

SENATE SECRETARIAT

**REPORT OF THE COMMITTEE ON RULES
OF PROCEDURE AND PRIVILEGES**

**REPORT NO. 4 OF 2013 (PRIVILEGES)
(1st of 11th Parliamentary Year)**

***REGARDING USING DEROGATORY REMARKS
AGAINST THE CHAIRMAN SENATE IN AN ARTICLE
PUBLISHED IN THE DAILY "THE NEWS" ON 22ND
JUNE, 2011, WRITTEN BY MRS.ANOOSHA REHMAN,
MNA, BELONGING TO PML(N).***

I, Chairman of the Committee on Rules of Procedure and Privileges, have the honour to present report of the Committee on the question of privilege raised by Senator Syed Nayyer Hussain Bokhari, Leader of the House and Senator Dr. Saeeda Iqbal in the sittings of the Senate held on 22nd and 23rd June, 2011, regarding using derogatory remarks against the Chairman Senate in an article published in daily "The News" on 22nd June, 2011, written by Mrs. Anoosha Rehman, MNA, belonging to PML(N).

2. During the sitting of the Senate held on 22nd June, 2011, Senator Syed Nayyer Hussain Bokhari, Leader of the House, rising on a point of order, said that in an article published in the daily "The News" by Mrs. Anoosha Rehman, MNA, derogatory remarks have been used against Chairman Senate on the appointment of Leader of the Opposition in the Senate. He said that the issue pertaining to appointment of Leader of the Opposition is under consideration in the Senate. Therefore, nobody has the right to write such remarks against the Chair. He said that the contents of the article amount to the contempt of the House. He also read out the following para of the article:-

"The Chairman conveniently ignored that status, and as such maliciously disregarded the Senate record to facilitate the appointment of Maulana Haideri as 'Leader of the Opposition'. The Chairman thus exceeded his jurisdiction by exercising powers not rooted in Constitution or validly made rules; in fact, he defied and violated the Constitution and conventions that require him to be neutral and impartial in the discharge of his functions. He is therefore liable to removal from office as well as membership of the Senate for stripping himself of the qualification for being "ameen" or "honest" under Article 62 (f). The Chairman acted with partiality to facilitate the election of Maulana Haideri; for which he not only

distorted his own oath but also Article 63 A. Sir, these are the remarks about the Chair of the Senate. Nobody approves it and I feel that the House should take notice of it and contempt proceeding should be initiated against the lady who has published this article."

3. Senator Mohammad Ishaq Dar said that he did not see the newspaper this morning and assured that he will try to find out whether the MNA is there he will certainly go into the details why and what is the basis of this matter and he will get back give the details.

4. Senator Mian Raza Rabbani was of the view that it is highly uncalled for and "May and Kaul" are full of citations where a member of the other House can not cast aspersions on any member of the other House of Parliament let along the Chair, whether it is the Speaker of the National Assembly or it is the Chairman of the Senate, both command the same respect and have to be given that respect by the members of the both Houses. He said that this article is uncalled for, particularly, when the Senate itself is seized of the matter and the debate is going on. That is another issue that the matter is subjudice to that extent before the Senate but to bring in disrepute to the Chair of a House by another member from the other House of Parliament is in itself an offence which constitutes a breach of privilege.

5. Senator Mian Raza Rabbani was of the view that Senator Ishaq Dar has undertaken to find out. So we can wait for the course of the day but obviously he think that the House should take cognizance and refer the matter to the Committee if it finally so decides.

6. Senator Molana Gul Naseeb Khan said that this article has been written by a woman Parliamentarian belonging to PML (N) and proposed that PML(N) should seek explanation from the woman Parliamentarian. He said that House may take appropriate action in the matter.

7. Senator Jan Muuhamad Khan Jamali said that Speaker National Assembly and Chairman Senate jointly should define code of ethics for Parliamentarians. He proposed that we have to go for a code of "Ethics Committee" for Parliamentarians where the Senate and the National Assembly should be represented jointly.

8. Senator Molana Abdul Ghafoor Haideri condemned the contents of the article and said that it is not only the contempt of the Chair but contempt of the whole House. He also supported the views of other Senators.
9. Senator Kalsoom Parveen said that she have read out this article and Senator Mohammad Ishaq Dar has taken the responsibility in the matter. She further said that no body has the right to blame the Chairman Senate who has been elected unanimously.
10. Senator Mohammad Zahid Khan proposed that Senator Mohammed Ishaq Dar must take cognizance of this matter and action may be taken against woman Parliamentarian. He said that this act is dangerous for democracy and the accused must apologize.
11. Senator Prof. Khurshid Ahmed supported the views of Senator Mian Raza Rabbani and appreciated the commitment shown by Senator Mohammed Ishaq Dar to investigate the matter at party level. He said that it is the right of every Senator to move privilege motion and the Privilege Committee should consider this issue.
12. Senator Rehmatullah Kakar said that the words used by women Parliamentarian in her article seems to be attack on the Parliamentarians. He proposed that the matter may be referred to the Privilege Committee and women Parliamentarian may be heard in the meetings.
13. Senator Haji Mohammad Adeel suggested that matter may be referred to the Privilege Committee and woman Parliamentarian may be given opportunity to hear in the meeting.
14. Senator Begum Najma Hameed said that Senator Mohammed Ishaq Dar will look into the matter and we should wait for his decision.
15. Senator Saeeda Iqbal said that contents of the article are against an institution and it is dangerous for both Houses. She said that she will not allow any one to use such remarks against the Chairman Senate and proposed that the woman Parliamentarian should apologize from the House and it may be

published in the press or otherwise the matter may be referred to the Privileges Committee.

16. Senator Mir Hasil Khan Bizenjo condemned the words used in the article against Chairman Senate and proposed that the matter may be referred to the Privileges Committee.

17. On 23rd June, 2011 Senator Saeeda Iqbal again raised the issue and said that as a member of PPP, as a member of this August House, she want an explanation on this issue on the floor of this House or at least in the Privileges Committee. So, if that is not done, we as treasury members are not going to participate in the proceedings of the House.

18. Senator Mohammed Ishaq Dar in his explanation said that according to his findings Mr. Rauf Hassan has written an article with the title "Moral Low Point" and it was published on 11 June, 2011 in the press, therefore, it is believed that it was sponsored by a certain political party. The contents of the Article are as under:-

"Having tasted blood, the hounds were on the prowl. The tentacles were laid bare again in the election of the Leader of the Opposition in the Senate. Lacking the requisite numbers of the position, the PML(N) leadership resorted again to the familiar tactics of '*lotacracy*'. They being no saints themselves, it managed to entice ten Senators away from their parent parties who conveniently dubbed themselves as the 'Likeminded Group' and the 'Dissident Group' and insisted that their votes be counted for the PML(N) candidate. The Chairman Senate did not agree and declared the opponent as elected to the coveted position. That enraged the PML(N) leadership and they announced a boycott of the Senate and all its ancillary committees till their demand was met. That proves beyond a shadow of doubt....."

19. He further said that the title of article written by Ms. Anoosha Rehman, MNA, was "ignorantial legis non excusat" which means that ignorance is no excuse in the eye of law. She never put a title of "Senate Chairman's partiality". Senator Mohammed Ishaq Dar further referred another paragraph of article which has been edited by the editor which is as under:-

"The very first code of ethics of the professional society of journalists clearly states that journalists should test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible. After that, there was a time when not an iota from the truth would be allowed to enter the holy of holies, the columns of any self respecting publication. However, a recent article "Moral Low Point" by Raof Hassan, read like hammering of the last nail in coffin of the code of ethics of professional journalism. While some readers may have found the article to be cheap sensationalism, personally I found it to be rather alarming for its woefully profound display of rugged ignorance and deliberate distortion of the law and for its fictional twisting and miserably economical play with the truth."

20. He said that the fact is that from the second paragraph the word second and the name of Mr. Rauf Hassan were edited and from the third paragraph the following words were edited.

"Let us move on the factual twisting and miserable economical play with the truth and the deliberate distortion of recorded historical facts."

21. He said that the following concluding para was whole washed off by the Editor.

"In his essay on Memory and Recollection, Aristotle advocates that sensationalism and selective memory and recall are both special classes of intentional states of mind. When Aristotle refers to many abilities to have thought with the relevant contents whether or not the corresponding contents exist in the world at large, he is referring to man's ability to deliberate, fabricate or deliberately distort the facts according to personal biases, partiality or animosity or lust for cheap sensationalism for our country to exist and fair better from its current perilous conjuncture. Columnist such as Raoof Hassan will need to not only harness the formidable hard work of mass media but also learn how to supplement it with the far greater soft power of factual correctness. I would say for the freedom of speech, I may not agree with a word you say but I will defend to the death your right to say it."

22. He said that in fact the title of the article has been changed and the reference which respond to Mr. Rauf Hassan has been omitted and the remaining article has been published. He said that the editorial editing is the right of the press and no one can direct them these are the facts. It has conveyed bad feeling, bad blood and misinterpretation and misconnection.

23. Senator Syed Nayyer Hussain Bokhari, Leader of the House, said that there are certain allegations against the editor of the paper. It has been said that the

article was published without taking consideration of the whole context of the article. This is my submission. We would not have suggested for sending the matter to the Privileges Committee. We should not have suggested it because it related not only to the Chair of the Senate but it related to the members of the Parliament. Had she spoken in the National Assembly on the floor of the House, we would have got no objection to it because she is protected under Article 66 to say whatever she wants to. Although we expect from the members of the Parliament that they must have a respect and regard for the House itself. They must have a respect and regard for the Chair of both the Houses. Now, Point is this that it is not only confined to the author of this article, it extends to the publisher, to the printer and to the editor of the particular newspaper. Secondly, the justification which has been given that some Hasan Raoof wrote it and in a response to that, that might be justified but people think that a man who commits a fault he should be responded in the same way what fault Farooq Naek has committed? There is another explanation or rather justification give because that was a sponsored article by Hasann Raoof. Let us not make accusations which we can not substantiate.

24. He further said that these were the words which the member did not express herself on the floor of the House. Otherwise she had privilege to talk anything about anybody on the floor of the House but certainly this was published and there are derogatory remarks about the Chair. While the matter was subjudice before the House also still that was being reexamined and it was being reexamined on the issue which was raised by Ishaq Dar himself also. So what I feel is that it is very appropriate that the matter should go to the privileges Committee. Thirdly what I feel is that apart from the privilege that has been breached, we have to see privilege of the member or the Senate that has been breached at the same time, there is a criticism on the ruling. So far that ruling holds the field, there is no restraint of the order that has not been set aside.

25. Senator Haroon Khan was of the view that that this article is neither the voice of their party nor this is the voice of this House or the voice of the National Assembly. As we have respect for the columnist and journalist and a

writer has expressed his views. However, certain limits were crossed through this article.

26. After hearing both the sides of the House, the Deputy Chairman, who was in the Chair, referred the matter raised on Point of Order to the Committee on Rules of Procedure and Privileges for consideration and report.

27. The Committee considered the question of privilege in its meetings held on 26th July, 2011, 14th November, 2011, 26th December, 2011 and 3rd January, 2012.

28. In the first meeting held on 26th July, 2011, the Chairman informed the members of the background of the issue and also drew attention of the members towards letter written by Ms. Anusha Rahman Khan, MNA dated 23rd July, 2011, to the Secretary Committee wherein she requested for provision of following record for enabling her to submit her reply before the Committee:-

- (i) Proceedings of the Senate during which the occasion for the said 'Point of Order' arose, including verbatim records of the speeches on the 'Point of Order' and ruling of the Chairman thereon.
- (ii) The legal basis for the issue of the aforesaid Notice.

29. Ministry of Information and Broadcasting in their working paper, submitted to the Committee, stated as under:-

"(1) Important points of article written by Ms. Anusha Rahman Khan titled "The Senate Chairman's Partiality":-

- i) The partiality of the Chairman of the Senate becomes more evident in his order of June 6, when he, on his motion and without any such requirement provided for in the rules, describes the JUI-F as being the "single-largest party in the opposition in the Senate having the strength of 12 members.
- ii) According to the record maintained with the Election Commission of Pakistan, the JUI has a strength of ten members and, according to the records of the Senate Secretariat, two independent members are allied with the JUI.

- iii) According to the rules of Senate, the "largest party" principle is not applicable to the Senate. Additionally, when it comes to counting the votes of other independent members having declared alliance with the government, the Chairman conveniently ignored that status, and as such maliciously disregarded the Senate record, to facilitate the appointment of Maulana Haideri as "Leader of the Opposition".
 - iv) The Chairman thus exceeded his jurisdiction by exercising powers not rooted in Constitution or validly made rules; in fact, he defied and violated the Constitution and conventions that require him to be neutral and impartial in the discharge of his functions. He is therefore liable to removal from office as well as membership of the Senate for stripping himself of the qualification for being "ameen" or "honest" under Article 62 (f).
 - v) The Chairman acted with partiality to facilitate the election of Maulana Haideri; for which he not only distorted his own oath but also Article 63A. That is tantamount to subversion of the Constitution, which is punishable under Article 6 of the Constitution. He therefore deserves to be deprived of his continued membership of the Senate by the Election Commission."
- (2) The freedom of expression and press is enshrined in Article 19 of the Constitution of Pakistan. The government, accordingly, believes in the freedom of the press and media and always welcomes healthy and constructive criticism, which is vital to promotion of democracy, transparency and good governance. However, at the same time, the government also believes in self-regulation to follow the established Ethical Code of Practice. The government believes in persuasive approach in this regard. It would not be out of place to mention here that the government has established an independent Press Council of Pakistan (PCP) having representation from all journalists' organizations with a view to addressing the grievances against the press. Whenever anything appears in the newspapers against the government or its functionaries, the Ministry of Information and Broadcasting on its own or on the basis of the input provided by the government organizations concerned, issues a timely clarification/rebuttal to the newspapers and tries to get the same published in order to dispel the false impression."
30. Ministry of Law, Justice and Parliamentary Affairs submitted following comments:-
- "(i) An article was published in the Daily News on 22nd June, 2011, written by Mrs. Anusha Rahman Khan, MNA regarding the derogatory remarks against the Chairman Senate.

- (ii) As per Rule 148(b) of the Rules of Procedure and Conduct of Business in the Senate, 1988, the Committee on Rules of Procedure and Privileges:-

“shall examine every question of privilege referred to it by the Senate and determine with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach and the circumstances leading to it; and make such recommendations as it may deem fit.”

- (iii) As the article has been published in the newspaper, the Committee on Rules of Procedure and Privileges may determine the remarks of privilege or otherwise.”.

31. Senator Dr. Saeeda Iqbal in her explanation to the Committee said that when they raised this point of order in the House everyone expressed sorry, even the Chairman had not announced decision and the debate was going on and Senator Mohammad Ishaq Dar was to give his arguments in the House, the article published on the same morning so it is by design. She said that Mr. Rauf Hameed wrote an article against his party and suggested that he may be called in the next meeting for his statement. She asked for presence of Senator Mohammad Ishaq Dar also in the next meeting.

32. Senator Dr. Muhammad Ismail Buledi said that this is an important issue and needs to be scrutinized thoroughly because charges of partiality have been leveled against the Honourable Chairman of the Senate and if we did not take notice of the matter then the others will follow the same practice. The Speaker of the National Assembly should ask the concerned MNA to appear before the Committee. Ch. Nisar may also be asked to approach her for appearing before the Committee. She should not have written the article on the matter which was pending before the Senate and the debate was in progress on it. The Honourable Chairman, Senate gives equal time to everyone even he allows more time to opposition members.

33. Senator Salahuddin Dogar termed this matter very serious. He said because of this, not only the privilege of the Honourable Chairman Senate but also the privilege of the whole house stands breached.

34. Dr. Firdous Ashiq Awan, Minister for Information and Broadcasting, said that we are passing through a transitional period. It is the discretion of the

Editor to publish an article or not and we have no role to play in it and the same has been published in the newspaper where mostly material is published against her Government. However, she assured the Committee of her full support and cooperation.

35. The Chairman while referring to the letter written by Ms. Anusha Rahman Khan, MNA, said that every parliamentarian is very well conversant with the rules. The rules of National Assembly and Senate are same. Every member knows the authority by which people are called here and this has constitutional backing as the rules are made under the Constitution so naturally the Committee can call any person or any document and she comes in the category of "any". They are called to give answer to the Committee and are given full opportunity. The Editor of the newspaper who was summoned by the Committee has not come. As she is not here so Committee can not decide the matter in her absence. The derogatory remarks have been used. The Chairman of the Committee directed for provision of record sought by Ms. Anusha Rahman Khan, MNA.

36. The Second meeting was held on 14th November, 2011.

37. The Chairman informed that Mrs. Anusha Rahman Khan, MNA, did not attend the previous meeting while today she also did not bother to come to attend the meeting. He further said that we have called the honourable MNA to attend the meeting as a citizen and the person who is alleged to have committed breach of privilege and not as a member of the Parliament. However, she has written a letter to the Secretary, Committee, in which she has stated that:-

"(i) I refer to your Secretariat's notice No.F.22(1)/2011-Com-1, dated November 2, 2011 regarding meeting of the Standing Committee for further consideration of the issue raised during the course of Senate's proceedings in its sittings held on 22nd and 23rd June, 2011 on a 'Point of Order' by Senator Nayyar Hussain Bokhari, Honourable Leader of the House in the Senate of Pakistan and Honourable Senator Dr. Saeeda Iqbal.

(i) In this regard, I refer to my letter dated July 23, 2011, soliciting the documents forming the basis of your earlier notice dated

July 16, 2011, in response whereof you sent me a letter bearing No.F.22(1)/2011-Com-1, dated July 26, 2011, containing two attachments:

- a. Proceedings of the Senate; and
- b. A copy of Rule 165 of the Senate's Rules of Procedures and Conduct of Business in Senate:

Seeking my attendance to 'express views on the issue pending before the Committee' at its next meeting.

- (ii) On my query to the legal basis for the issuance of the above referred Notice, Rule 165 has been cited by the Secretariat, followed by yet another attendance notice. In my view, the requirements of due process enshrined in Article 4, are not met by the said Rule 165, as the sufficient legal basis for the notice, on more than one count:-
 - Firstly, as a matter of principle, by virtue of the provisions of this rule, Standing Committee of one House of the Parliament cannot arrogate to itself the powers to summon a member of the other House.
 - Secondly, a plain reading of the said Rule reveals that it enables the Senate Committee 'to take evidence, call for paper, records or documents' from specified persons and sources for specific purposes.
- (iii) The scope of this rule is obviously confined to the purposes mentioned, and circumscribed by the power conferred by it in the heading of the said rule *ibid*; these have no nexus with the content of the Attendance notices or the elementary queries raised in my earlier communications on the subject.
- (iv) I, therefore, reiterate my request to please re-examine the legal basis of the issuance of the aforesaid notices, keeping in view of the related binding constitutional obligations, and accordingly to kind let me know the outcome at your earliest convenience. This will enable me to consider whether I could render, and if so, what meaningful assistance as per law to the esteemed Committee for the resolution of the matter.
- (v) I reserve my right to comment on the subject matter Senate debate about which I have been called to the Committee after the legal basis on which I have been called is amicably determined and resolved.
- (vi) I look forward to an early response in this regard.”.

38. Senator Wasim Sajjad said that as far as rules are concerned, there is no ambiguity and stated that the Committee is competent and has every right to call the honourable MNA. He further said that since she is member of the National Assembly and has equal respect being a Parliamentarian but the Chairman may ask the honourable Speaker, National Assembly to take action against her because she has committed a breach of the Parliament. The honourable MNA should follow the Constitution of Pakistan and abide by the Parliamentary rules and regulations. Being an MNA she should be more conscious and respectful to Parliament than an ordinary citizen.

39. Senator Syed Nayyar Hussain Bokhari said that if no action is taken against persons who violate the sanctity of the Parliament then it will open door to a flood of breach of privilege of the honourable members and the Parliament. This is the disgrace to the Parliament and to the members of the Parliament, so the Committee may take proper action in this case. It is unacceptable for a parliamentarian who should have respect for honour, dignity and prestige of Parliament to write such scandalous and libelous things in a newspaper. If parliamentarians do such things to belittle and degrade parliament how can we expect the public to respect the Parliament.

40. Senator Dr. Saeeda Iqbal said that she has two concerns in this matter, first the honourable MNA used the word 'partiality' against the honourable Chairman Senate, which is highly objectionable, and secondly the publisher should have been careful to publish the articles specially when it was against the Parliamentarians. She also emphasized that the publishers should be well conversant with the rules and regulations of the Parliament.

41. Senator Dr. Muhammad Ismail Buledi, said that it is very important issue. Members of both the Houses should respect each other. The words used by the honourable MNA in her article were extremely derogatory, false and uncalled for and should not be tolerated otherwise the Prime Minister and President of Pakistan would not even be spared. He suggested that a letter should be written to the honourable Speaker, National Assembly, to give the MNA fifteen days time to come to the Committee meeting to defend herself.

42. Senator Salahuddin Dogar said that this issue is not a matter of concern that it is of the Senate or National Assembly but it is a matter of serious breach of privilege of Parliament. As the honourable MNA didn't come in both the meetings and has raised frivolous objections she is also in breach of privilege of the Committee as she has chosen to ignore its orders. She should come to the Committee meeting to resolve the issue through discussion. He further said that it was before the time when the honourable MNA wrote that article because that time the Chairman Senate didn't give his final ruling on the appointment of the Leader of the Opposition and when he did so, he did it after long and lengthy debate in Senate when all parties were most patiently heard and he gave the decision in a extremely clear written and mark ruling.

43. Senator Syed Nayyar Hussain Bokhari said that this case is different as Mrs. Anusha Rehman Khan, MNA has committed a breach of the House. Here we are not asking her to produce documents rather we are asking her to defend herself for what she has written in the newspaper. She is being asked to appear to give her ample opportunity to defend herself and she is being called before the Committee as an alleged breacher of privilege or contemptor of the House.

44. Senator Syeda Sughra Imam said that the Committee has summoned the MNA to explain her position but conversely the honourable MNA wrote in her reply that being a member of the other House she is not bound to appear in the Committee meeting. She further added that if the honourable MNA conveys her views in this regard and if she is right then it would be a precedent in the Parliament for the rest of Parliamentarians and general public to be followed. This will create chaotic conditions and be a great blow to the dignity of Parliament.

45. Senator Syed Nayyar Hussain Bokhari referred to Rules 67 and 165 (1) of the Rules of Procedure and Conduct of Business in the Senate, 1988, according which the Committee has the power to summon any person and punish him/her, if found guilty. Furthermore, he also referred to Article 67 of the Constitution under which the rules have been made to regulate the procedures and conduct of business in the Senate. He further added that in this case the Committee has given the honourable MNA ample opportunity to appear before the Committee to explain her views. He suggested that now it is up to the Committee to decide the issue under the rules. He emphasized that it was the responsibility of the publisher also to first certify the contents of the article and then to get it published so he should be warned to be careful in future.

46. The Chairman said that the Committee is seized of a very sensitive and serious matter. While considering this breach of privilege of the House, the following important and relevant rules, regulations, practices, procedures, traditions, norms and usage of Parliamentary practices are followed all over the world. The Chairman referred to "Practice and Procedure of Parliament by

M.N. Kaul, 5th Edition which gives parliamentary examples of many of the issues involved in this matter.-

- a. It is the right of the Chairman/Speaker as the case may be to interpret the Constitution and rules so far as matters in or relating to the House are concerned and no one, not even the Government can enter into any argument or controversy with the Chairman/Speaker over such interpretation.
- b. The Chairman's/Speaker's ruling can not be challenged or questioned except by a substantive Motion in the respective House. A member of Parliament who protests against the ruling of the Chairman/Speaker commits contempt of the House and that of the Chairman and Speaker.
- c. Members can not criticize directly or indirectly inside or outside the House, any ruling given, opinion expressed or statement made by the Chairman/Speaker.
- d. Mrs. Anusha Rehman is claiming privilege not to attend these proceedings due to the fact that she is an Honourable Member of National Assembly. The term privilege applies to certain rights and immunities enjoyed by each House of Parliament and Committees of each House collectively and by members of each house individually. The object of Parliamentary privileges is to safeguard the freedom, its authority and the dignity of Parliament:-

- (1) Privileges of Parliament are granted to members in order that they may be able to perform their duties in Parliament without let or hindrance. They apply to individual members only in so far as they are necessary in order that the House may freely perform its functions. They do not in any way discharge the members from the obligations to society which apply to them as much and perhaps more closely in that capacity as they apply to other subjects of the state.

- (2) Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of application of laws or civilized behaviour unless there are good and sufficient reasons in the interest of Parliament itself to do so.

- (3) The fundamental principle is that all citizens including members of Parliament have to be treated equally in the eye of the law. Unless so specified in the Constitution or in any law a member of Parliament can not claim any privilege higher than those enjoyed by ordinary citizen in matter of application of law or claim exemption from attending proceedings of a Parliamentary committee of either House.

- e. When an individual disregards or attacks any of the privileges, rights and immunities either of the members, individually or the

Chairman/Speaker or of the House in its collective capacity or its Committees, the offence is termed a breach of privileges and is punishable by the House. Besides, actions in the nature of offences against the authority, dignity or prestige of the House, its Chairman or Speaker as the case may be libels upon itself, its members or officers are punishable although these actions are not breaches of specific privilege. Such actions are more properly distinguished as "contempt".

- f. Each House is the guardian of its own privilege. It is the sole judge of any matter that may arise which in any way infringes upon its privilege.
- g. The power of the House to punish any person who commits a contempt of the House or breach of its privilege is the most important privilege. It is this power that gives reality to the privilege of Parliament and emphasizes its sovereign character so far as the rights and maintenance of its dignity, honour, prestige and supremacy are concerned.
- h. The powers, privileges and immunities of either House and Committees have been laid down in Articles 66 to 69 of the Constitution. No comprehensive law has so far been passed by Parliament to define the powers, privileges and immunities of each House and the Committees and member thereof. In the absence of such law, the powers and privileges and immunities of the House, the Committees and the members continue to remain in actual practice as such as those of the House of Commons of the United Kingdom.
- i. The privileges of Parliament can be deemed to be part and parcel of the Constitution and therefore are part of what is termed as "fundamental law".
- j. The basic law that all citizens be treated equally before the law holds good in the case of members of Parliament as well. They have the same rights and liberties as ordinary citizens except when they perform their duties in the Parliament. The privileges, therefore, do not, in any way, exempt members from their normal obligations to society which apply to them and perhaps more closely in their capacity of being members of Parliament than they do to ordinary citizens.
- k. It is an established Parliamentary authority that each of Houses of Parliament and the provincial/state assemblies have the power to secure the attendance of persons on matters of privilege and to punish them for breach of privileges or contempt of the House.
- l. The Parliament and state legislators possess not only the power to punish for contempt but also have the right to judge for themselves as to what is contempt or what is not. Without this power the privilege of punishing for contempt would be worthless. The power of the House to punish for contempt or breach of privilege is the

keystone of Parliamentary privilege without such power the House would sink into utter contempt, chaos, indignity and inefficiency.

- m. The term breach of privilege means a disregard of any of the rights. Privileges and immunities either of members of Parliament individually or of the House in its collective capacity. After due inquiry, a breach of privilege is punished in the same way as courts of law punish for contempt of their dignity or authority.
 - n. In the matter of its own privilege each House of Parliament is supreme. It combines in itself the powers of the legislature, judiciary and executive while dealing with a question of its privilege. The House itself or through its committee has the power to declare what its privileges are, subject to its own precedents, and name the accused who is alleged to have committed a breach of privilege or contempt of the House.
 - o. Disobedience to the orders of a Committee of the House is to be treated as a contempt of the House itself.
 - p. To prevent, delay, obstruct or interfere with the execution of the orders, refusal or neglect of a witness or any other person summoned to attend the House or its committee thereof is also a contempt of the House.
 - q. It is breach of privilege and contempt of the House to make speeches, or to print or publish any libels, reflecting on the character or proceedings of the House or its committees or its members for or relating to his character of conduct as a member or office holder of Parliament.
 - r. Speeches or writings reflecting on the House or its committees or members are punished by the House as a contempt.
 - s. Impartiality is an integral attribute vis a vis the office of the Chairman/Speaker as the case may be. Hence reflections, casting of aspirations, accusations or doubts on the character, integrity or impartiality of the Speaker/Chairman of either House in discharge of his duties has been universally held to constitute a breach of privilege and contempt of the House.
47. The Committee notes that it might be true that it is an established parliamentary practice and custom that neither House of Parliament can claim or exercise any authority over a member of the other House when the breach of alleged privilege or contempt is made on the floor of the House to which he belongs. No action can be taken in one House for anything said in another House. It is for the Chairman/Speaker of the particular house where such

objectionable statements are made to take appropriate action against their respective members. However, notice of breach of privileges or contempt of a House can be taken if the member of the other House or of a provincial assembly has committed the offence outside the House, to which the member belongs, as is the case in this matter. "Practice and Procedure of Parliament by M.N. Kaul, P.300, 5th Edition, says that.-

"However, notice of the breach of privilege or contempt of the House can be taken if the member of the other House or any other State Legislature has committed it outside the House to which he belongs."

48. The Committee observe that there is another important aspect to the proceedings before the Committee and that is regarding the conduct of members of Parliament and what is expected of them both inside and outside the House. In order to maintain the highest traditions in Parliamentary life. Members of Parliament throughout the world are expected to observe a certain standard of conduct both inside and outside the House. The behaviour should be and has to be such as to enhance the dignity, Honour, respect and prestige of Parliament and its members. The conduct of the members can not be contrary to the norms, usages, customs, traditions of Parliament. It must in no way be derogatory to the dignity and grace of the Parliament or be in any way inconsistent with the highest standard of conduct which parliament is entitled to expect from its members. Parliament has the right to punish its members for their misconduct. It exercises its jurisdiction of scrutiny over its members for their misconduct whether it takes place inside or outside of Parliament. The Committee is of unanimous view that Mrs. Anusha Rehman, MNA has acted contrary to behaviour expected from a Parliamentarian.

49. The Committee was of the view that Mrs. Anusha Rehman, MNA who authored the libelous and extremely objectionable article which appeared in a

mass circulation newspaper in "The News" has been requested to attend the proceedings so that ample and fair opportunity may be given to her to give her point of view, comments or arguments as to why she should not be declared a contemtor of the House and its Chairman or as the person who has breached the privilege of the House and its Chairman. The MNA has taken recourse to an imagined immunity and for reasons best known to herself has declined to attend the proceedings or put up any defence of her actions. On the contrary Mrs. Anusha Rehman who has cast such far-fetched, unsubstantiated and slanderous allegations and aspirations on the fair name, office and integrity of the Chairman Senate has not only refused to attend the proceedings but has not shown no remorse, regret or embarrassment on writing such libelous and unwarranted allegations in an article in a national newspaper, it is usual practice and parliamentary customs through out the world that when a person who has committed contempt or breach of privilege appears before a committee and shows remorse, regret or is sorry and tenders an apology usually no further action is taken on the motion. However, in this case no remorse, feeling sorry or regret or even embarrassment has been displayed nor any apology tendered.

50. The Committee after detailed investigation and study of the matter and after hearing the movers who raised the question on pursuing the documentary evidence i.e. the newspaper article appearing in a national daily English language newspaper "The News" of 22nd June, 2011 written by Mrs. Anusha Rehman Khan, MNA has come to a conclusion that very derogatory, objectionable, insulting, unwarranted and libelous remarks have been made against the Chairman of the Senate and Mr. Anusha Rehman MNA has prima facie committed a grave breach of privilege and contempt of the Senate.

51. With regards as to how to proceed further as it is very necessary to proceed with the matter and decide the punishment for this case and set an example and a precedent otherwise there will be complete chaos and opening of flood gates of such contemptuous behaviour if members of one house begin to write or utter contemptuous allegations on the members of the other House including the presiding officers. It will bring disgrace and bad name to the fair name, dignity and prestige of Parliament. A detailed study of parliamentary history of all the countries which follow parliamentary democracy shows that there has been no precedent of such open, spiteful, outrageous and un-parliamentary allegations ever been made outside the House by any member against any member of another house, let alone the Chairman or Speaker who hold exalted positions and deserve to be respected. Such an outrageous and wild accusation has never been made in any existing parliament of the world. The Committee therefore suggests various options that can be followed to take this matter to its logical conclusion:-

- a. As prima facie breach of privilege and contempt of the Senate has been committed by a member of the National Assembly. Forward the complete proceedings of this Committee to the Honourable Speaker of the National Assembly through the Chairman Senate with a request to the Honourable Speaker of the National Assembly to deal with the matter in the same way as if was breach of privilege of the Honourable Speaker and of the National Assembly itself.
- b. This Committee to which the matter has been referred by the Chairman Senate should dispose of the matter on merit as suggested by the Ministry of Law and Parliamentary Affairs and in accordance with rule 148 (b) and 67 of the Rules of Procedure and Conduct of Business in the Senate 1988.
- c. The matter be further taken up after consultations between the Honourable Speaker of National Assembly and Honourable Chairman of the Senate have been held and they may be requested to consider to constitute a Joint Privilege Committee

comprising of the privilege committees of both the Houses i.e. Senate and National Assembly and the two committees should jointly decide the punishment for the contemtor/breacher of privilege on merit.

52. The Committee suggests that:-

- a. The Minister for Law and Parliamentary Affairs may take immediate steps for enacting a law for provision to be made by law for the punishment of persons who refuse to attend, give evidence or produce documents before a Committee of the House when duly required by the Chairman of the Committee to do so as directed/sanctioned under Article 66(3) of the Constitution.
- b. Code of conduct for legislators may be suitably incorporated in the Rules of Procedure and Conduct of Business in the Senate. Before adopting the code opinion of leaders of the legislative parties be obtained.
- c. Appropriate rules may be incorporated to the Rules of Procedure and Conduct of Business in the Senate, laying down the procedure for making complaints relating to unethical conduct of a member;
- d. The Committee decided to postpone decision till next meeting which will be held after placing the matter before the Speaker and or discussions between the Chairman Senate and the Speaker of National Assembly. The matter here is taken under advisement for further discussion by Committees and with concerned persons before final action is decided at next meeting.
- e. Mrs. Anusha Rehman will be granted third and last opportunity to plead her case and to bring to the notice/consideration of the Committee any material/witness in her defence.
- f. The Editor "The News" will give his comments as to whether the article was vetted before publication or not.

53 The third meeting was held on 26th December, 2011.

54. Senator Wasim Sajjad and Senator Syeda Sughra Imam suggested that the Committee should send this matter to the Speaker National Assembly for her decision. Senator Syeda Sughra Imam inquired whether the criticism comes under the definition of breach of privilege. Senator Wasim Sajjad suggested that notice should be served on MNA to appear before the Committee otherwise ex-party action will be initiated against her.

55. The Chairman observed that the MNA may be given last chance to appear before the Committee otherwise the motion will be decided ex-parte on the basis of available record.

56. The fourth meeting was held on 3rd January, 2012.

57. The letter written by Mrs. Anusha Rahman Khan, Advocate, MNA dated 2nd January, 2011 to the Committee, inter alia, reads as under:-

- “(i) I refer to your Secretariat’s notice no.F.22(1)/2011Com-1, dated December 29, 2011 received on January 2, 2012, regarding meeting of the Standing Committee on Rules of Procedure and Privileges to be held on January 3, 2012 for further consideration of the issues raised during the course of Senate’s proceedings in its sittings held on 22nd June and 23rd June 2011 on a ‘Point of Order’ by Senator Syed Nayyer Hussain Bokhari, Leader of the House in the Senate of Pakistan and Senator Dr. Saeeda Iqbal. The notice also refers to a meeting held on the subject on December 26, 2011. Kindly note, that I never received any meeting notice for December 26, 2011.
- (ii) In this respect, I wish to draw your attention to self-contained contents of my letter dated November 12, 2011, and would yet again reiterate my request to please re-examine the legal basis of the issuance of your notices, keeping in view the related binding constitutional and legal obligations, and share with me accordingly.
- (iii) Please note that despite written requests in this behalf, to date I have not received any response that would enable me to consider whether I could render, if so, what meaningful assistance to this esteemed Committee for resolution of this matter as per law.
- (iv) I look forward for an early response in this regard.”.

58. The Chairman of the Committee said that three meetings to discuss the issue were held on 26th July, 14th November, and 26th December, 2011, respectively but the matter stands unresolved. Members have been giving different suggestions.

59. Senator Syed Sughra Imam recalled that during the last meeting it was decided to write to Speaker of the National Assembly and the honourable Senator Mr. Wasim Sajjad was also of the same view. She said that Senator Wasim Sajjad said that criticism does not come under breach of privilege. She further said that in democracy if we take criticism as a privilege motion then it would not be better in parliamentary practices. She again stressed that the Speaker of the National Assembly may be informed in writing for appropriate action in the matter.

60. Senator Mian Raza Rabbai said that the Committee can not issue notices to the MNA directly but through the Chairman. He further said that even if the breach of privilege takes place outside the house then notice can be taken as it has been laid down in the Parliamentary Practice "Kaul". He said that the Committee should write a letter to the Speaker National Assembly in this regard and it would be an appropriate way to follow. He also said that criticism against Chairman or any member is breach of privilege for him because this criticism earns a bad repute and bad name for him. He said that MNA is very much right for not appearing before the Committee.

61. The Chairman said that there is no example like this one in the parliamentary history of the world that a member of the National Assembly has written in an article in a national newspaper which is outside both the Houses against the Presiding Officer of the Upper House. The references in "Kaul" which Senator Mian Raza Rabbani is referring to pertain to incidents when a member of one house had spoken on floor of another house. There are numerous examples of speaking on floor of the Houses therefore if this happens on the floor of the Houses then the procedure is adopted of referring the matter to the Presiding Officer of the House in which the member has spoken. He further said that there are different kinds of privileges and all these as per Parliamentary practices are enumerated to the members of our previous meeting and these include privilege of a member, privilege of the House and privilege of the Presiding Officer. He said that every category is different from the other. It is basic Parliamentary custom that each House is the protector of its privilege and the privileges of its Presiding Officer, its committees and its members. We can not just pass the buck because in this incident a member of the other house is involved. "Kaul" is clear on the issue

that if a member of one house passes contemptuous remarks, writes against and violates the privilege of Presiding Officer, the House, Committee or member of another house outside the floor of his or her own House, then the House against which the alleged breach of privilege has taken place can take cognizance of the alleged breach and deal with the matter. He further stated that the plea of the member and her point blame refusal to attend the Committee procedures can not be condoned. The question of any privilege for the MNA not to attend does not arise. As privilege of Member of Parliament is only enjoyed by the member in discharge of his or her parliamentary duties. By attending this Committee, question of hindrance of her performance in her parliamentary duties does not arise. Giving special latitude and favour to the Honourable MNA will be against all norms of justice, fair-play, customs, traditions, usage of Parliament or Parliamentary Committees if it is accepted that she needs not attend then it tantamounts to accepting the plea that no one needs to attend, whereas a Parliamentary Committee can call any person before it.

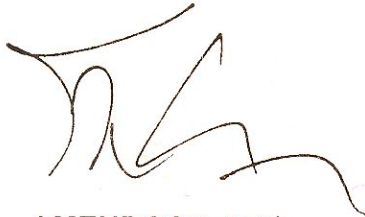
62. After some deliberations the Committee decided to defer the matter for some time.

63. The Committee now consider that the situation is further compounded by the fact that a long period of time has lapsed. However, whereas it is clearly evident that a breach of privilege has been committed, it will not be prudent or serve any useful purpose to continue hearing this Motion. The Honourable Mover has been elevated and elected as Chairman of the Senate and the member of the National Assembly who was alleged to have written the derogatory remarks has completed her term and is no longer an MNA. Most of all the Committee seized of hearing this matter ceased to exist. It will be in the fairness of things, especially after considering all the development and existing realities the continuation of hearing this matter will serve no useful purpose. It is therefore felt expedient and proper to close this matter.

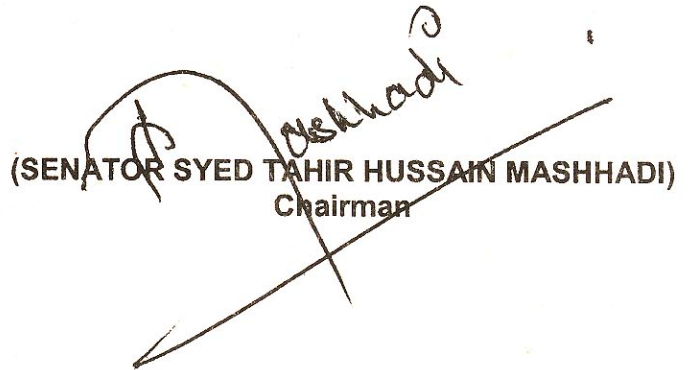
64. It is, however, strongly recommended that the legal deficiency with regards to attendance of witnesses and calling of persons to appear before Committees of Parliament and to produce documents needs to be filled as soon as possible. The fault lies with the past and present Parliamentarians who have not seized of this matter. The framers of the Constitution of the

Islamic Republic of Pakistan had clearly envisaged the need for strong laws to ensure attendance and had specifically inserted a provision in Article 66(3) in which it is clearly directed that Parliament shall make "provision may be made by law for the punishment, by a House, of persons who refuse to give evidence or produce documents before a committee of the House duly required by the Chairman to do so" empowering a court to punish a person who refuses to attend or give evidence or produce documents. The Committee strongly recommends that Parliament should enact laws as envisaged in Article 66(3) of the Constitution at the earliest.

65. The Committee, therefore, dispose of the Privilege Motion.



(MEHBOOB ALI)
A.S / Secretary Committee



(SENATOR SYED TAHIR HUSSAIN MASHHADI)
Chairman