tv channels. 'Times Now' went off the air across several parts of UP including Lucknow and Ghaziabad. The cable operators have not given any specific reason for not broadcasting two tv channels in 12 TRP centres of UP.

Operators obligation

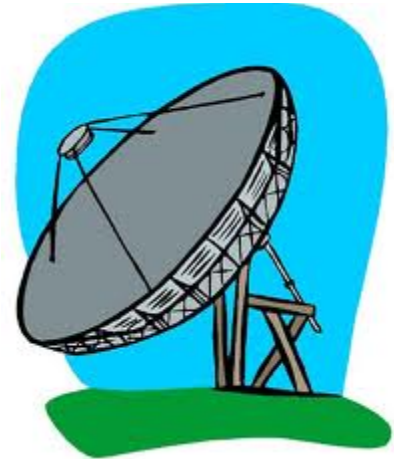
- The cable tv operators have an obligation to transmit the channel.
- law made it a crime of cable tv operators to telecast defamatory and insulting programs.
- The Cable Television Networks (Regulation) Act, 1995 regulates the operations of these networks so as to bring uniformity in their operations, avoid undesirable programmes as well as to enable the optimal exploitation of the technology which had the potential of making available to the subscribers a vast pool of information and entertainment.

Cable operators - **disclose**

- The Act also requires the cable operators to submit reports on the total number of subscribers, subscription rates, and the number of subscribers for free-to-air and pay channels.
- The Act authorised the seizure of the cable operators' equipment if the cable operator violates provisions of the Act.
- This period of seizure was limited to 10 days and could be extended by an order of the District Judge.
- Under the amendment Act 2011, there is no limitation on the period of seizure.
- Amendment will empower the central government to revoke or suspend a cable operator's registration if he violates the terms of registration.



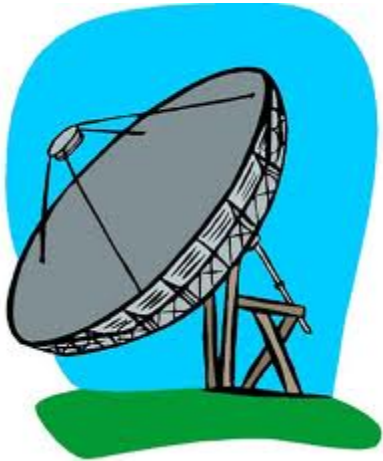
Do not know their duties



- The cable operators themselves are not aware of their rights, responsibilities and obligations in respect of
- the **quality of service**, technical as well as content-wise,
- use of material **protected by copyright**,
- exhibition of **uncertified films**, protection of subscribers from **anti-national broadcasts** from sources inimical to our national interest,
- responsiveness to the **genuine grievances of the subscribers** and perceived
- willingness to operate within the broad framework of the laws of the land, e.g. the Cinematograph Act, 1952, the Copyright Act, 1957, Indecent Representation of Women (Prohibition) Act, 1986.



Ban programs which hate and divide



- According to Section 11, an officer not below the rank of Group 'A', can seize equipment of cable operator if he violated Section 3 i.e., operating without registration. If he does not register, the equipment can be confiscated under Section 12.

Section 19 gives power to prohibit transmission of certain programmes in public interest, if the officer thinks it necessary or expedient so to do in the public interest, he may, by order, prohibit any cable operator from transmitting or retransmitting or retransmitting any **particular programme** if it is likely to promote, on grounds of religion, race, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb the public tranquillity.



Prohibit operations

- Under section 20 where the Central Government thinks it necessary or expedient so to do in public interest, it **may prohibit the operation of any cable television** network in such areas as it may, by notification in the Official Gazette, specify in this behalf.
- But **not prohibit a tv channel not even for a day.**

TRAI guidelines

- To protect **consumer-interests**, law empowered TRAI to specify a package of free-to-air channels, called basic service tier, which shall be offered by every cable operator to the consumers.
- Law mandates the cable operator to offer channels in the basic service tier **on a la carte (individual) basis to consumers at a tariff fixed by TRAI.**
- The Cable operators have to give guarantee for transmission. **The Amendment Act 2011 empowered the central government to issue notifications requiring all cable operators to transmit any channel, including free-to-air channels, in an encrypted form through a digital addressable system.**

Telecast crimes

- They shall not transmit or re-transmit through a cable service any programme unless such programme is in conformity with the prescribed programme code, as per section 5 of Cable Television Network Regulation Act, 1995.
- If this provision is violated, as per section 16, they can be punished for the first offence, with imprisonment for a term up to **two years or with fine which may extend to one thousand rupees or with both**, and for every subsequent offence, with imprisonment up to **five years** and with fine which may extend to five thousand rupees. If the telecast violates the program code, this penalty provision could be invoked.

Maligning a Regional Group

- Program code says: (1) No programme should be carried in the cable service which:-
- (a) Offends against **good taste or decency**;
- (d) Contains anything **obscene, defamatory, deliberate, false and suggestive innuendos and half truths**; ... (i) Criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country; ...
- (m) **Contains visuals or words which reflect a slandering, ironical and snobbish attitude in the portrayal of certain ethnic, linguistic and regional groups.**
- Any program which violate the above rules will attract two to five years imprisonment, and perhaps every day the tv operator might end up paying five or ten thousand.

Private commerce vs Private censors

- Its private censorship verses commercial-cum-political expression in Hyderabad.
- The TV9 and The ABN Andhra Jyothi are rich and reputed channels in both Telugu states.
- While the complaint against TV9 is specific about a nasty telecast insulting MLAs, there was no such specific issue against ABN Andhra Jyothi channel, except for their steadfast bias in favour of Telugu Desham party and against TRS.
- In general, most of the electronic media in two Telugu states are neither free nor objective.

Foul epithets of tv9



- Foul epithets in tv9 report::
What will a loincloth-clad person do when offered with a Laptop? Where will he tuck it? Wonder if they shove it inside their loin or sell it somewhere! But the T-MLAs took them with both hands just as a drunkard would crave for spicy pickle!" Tv9 is alleges that MLAs would sell it!

Libellous reflections:



“What would happen if you screen a Hollywood movie in a multiplex to someone who is habituated to watching old movies on touring theatre? Sample this!” Does it mean that those villagers who watch movies in touring talkies should never come to multiplex or that a villager should never get elected to Assembly? It is an allegation that they are incompetent and hence undeserving.

Ridiculing CM & legislators

- While showing K Chandrasekhar Rao, the first Chief Minister as he goes to take oath, a cinema song is played saying a 'wonder' happened.
- As the 'wonder' song continues the pan shot of tv9 camera shows legislators of almost all political parties including TDP, Congress and BJP etc, which infers that not only the leader but whole **lot of legislators are incompetent.**
- It is 'casting libellous reflections' on legislators.



Nasty Tv report

- While presenting the scenes of oath taking and other shots within House and beyond the House, a commentator doled out cheap content in specifically chosen Telangana *linguistic accent, using all sorts of idioms and expressions of Telangana to bring down the image of the newly elected*. Major demerit of this program was that the spoken content was not supported by visuals.

Nasty & indecent talk

- All this emanated from a nasty and abusive telecast by TV 9.
- <https://www.facebook.com/video.php?v=694769493933362&set=vb.100002009544246&type=2&theater>
- New Assembly passed a resolution on June 14, authorizing speaker Madhusudanachary to take stern action against news channel tv9.
- Speaker referred the issue to a special committee (in the absence of the Privileges Committee).
- While media is claiming its freedom of speech, angry legislature is saying its dignity is affected by abuse of media.

Contemptuous reporting

- Powers of legislature to punish for their contempt stems out of the privileges the Constitution.
- 'restriction' on the freedom of speech and expression, grounds of restrictions listed in Article 19(2).
- Citizens & media have a fundamental right to criticise the actions of legislators, the proceedings of the house, budget, speeches, answers, no confidence motions etc.
- can make fair comments as part of press freedom.

The law of privilege & contempt

- According to Halsbury's Laws of England (reissue 1977) if the comment *lowers the dignity or authority of the House or which has a tendency to produce such a result*, it may be regarded as contempt even if there is no precedent for the offence.
- Power to **punish for contempt is considered 'keystone' of legislative privilege**. This power was derived from privileges of the House of Commons.
- If the comment brings the House into odium, ridicule or contempt it might attract the punishment.
- Casting of reflections or aspersions on the House, its committees, or its members would be the example of 'contempt' of House.

R K Karanjia reprimanded



Blitz, weekly news magazine wrote a caption “Kripaloony” under J B Kripalani, MP, Committee of Privileges held R K Karanjia, guilty of ‘contempt’.

Karanjia was summoned to Lok Sabha on August 29, 1961 before the bar of the House and reprimanded him.

Committee explained that ‘**libellous reflections, contemptuous insults, gross calumny or foul epithets used against members of the House on the account of his speech or conduct in the House is gross contempt of the House**’.



MISA Rape in Bhopal Jail

- **Sewakram Sobhani vs R.K. Karanjia, Chief Editor, 1 May, 1981 AIR 1514, <http://indiankanoon.org/doc/1506133/>**
- A news item published in the Blitz weekly of which the respondent was the Editor, stated that the appellant enticed a female detenu who alongwith him, was detained in the Central Jail under the Maintenance of Internal Security Act and that she had **conceived through him** and that on getting released on parole she had the pregnancy terminated.
- Before the Magistrate the respondent prayed that the report of the Enquiry Officer be sent for. But the report could not be obtained because the **State Government claimed privilege in respect of that report.**

Inquiry report

- RKK filed a revision before the High Court for setting aside the order of the Magistrate.
- **Waiving privilege the State Government produced a copy of the enquiry report before the High Court.**
- A single Judge of the **High Court quashed** the proceedings on the view that the respondent's case clearly fell within the ambit of the ninth exception to section 499, I.P.C. because, according to him, the publication had been made honestly in the belief of its truth and also upon reasonable ground for such belief, after the exercise of such means to verify its truth as would be taken by a man of ordinary prudence under like circumstances.

Reaches Supreme Court

- The Official report throws light on how **Sobhani allegedly enticed Mrs. Shukla** with the help of a high official of the Bhopal Central Jail despite a ban on contacts between male and female detenus.
- The jail official, himself a close sympathiser of the RSS allowed Sobhani to meet her frequently in his office and **their love sessions were in his anteroom.**
- Yogesh Shukla has made a representation to the State Government alleging that Sobhani had committed adultery with his wife and demanded action against the jail authorities for permitting a "rape" of his wife.

Inquiry report

- Deputy Secretary Home, inquiry discovered:
(1) There was free mixing of male and female prisoners in the Bhopal Central Jail ;
- (2) Shri Sewakram Sobhani had opportunity and also availed of the opportunity and mixed very freely with Smt. Uma Shukla; and
- (3) Smt. Uma Shukla became pregnant through Shri Sewak Ram Sobhani.

IPC 499 Exception 9

- The ingredients of the Ninth Exception are that (1) the imputation must be made in good faith, and (2) the imputation must be for the protection of the interests of the person making it or any other person or for the public good.
- SC held HC was wrong in quashing the charges and it should have been remanded to trial court.



Doctrine of Postponement of publication 2012

- The Supreme Court laid down a new doctrine that would allow courts to **temporarily ban media** from reporting a case if it **would adversely affect the trial**, but the special constitutional bench of five judges **declined to create wider guidelines** on how the media should report court cases.
- The SC bench of CJI S.H. Kapadia, laid down a test: said that if publishing news related to a trial would “create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial”, the court could grant a postponement order, temporarily gagging electronic or print media from reporting on the case.



SC Test

- The test is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. It is important to bear in mind that sometimes even fair and accurate reporting of the trial (say murder trial) could nonetheless give rise to the “real and substantial risk of serious prejudice” to the connected trials.
- In such cases, though rare, there is no other practical means short of postponement orders that is capable of avoiding the real and substantial risk of prejudice to the connected trials... (Sept 11, 2012 SC)

Vodafone & CJI

- Last August, 2011 when the incorrect reporting of the Vodafone case occurred, Kapadia had suggested passing directions or guidelines for media coverage of the court proceedings.
- “We will pass a short order. But you (the press) have to regulate. This is not the first time it has happened. All over several wrong reports are appearing. It has happened in other courts also,” said the judge.

Ambiguous order

- Criticism: The ambiguous order the apex made it easier to muzzle the media and, far worse, institutionalized the process by which individuals and entities fighting cases can ensure that these aren't covered till the order is passed.
- although it created room for allowing courts to **temporarily ban** the media from reporting a case if it could adversely affect a trial, none explained the period of temporary ban. **By default it becomes permanent ban. It gives enough time to parties to manage case and media.**



N Ram says:

- “I am afraid the net effect of the latest judgement will be to add to **the ‘chilling effect’ that the press and the other news media are already experiencing from other unreasonable restrictions and pressures on what is supposed to be a robust and expansive freedom of speech and expression,** constitutionally guaranteed as a fundamental right,” said N. Ram, former editor-in-chief of The Hindu.



Press Trust of India

Origin of case

- HKP Salve complained the article written *Press Trust of India (PTI)*, had misquoted him in reporting on arguments in the Vodafone Group Plc. tax case. Salve was arguing why Indian income-tax authorities should not be allowed to tax the British telecom company for its 2007 acquisition of Hutchison Whampoa Ltd's Indian operations.
- The report had quoted Salve to say that his client had resorted to tax “evasion”. He had actually said Vodafone had taken recourse to tax planning and “avoidance”. Tax evasion is a punishable offence.



Press Trust of India

PTI apology

- *PTI* in response to Salve's application tendered unconditional apology.
- Journalist who wrote the report was taken off the Supreme Court beat.
- "The media has its own internal checks and balances. It's not only in SC," the editor said. "If a reporter on any other beat makes a mistake, he or she will be held accountable." When it comes to reporting on Supreme Court cases, the news agency is "extra careful," he said, "but unfortunately, sometimes errors do happen".

CJI's basis for guidelines

- CJI Kapadia said: he received 11-13 such complaints from senior lawyers about wrong reporting of cases. He also regularly receives letters from undertrials in criminal cases who claim to have been condemned by newspapers or on television.
- “The Chief Justice receives letter after letter that our rights are affected. How can I keep ignoring (them)? Till when can I ignore (them)?” asked Kapadia as he sat on a constitution bench of five judges, to frame guidelines for the media’s reportage of court proceedings.



Sahara leak

- The constitutional bench hearing was born out of lawyer Fali S. Nariman's complaint to Kapadia's court on 10 February.
- Nariman, who was representing two Sahara real estate companies facing action from the stock market regulator Securities and Exchange Board of India (Sebi), complained to the court about a confidential proposal that had **made its way onto a business news channel.**

SEBI vs CNBC tv18

- We are distressed that even without-prejudice proposal submitted by the petitioners to Sebi has come on CNBC-TV18. Such incidents are increasing by the day.
- Such reporting not only affects business sentiments, it also affects administration of justice,” the SC said in a written order.

Thomas CVC case

- During the hearing of the P.J. Thomas case 2013 January, where the government faced a petition for appointing an officer with a charge-sheet against him to the position CVC.
- KKVenugopal submitted that while the charge-sheet was in a criminal case under the Prevention of Corruption Act, his client was the victim of a political battle in Kerala.

Arnab Goswami's apology



Later that night, Arnab Goswami, editor-in-chief of Times Now news channel, told his viewers that he found Venugopal's submissions to the court to be "absurd".

Venugopal next day complained. CJI asked him to write complaint against Times Now and Goswami. Venugopal did not do as Goswami apologized (according to lawyers in Venugopal's chambers)

CJI's displeasure

- CJI had expressed displeasure at a 15 December, 2010, news report in a national daily that said the judiciary wanted to retain 1% of the Rs.2,500 crore deposit made by Vodafone in the court's registry in the tax case.
- The report said a **“cash-starved” judiciary was trying to source funds through such “novel” methods.**
- CJI Kapadia said: “People write whatever they want.” **But the court did not initiate any action against the reporter or the newspaper.**

Education of Court Reporters

- Essentially, senior accredited correspondents are expected to have a law degree to report from the Supreme Court.
- But these were subsequently rolled back after representations from correspondents to the court's press committee that it would be unreasonable for the court to impose these.

Targeting CJI

- After the Vodafone judgement in January, Kapadia was targeted through a public interest litigation (it was later dismissed as “frivolous” with heavy costs) which claimed that the CJI had a conflict of interest in the Vodafone case because his son worked with Ernst and Young.
- The consultancy had advised Vodafone on the transaction with Hutchison.

CJI asks

- When told that India had principally adopted a system of open justice, Kapadia said:
- “We are not on open justice. We are on what goes on in a trial court. A petition is filed. The press is reporting. It is analysed. Is it not prejudging the issue?”
- “And those petitions, no sooner than they are filed, you go on attacking the lawyers, you go on attacking the judges,” he said to Rajeev Dhavan, who appeared for the Editors Guild of India and the Forum for Media Professionals.

Dhavan & Nariman

- Dhavan told the judges that they didn't have the power to do what they were contemplating—muzzle the media with guidelines that could be enforced. This amounted to legislating, he said.
- Nariman, who filed complaint, told the court: Such guidelines could not be enforceable nor would they be punitive. It would upset the constitutional balance among free speech, limits on free speech and the rights of an undertrial.
- The court was also told that the existing remedies of **contempt and defamation acted as sufficient checks against a wavering press.**

Twitter v Citizen Journalism



- Senior advocate Rajeev Dhawan, who represents the Editor's Guild of India, specifically asked the court what to make of the micro-blogging service Twitter and a world where every man and woman was a journalist, which Kapadia dismissed in his response as being outside of the scope of the hearing.

Gag order in Abhishek Singhvi case



- The Delhi High Court in an interim order has restrained a leading media house from disclosing or disseminating the contents of a CD relating to lawyer and Congress spokesperson Abhishek Manu Singhvi.
- Justice Reva Khetrapal in her April 13 order restrained the media house and primary defendent Mukesh Kumar Lal from disseminating or distributing the contents of the CD allegedly in their possession.
- According to the Indo-Asian News Service (IANS) Justice Reva Khetrapal restrained the TV channels Aaj Tak, Headlines Today and The India Today Group from disseminating the contents of the CD which was allegedly prepared by Manu Singhvi's driver. 16.4.2012
- <http://currentnews.in/court-restrains-media-house-from-exposing-manu-singhvi-cd-gag-on-driver/>

Amar Singh: SC removed gag order



- The apex court had on February 27, 2006, restrained the electronic and the print media from broadcasting and publishing the contents of the tapped conversations of anyone, including that of Singh.
- Supreme Court lifted its gag order on media on publishing taped conversations of Amar Singh on May 12, 2012, There has been suppression of facts by Amar Singh in the case, SC says.

Amarsingh v Mulayam



- The conversations revolved around Amar Singh discussing with the then Uttar Pradesh Chief Minister Mulayam Singh about allegedly getting a judge of the Allahabad High Court removed from a matter related to Mulayam.
- Another is regarding exchange of money with an industrialist wanting to set up a shop in Uttar Pradesh and the rest are his conversations with Bollywood stars.
- The Bhushans have already filed a contempt petition alleging Amar Singh's role in fabricating the CD's



Asaram Bapu gets no such order

- In September 2013 when Asaram Bapu was subject to intense media scrutiny over allegations of sexual assault, his lawyers approached the Supreme Court of India with a plea to restrain the media from reporting on his case in a manner which prejudiced his right to a fair trial. The Supreme Court turned him away.

Swatanter Kumar



- on 16 January, 2014 an ex- SC judge, Justice Swatanter Kumar, was accused of sexual harassment and complained intense media scrutiny.
- The Delhi High Court, in response to a defamation lawsuit filed by the ex-SC judge imposed postponement orders on media.



PETITION ACCEPTED

- 3-judge bench of Supreme Court issues notice to ex-judge Swatanter Kumar, to Secretary General of Supreme Court, and to Govt of India

- Appoints Fali S. Nariman and P.P. Rao as amicus curiae. Directs Attorney General G. E Vahanvati to assist

- Bench says inclined to consider absence of mechanism to probe sexual harassment complaints against all judicial officers, sitting or ex-judges, that take place while they are in office or not

- Asks why intern took so long to make her complaint

- Intern's lawyer Harish Salve says no way for her to file complaint earlier as no mechanism available

- Bench asks Centre to file response within 4 weeks

- Case posted for Feb 4

- Swatanter Kumar files defamation case in Delhi High Court against three media organisations for Rs 25 crore





Sahara of Sahara

- Kumar's lawsuit are based on a precedent of a Bench of five judges of the Supreme Court in the very high profile case of [Sahara India Real Estate Corporation Limited and Others vs. Securities and Exchange Board of India & Another](#) decided in 2012.
- Justice Kumar's lawsuit was filed as a defamation lawsuit, while the Supreme Court in the *Sahara* case had very clearly located the power to order 'postponement' of media reporting within Articles 129 and 215 of the Constitution of India which vest in the SC and the High Courts powers to punish for contempt.

Tool in hands of rich

- Sukumar Muralidharan wrote of the Gag Order case that the postponement (of media coverage) orders that it set up as a remedy, could become an “instrument in the hands of wealthy and influential litigants, to subvert the course of open justice.”
- **Law should stand by weak against the strong,**
- **But unfortunately, it is weak against strong and strong against weak**

Injustice

- A related weakness in the judgment is the fact that the Delhi High Court (Swatanter Kumar case) has issued this postponement order in a case where it had no jurisdiction over the legal proceedings involving Justice Kumar.
- A day after the Delhi High Court issued gag orders on the media barring all publications and TV channels from reporting on a law intern's sexual harassment complaint against a former Supreme Court judge, the Editors Guild of India on Friday expressed serious concern and called the order a **"mockery" of the rule of law and an unwarranted intrusion on media freedom.**

Justification of DHC order

- Justice Manmohan Singh of the Delhi High Court has said in *Swatanter Kumar v. Indian Express and Others*, that the pervasive sensational media coverage of the sexual harassment allegations against the retired Supreme Court judge “may also result in creating an atmosphere in the form of public opinion wherein a person may not be able to put forward his defence properly and his likelihood of getting fair trial would be seriously impaired.”



Mid Day and CJI

- In 2007, the Delhi High Court took *suo motu* cognizance of an article in the Mid-Day on how the sons of the then Chief Justice of India were allegedly profiting through the sealing drive initiated by their father as a sitting judge of the Supreme Court.
- That case ended with a conviction and jail term of 4 journalists for a period of 4 months. The Supreme Court stayed the verdict pending disposal of the appeal.



Mysore episode

- Karnataka High Court suo motu contempt notice to 56 journalists from 14 media establishments for their reporting on the conduct of 3 Karnataka High Court judges. Eventually the Supreme Court stayed the contempt proceedings while lambasting the media for their irresponsible reporting on the issue.





Wah India

- A contempt case initiated against journalist Madhu Trehan editor of Wah India & her colleagues. Trehan and her colleagues had administered a survey amongst senior advocates in the Delhi High Court asking them to rate the judges of the Delhi High Court on various factors including punctuality, integrity, knowledge etc.
- The results of the survey were published in the magazine leading to an unprecedented situation where the Delhi High Court acting on a contempt petition filed by the bar, ordered the Delhi Police to seize all copies of the magazine and also restrained the media from reporting on the contempt proceedings.

Guilty of contempt

- The ban on the reporting of the contempt petition was lifted only after the editors of the *Indian Express*, *Hindustan Times*, *Outlook*, *Times of India*, *Punjab Kesari* & Kuldip Nayar moved court opposing the gag order.
- Trehan and her colleagues were found guilty of contempt by a five judge bench of the Delhi High Court and were let off after an unqualified apology to the Court.

Times now v PB Sawant



- A defamation case filed by ex-SC Justice PB Sawant against *Times Now*.
- The trial court had found in favour of Justice Sawant and awarded him damages of Rs 100 crores. On appeal the Bombay High Court ordered the channel to deposit with the Court, Rs 20 crore in cash and another Rs 80 crore as bank guarantees, pending appeal and the Supreme Court refused to interfere with this direction.

Injustice

- Supreme Court of India which had reduced the punitive damages in the Uphaar cinema tragedy where 56 people died, from Rs 2.5 crore to Rs 25 lakhs on the grounds that punitive damages were an exception to the rules.
- Supreme Court should have stayed the order for *Times Now* to deposit even Rs 20 crore in cash, pending appeal because the Bombay High Court was *prima facie* wrong in its conclusion.
- (*From article by Prashant Reddy Monday, 10 February 2014, <http://www.legallyindia.com/Tech-Media-Comms/swatanter-kumar-how-do-journalists-keep-losing-to-judges>*)



Marakandey Katju explains

- If someone calls a judge a fool inside the courtroom and goes away, in my opinion it is not contempt, for he has not stopped the functioning of the court.
- But if he keeps shouting in court the whole day, and despite warning does not stop, he is obviously not letting the court function, and this would be contempt. After all disputes in society have to be adjudicated, and judges must decide cases to justify payment of salaries to them.
- Katju claimed that he had “seen the darker side of the judicial system intimately. To disclose everything would raise such a storm that I may not be able to withstand it”:



Markandey Katju @mkatju · 1h

In 2001 former CJI Bharucha said 20% High Court Judges r corrupt. The situation has worsened since then, though there r honest judges too



Markandey Katju @mkatju · 2h

It is because of contempt of court law in India many corrupt judges r protected and get away with it. Of course there r honest Judges too





The Difference

- Ex-Supreme Court Justice AK Ganguly faced (unproven) allegations of a similar nature to the allegations his former brother judge, Swatanter Kumar. However, the former West Bengal Human Rights Commission chairman did not formally instruct lawyers to fight on his side. Kumar, of course, got Karanjawala and nine senior counsel to bat for him.
- Media coverage around Kumar had gradually been ramping up since the story broke (for the second time, of sorts) on 10 January 2014, but it never quite reached the fever pitch and pressure surrounding Ganguly just before his resignation on the eve of a presidential reference to remove him.
- Frigging effigies of Ganguly were burnt outside his Kolkata office by protestors and TV cameras followed him on his morning walk in the park.

SC can bar media

- In 1966 Supreme Court judgment in *Naresh Shridhar Mirajkar v. State of Maharashtra*, stated that the inherent powers of courts extend to barring media reports and comments on ongoing trials in the interests of justice, and that such powers do not violate the right to freedom of speech

Purpose of openness

- Court proceedings are usually open to the public.
- This openness serves as a check on the judiciary and ensures public faith in the judiciary.
- In countries as large as ours, media coverage of important cases ensures actual openness of court proceedings,
- When court proceedings are closed to the public (known as “in-camera” trials) or when media dissemination of information about them is restricted, the openness and transparency of court proceedings is compromised.

Criticism

- The Supreme Court stated in principle that the openness of court proceedings should only be restricted where strictly necessary.
- The suppression of media coverage leaves the young woman comparatively isolated, without all the support that media coverage can bring.
- Wide coverage of the other sexual harassment complaint involving Justice Ganguly helped the intern in that case find support.
- The circulation of information led to other former interns in a similar position as well as from a larger network of lawyers and activists reaching out to her.
- Media coverage is often critical to whether someone relatively powerless is able to assert her rights against a very powerful person, and it is the reason that we protect the freedom of expression in our democracy.

Contempt of court and the truth

Anil Divan

- *The contest is between truth and its suppression. The choice then is between the plea of truth to expose judicial misconduct and the attempt to stifle such publication by the use of the contempt power.* <http://www.thehindu.com/todays-paper/tp-opinion/contempt-of-court-and-the-truth/article1938590.ece>
- Broadly, criminal contempt means either scandalising the Court or prejudicing a fair trial or interference with the administration of justice.
- In the “Mid-day” case, a bench of the Delhi High Court without considering the defence of truth has imposed a severe sentence of four months imprisonment on the media for scandalising the Court. The case is now pending in the Supreme Court and raises far-reaching questions of public law.

Truth was no defence for a long time

- The law as laid down by the Supreme Court following earlier cases was that justification or truth was no defence against summary proceedings for contempt when words were used which scandalised the Court or lowered its authority.
- Parliament has now intervened and radically changed the law by Act 6 of 2006 by amending Section 13 of the Contempt of Courts Act, 1971 which states —
“Notwithstanding anything contained in any law for the time being in force ... (b) the court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bonafide.”

H R Bharadwaj

- When the provisions of the Bill were discussed in the Lok Sabha, Law Minister H.R. Bharadwaj said “Suppose, there is a corrupt judge and he is doing corruption within your sight, are you not entitled to say that what you are saying is true? Truth should prevail. That is also in public interest.”

MN Venkatachalaiah NCRWC

- ... A total embargo on truth as justification may be termed as an unreasonable restriction. It would, indeed, be ironical if, in spite of the emblems hanging prominently in the court halls, manifesting the motto '**Satyameva Jayate**' in the High Courts and '**Yatho dharmas tatho jaya**' in the Supreme Court, the courts could rule out the defence of justification by truth. The Commission is of the view that the law in this area requires an appropriate change."

ESV interview with Kuldip

- Chief Justice E.S. Venkataramiah, whose judgments on press freedom are liberal and well known — gave an interview to journalist Kuldip Nayar on the eve of his retirement. He stated “the judiciary in India has deteriorated in its standards because such judges appointed as are willing to be ‘influenced’ by lavish parties and whisky bottles.” ... “in every High Court, there are at least 4 to 5 judges who are practically out every evening, wining and dining either at a lawyers’ house or a foreign embassy.” The columnist further reported that “Chief Justice Venkataramiah reiterated that close relations of judges be debarred from practicing in the same High Court.” (Anil Divan)

International standards

- International standards and laws of other democracies would be informative and enable us to arrive at the right standards. Professor Michael Addo of the University of Exeter has collected the views of many European experts in “Freedom of Expression and the Criticism of Judges.”
- In European democracies such as Germany, France, Belgium, Austria, Italy, there is no power to commit for contempt for scandalising the court. The judge has to file a criminal complaint or institute an action for libel. Summary sanctions can be imposed only for misbehaviour during court proceedings.

Belgium judges file defamation case

- Leo De Haes and Hugo Gijssels, editor and journalist of a weekly magazine Humo published five articles criticising judges of the Antwerp Court of Appeal in virulent terms for having awarded custody of children to their father although there were serious allegations against him of incest and abuse of children.
- The three judges and the Advocate-General instituted proceedings against Haes and Gijssels seeking compensation for damage caused by the defamatory articles.

Journalists won

- The Tribunal of first instance held against the journalists and the same was affirmed by the Brussels Court of Appeal and on further appeal by the Court of Cassation.
- The journalists applied to the ECHR and succeeded.
- It was held that though courts had to enjoy public confidence and judges had to be protected against destructive attacks that were unfounded, the articles contained detailed information based on thorough research, and the press had a duty to impart information and ideas of public interest and the public had a right to receive them

Journalists got damages

- It was held that there was a breach of Article 10 of the European Human Rights Convention which guaranteed freedom of speech and expression and there was also a breach of Article 6(1) (fairness of trial) because the Tribunal refused to study the reports of professors relied upon by the journalists.
- The journalists were awarded damages and costs of over Francs 964000 against the State.
- The case shows that there is no summary right of committal for contempt and the judges adopted proceedings for libel which ultimately failed.

Spycatcher case

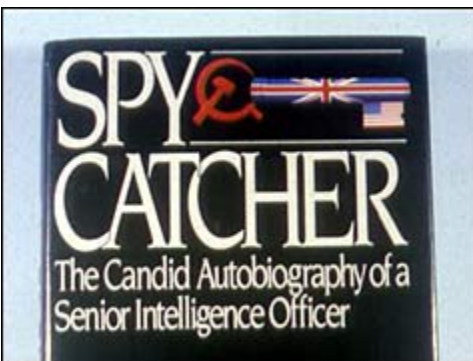
- In July 1987 *Spycatcher* was freely available in America and Europe and, the Thatcherist regime having chosen not to impound personal copies at airports, could be freely brought into England by individuals.
- Nonetheless, on 30 July 1987 the House of Lords upheld the interim injunctions banning the book, extracts from it, reviews of it, and even evidence given about it in the Australian court.
- The decision was by majority. Those in favour of the ban were Lord (Sydney William) Templeman (b. 1920), Lord (Desmond James Conrad) Ackner (b. 1920) and Lord (Henry Vivian) Brandon (b. 1920). Those against were Lord (Nigel Cyprian) Bridge (b. 1917) and Lord (Peter Raymond) Oliver (b. 1921).

Lord Bridge stated

- Bridge stated in his judgment: 'Freedom of speech is always the first casualty under a totalitarian regime. The present attempt to insulate the public in this country from information which is freely available elsewhere is a significant step down that very dangerous road. The maintenance of the ban, as more and more copies of the book *Spycatcher* enter the country and circulate here, will seem more and more ludicrous.'

Spycatcher affair

- The Spycatcher affair began in 1985, when the British Government started proceedings against the book being published in Australia. It lost the action in 1987. By late 1987 Spycatcher was the number one hardback bestseller in the US, selling 400,000 copies.
- Although the government had succeeded in gagging the British media for a time it failed to prevent the book's disclosure anywhere abroad.
- In November 1991 the European Court of Human Rights found the government's actions had violated the right to freedom of speech.
- Peter Wright died a millionaire in April 1995 aged 78



You Fools

- In yet another instalment of the saga, it sent Bob Alexander QC into court in December 1987 to argue before Justice Scott that there was 'simply no room for saying freedom of the Press is important', because free speech and a free Press run 'headlong into the principle of confidentiality'.
- Scott does not seem to have been impressed with the Government's case. Turnbull (1988, p. 209) notes that Scott found that *The Guardian* and *The Observer* were 'justified in publishing the allegations in June 1986 because they concerned important matters of public interest'; that Wright's 'duty of confidence was qualified'; and that 'henceforth, given the wide circulation of *Spycatcher* throughout the rest of the world, newspapers were free to report its contents in the United Kingdom'.
- The Government appealed to the English Court of Appeal.

Can publish

- **1988: Government loses Spycatcher battle**
- The British Government has lost its long-running battle to stop the publication of the controversial book Spycatcher, written by a former secret service agent.
- Law Lords ruled the media can publish extracts from former MI5 officer Peter Wright's memoirs, because any damage to national security has already been done by its publication abroad.
http://news.bbc.co.uk/onthisday/hi/dates/stories/october/13/newsid_2532000/2532583.stm

No contempt

- *The Daily Mirror* once published photographs of three Judges in the House of Lords upside down with a comment "You fools".
- It was not hauled up for contempt of court.
- it means that there is no longer any acceptability and therefore legitimate authority in the courts. Nor does it mean that when the courts do something about which a paper, or even the media in general disagrees, this is illegitimate. But it does mean that on a wider level there is a relationship between the media and the legitimacy of the courts

Imminent and present danger

- In the United States, contempt power is used against the press and publication only if there is a clear imminent and present danger to the disposal of a pending case. Criticism however virulent or scandalous after final disposal of the proceedings will not be considered as contempt.

U S SC observed

- “the assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one’s mind, although not always with perfect good taste on all public institutions ... And an enforced silence, however, limited, solely in the name of preserving the dignity of the Bench, would probably engender resentment, suspicion and contempt much more than it would enhance respect.”

Veeraswamy case

- In the case of Veeraswami, a former Chief Justice of Madras High Court, the Supreme Court observed: “A single dishonest judge not only dishonours himself and disgraces his office but jeopardises the integrity of the entire judicial system.”

Ten tests of malice

- The Supreme Court ruled in the *The New York Times* case that a public figure must prove malice or recklessness when he sues for libel. The House of Lords rejected this test. Lord Nicholls laid down 10 tests –
- the seriousness of the allegation;
- the nature of the information and the extent to which the subject matter is a matter of public concern;
- the credibility of the source of the information;
- the steps taken to verify the information; the status of the information;
- the allegation may have already been the subject of an investigation;
- the urgency of the matter;
- whether comment was sought from the claimant;
- whether the article contained the gist of the claimant's side of the story;
- the tone of the article and the circumstances of the publication, including the timing.

SPICE THAT'S NOT NICE

16 MPs SUSPENDED FOR MAYHEM OVER INTRODUCTION OF TELANGANA BILL



12.02 p.m. Shinde rises to introduce Bill even as L. Rajagopal releases pepper spray

12.03 p.m. MPs feel the effects. Marshals called in as scuffle breaks out

12.08 p.m. MPs troop into well, try to break Speaker's microphone

12.12 p.m. Affected MPs are taken away in ambulances

INDICOROUS INCIDENTS

Uttar Pradesh, October 1997:

Fractions over vote of confidence on BJP government. MLAs engage in fistbuffs, throw chairs, microphones at one another

Maharashtra, November 2009:

Right-wing MLAs slapped and air-saulted MLA as he took oath of office in Hindi as opposed to Marathi

What happened in the Lok Sabha was a Congress drama with eye on polls.

SUSHMA SWARAJ, BJP leader



Among suspended MPs: 1) Sabbam Hanu (Congress) 2) Rayapati Sambasiva Rao (Congress) 3) Modigula Venugopala Reddy (Telugu Desam Party) 4) Nimmala Krishappa (TDP) 5) Y.S. Jagan Mohan Reddy (YSR Congress)







Worst behaviour

- For the [Asian Age](#), the 15th Lok Sabha has "statistically proved to be the worst in history in terms of passage of bills... The declining standards of behaviour of the **MPs was worst exemplified by the use of a pepper spray** in the house".
- [The Tribune's](#) editorial says the house "**lost 79% of its time** to din over various issues...
- Gone are the days when parliament had good orators and wit, repartee and humour marked the proceedings". (BBC newsreport)



RUCKUS: Anti-Telangana MPs rush into the well of Lok Sabha. TDP's Venugopal Reddy clashes with Cong MPs. Glass on secretary general's table smashed. Screen on table breaks



2 FISTS FLY: Mikes uprooted as MPs grapple. Pro-Telangana TDP MP Ramesh Rathor, Cong MPs Lal Singh and Vinay Pandey involved in fracas. Papers fly as Telangana fight turns physical



3 CLOSE COMBAT: Expelled Cong MP L Rajagopal and pro-Telangana MP Ponnamm Prabhakar clash. Other Cong MPs also close in on Rajagopal who tries to approach the Speaker's table



4 PEPPER ATTACK: Rajagopal whips out a pepper spray and unleashes the chemical. Stunned MPs flee as spray causes coughing fits. Watch and ward staff nab Rajagopal, lead him from House

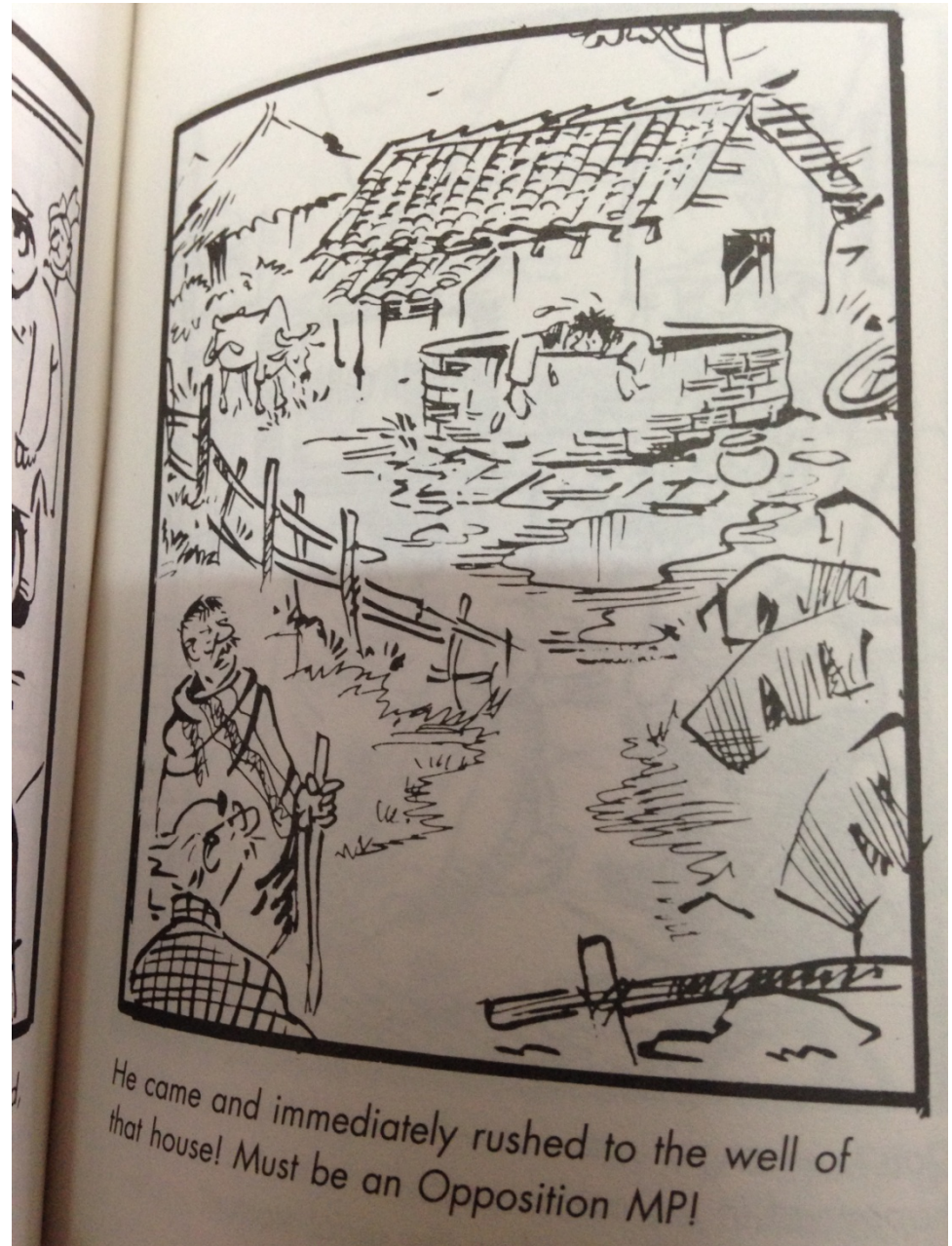
IRREGULAR by MANJUL



I've heard the CAG is working on the biggest ever loss report -- the money the nation lost on Parliament so far



Politics in Well! RK Lakshman's Cartoon

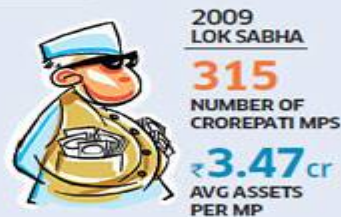
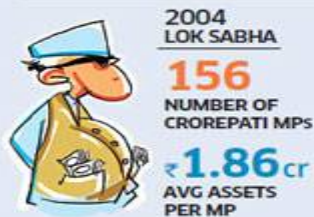




Richer, Older, Lazier, Ruder...

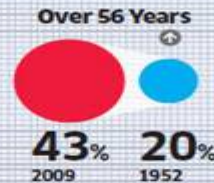
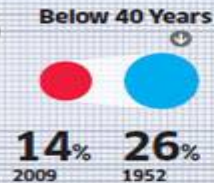
These adjectives sum up the changing face of our parliamentarians, with the last two attributes being on full, raucous display in the just-ended monsoon session. Some members brought the legislative business to a crying halt for nearly a third of the days and some brought shame. Here's helping you add them up:

Honourable MPs are **Wealthier...**



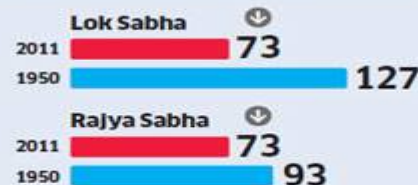
...much **Older...** | Average Age of MPs in Lok Sabha

Fewer MPs under 40, more MPs over 70 in Lok Sabha

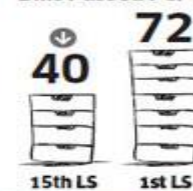


...**Lazier...** | Avg No. of Days (Per Year) the Houses Met

Both the Houses have fewer sittings; pass fewer bills



Bills Passed Per Yr



...and **Ruder**

Increasing question hour interruptions show how intolerant our MPs have become

*Starred Questions Answered Orally in Budget Session

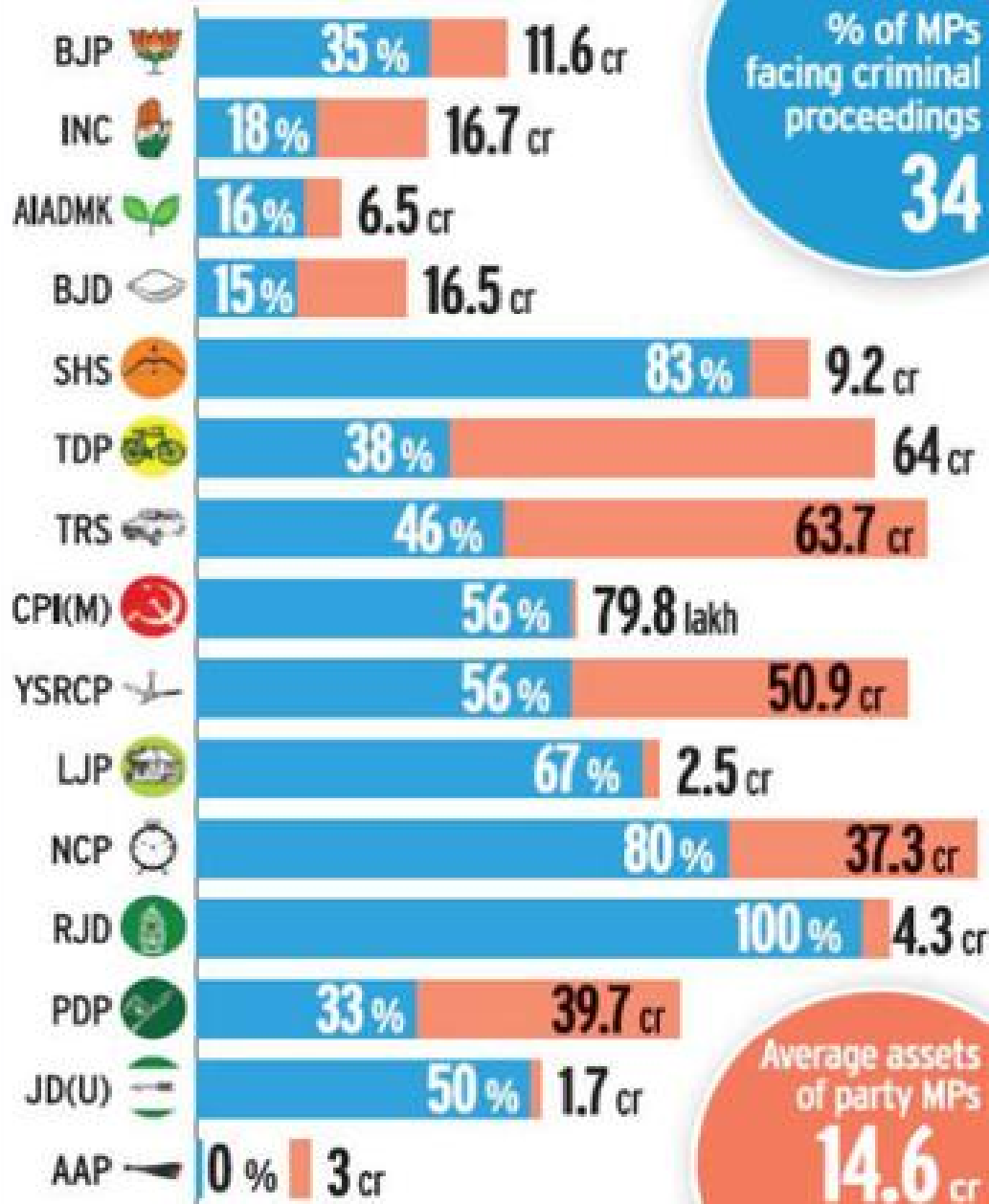


20 starred questions can be listed for oral answers per day



WEALTH AND LEGAL TROUBLES

THE NEW LOK SABHA WILL HOLD THE DUBIOUS DISTINCTION OF HAVING THE RICHEST MPs AND THE HIGHEST PROPORTION OF THOSE FACING CRIMINAL CHARGES



Live telecasting

- Conscious of people watching them, members find it difficult to be absent during the Question Hour. better dressed and more careful about their behavior before the camera.
- it is necessary to telecast nationally other important debates live.
- The edited version becomes stale, ceases to be newsworthy and remains suspect for having omitted the most 'interesting' parts of the proceedings.

MP LADS

- MPLADS - placing two crores of rupees each year at the discretion of each Member of Parliament to be spent on local projects are bound to create role conflicts and tensions.

What MPs should not do

- the quality and conduct of individual Members improve and every Member is imbued with a sense of purpose and responsibility.
- every backbencher should be enabled to feel relevant
- Members of important parliamentary committees need to lay down a strict code of conduct for themselves,
- never to ask the senior Government officers appearing before the Committee for personal favours,
- avoid Committee tours unless really necessary and
- never accept any gifts, dinners, free transport, five star hospitality and the like while on tours.

Privileges

- Privileges are attached to a house of a legislature **collectively** or to its members with a view to enabling the house to act and discharge its high functions effectively without fear or favour, or without any hindrance, interference or obstruction from any quarter.
- Exercised by individual members also.

Two kinds of privileges

- Privileges are of two kinds
- External- refraining anybody from outside to interfere with is working. The outsider's freedom of speech and action is limited by the exercise of privilege by House.
- Internal- restraining member from doing something which may amount to an abuse of their position

Debate is essence of democracy

- 105(1) subject to provisions of this constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech. (No civil or criminal action possible)
- Full and free debate is the essence of parliamentary democracy- from this two privileges emerge a) to hold in camera meet & to exclude strangers, b) prohibiting the publication of the debates and proceedings held within the house.

Freedom of speech

- 105(1) subject to provisions of the Const and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parli.
- (2) No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof..

Immunity from Courts

- 105(2)..and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- (3) In other aspects, privileges shall be such as may from time to time defined by Parl by law and until so defined, shall be those of that House immediately before 1978.

JMM Bribery Case

- PV Narasimha Rao v State AIR 1998 SC 210. Ruling party gave large sums to JMM members to vote in their favour. No confidence defeated, for 251/261 against
- Can member claim immunity 105(1 & 2)
- Whether MP is public servant under Prevention of Corruption Act

Majority Judgment

- Bharucha J speaking for majority broadly interpreted immunity and said that 105(2) protects MP against proceedings that relate to, or concern, or have connection or nexus with anything said, or vote given, by him in Parliament. Bribe as motive or reward for voting, so it has nexus with vote in House.
- Bribe givers can claim no immunity.

Minority Judgment

- SC Agarwal J said that “criminal liability incurred by MPs who accepted bribe for speaking or giving vote in a particular manner arises independently of the making speech or giving vote by MP and such liability cannot be regarded as a liability in respect of anything said or any vote given in Parliament”.

Wade and Phillips

- Courts will not allow a House to extend its privileges at the expense of rights of the citizen.
- Act of Parliament is needed if the law is to be changed.
- (All these statements are evolved by the study of Wade and Phillips, Constitutional and Administrative Law, 198, 1977) This applies pari passu to India as well.

Keshav Singh Case

- March 16, 1964: K Printed a pamphlet against a member. Speaker reprimanded K, during which he misbehaved. Jailed for 7 days.
- March 19: Advocate Soloman filed WP in Lucknow HC. Beg & Sehgal JJ, ordered interim release.
- March 21: House ordered arrest of K, S, JJ

UP Assembly v High Court

- Two judges heard it in radio and moved a petition under Art 226 on March 22, resolution violated art 211 (No discussion about conduct of judges of HC or SC, 121 prohibits it in parliament) A full bench of 28 judges ordered stay of legislature resolution.
- Arrest warrants against JJ were withdrawn but they were asked to appear. 23 JJ stayed.

Presidential Reference

- President referred the issue for opinion 143
- Is the House sole judge of issue whether its contempt has been committed when such act took place outside the House? Is House sole judge to impose punishment? Whether HC can entertain a WP against general warrant?

Judgment

- Court can examine an unspeaking warrant to ascertain whether a contempt had in fact been committed. House can punish anyone for CoH
- 194(3) must yield to Article 21, if not 19, hence HC can hear the petition under 226
- 194(3) does not give power to take action against judges. 211 debars discussion on conduct of judges. Harmonious functioning of three wings was pleaded by Gajendragadkar CJ

Gajendragadkar

- Question of determining the construction of art 194 in regard to the nature, scope, and effect of powers of the House ultimately rests with the judiciary of the country.
- Scope of 194 is affected by 226, 32, 211
- 226- writ against any authority (+Legis)
- 212 does not impose limitation on court

Legislature v judiciary

- If parliament defines the law, its validity can be examined vis-à-vis Fundamental rights
- India legislature has no judicial powers like House of Commons, they are not courts of record with contempt power. No immunity to general warrants from scrutiny of courts, can be claimed.

Qualified privilege 361A

- Report must be report of proceedings and not casual conversation between members
- It must be report and not an 'article' or a 'comment'.
- Report must be substantially true
- It must not be actuated by malice
- Proceedings must be of those of a House.

Implications of 361A

- Protection is not available to reports of the committees.
- Even if speech offends against the law of sedition, official secrets act, conspiracy to deceive, law of defamation and other offences under IPC like obscenity. 361A does not protect press from contempt of court. (No contempt of court against MPs)

No immunity from BoP

- 351A gives immunity from court proceedings but not from breach of privilege, even if publication is true and a faithful account of proceedings. What is given with one hand is taken away by the other.
- Needs an amendment to the Constitution to make press to work for open and accountable govt.

Expunging

- Under Rule 380-1 LS and Rule 221-2 of RS Presiding officers can expunge objectionable words used in debates on the grounds of defamation, decency, unparliamentary expression. Expunged portion do not form part of record, so no right to publish them is available.

Objectivity & Neutrality

- Unethical, indecent, obscene, defamatory reports have to be shunned by media.
- **Divisive speech** and **hate speech** will invite criminal consequences.
- Committing **contempt of Court or breach of privilege** could be constitutional wrong & Crime
- Besides, it destroys **credibility** of media organizations.
- **Objectivity & Neutrality** are sources of credibility of media.