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Indian Parliament: The House needs to be More Credible on Penalising Errant Members

The Aam Aadmi Party MP, Bhagwant Mann, was briefly suspended in end-2016 for compromising the security of the Indian Parliament. This paper argues that though the Indian Parliament has since its inception used its powers to institute inquiry committees and penalise misconduct by members, it has been less successful in complex corruption cases such as the one during the 2008 trust vote where several players were involved.

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The suspension of the Aam Aadmi Party Member of Parliament (MP), Bhagwant Mann, for part of the 2016 winter session for compromising the security of Indian Parliament throws into focus the privileges of legislators and the powers of Parliament to punish MPs. A nine-member parliamentary committee, headed by BJP MP Kirit Somaiya, indicted Mann, who had live-streamed the security arrangements in Parliament House on social media, during the 2016 monsoon session. On 9 December 2016 a motion was approved to suspend Mann for the rest of the winter session. The motion said, “The House, having taken note of the report of the committee to inquire into the improper conduct of a member of Lok Sabha, accepts the findings and recommendations of the committee that Bhagwant Mann has committed a highly

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objectionable act unbecoming of a member...and that he may be suspended from membership of the House for the remaining period of the current session.”²

While Mann may have been disciplined for what might seem like a relatively minor transgression, Parliament’s powers to discipline members has drawn scrutiny due to a series of offences by parliamentarians in recent years as well as the high number of MPs with criminal charges against their name. Indeed, as many as 34% of MPs in the current Lok Sabha have charges against their names.³ In this paper, I focus on misconduct by India’s MPs which have a direct relation to Parliament and its functioning and not criminality or corruption involving elected representatives in general. I also do not deal with disruptions, which are common in Parliament, but are transgressions of a different order. I argue that Indian Parliament has historically, beginning in 1951, been prompt to use its parliamentary privileges to punish misconduct by MPs. It might be noted that the concept of parliamentary privileges first developed in England to defend the independence of the legislature against encroachments by the crown and the judiciary and has been adopted by many democracies, including India.⁴ There are, however, limits to what parliamentary enquiry committees can achieve in penalising corruption and misconduct and redeeming parliament’s low reputation. The rulings by the Indian Supreme Court (SC) have also complicated the issue.

The Early Years

The first instance where the conduct of an MP was investigated by Indian Parliament was the Mudgal case in 1951. H.G. Mudgal was accused of canvassing the cause of the Bombay Bullion Association and taking money from them. Mudgal had promised to arrange a meeting of the association’s president with the finance minister and also garner support for their objectives. In March 1951 he had also asked a question in Parliament about the import of bullion. When questioned by Prime Minister Jawaharlal Nehru, Mudgal denied any wrongdoing. The matter was then taken up in Parliament in June 1951. Moving the motion that a committee be set up to enquire into the activities of Mudgal, Nehru said, “The dignity of the House and the proper

² <http://indianexpress.com/article/india/bhagwant-mann-suspended-from-lok-sabha-for-videography-of-parliament-4418613/>.

³ <http://www.thehindu.com/news/national/16th-lok-sabha-will-be-richest-have-most-mps-with-criminal-charges/article6022513.ece>.

⁴ For a summary of legislative privileges in India, see Siddarth Chauhan, “Legislature: Privileges and Process,” in Sujit Choudhry et al eds., *The Oxford Handbook of the Indian Constitution* (Oxford: Oxford University Press, 2016), 291-306.

behavior of every hon. Member is dear to the House and I felt that any action taken by a Member, which might not be in consonance with propriety and good behaviour and what is expected of him should be inquired into.”⁵ During the debates, the Speaker made the important point that despite the existence of a Committee of Privileges, it was within the “powers of the House to constitute other special committees if there are any special circumstances and enquiries to be made.”⁶ After a two-day debate, a five-member committee was set up to enquire into the matter.

The committee, headed by T.T. Krishnamachari, submitted its report in end-July. It reported that Mudgal’s conduct was “derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its members.”⁷ In September 1951, Nehru moved a privilege motion to expel Mudgal from Parliament. While moving the motion Nehru also brought up Article 105 which deals with the powers and privileges of the Houses of Parliament.⁸ He concluded by saying, “If the House does not express its will in such matters in clear, unambiguous and forceful terms, then doubts may very well arise in the public mind as to whether the House is very definite about such matters or not.” But even before the motion could be decided on, Mudgal tendered his resignation to the Speaker. Arguably the handling of the Mudgal set in place an early and clear precedent.

Contemporary Period

More than five decades after the Mudgal case, 11 MPs — 10 from the Lok Sabha and one from the Rajya Sabha — were caught in 2005 in a sting operation, which was telecast on a news channel, accepting money for tabling questions. The very day the sting was telecast, the Lok

⁵ *Lok Sabha Debates*, June 6, 1951, 361.

⁶ *Ibid.*, 363.

⁷ *Committee on the Conduct of a Member* (New Delhi: Parliament Secretariat, 1951), 29.

⁸ Article 105: Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof
(1) Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament
(2) No member of Parliament 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, 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 respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978
(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament

Sabha Speaker observed that there had been “serious allegations of improper conduct” against some members.⁹ He proceeded to set up a committee, headed by Pawan Kumar Bansal, to inquire into the matter. After eight sittings over 10 days, the committee submitted its report. In its report the members said the actions of the accused MPs eroded “the credibility of Parliament.” The committee also quoted Nehru from the debate on Mudgal’s expulsion, while recommending that the “continuance of these members as members of the Lok Sabha will be untenable.” One committee member, V.K. Malhotra, dissented saying that the matter should have been referred to the Privileges Committee and that proper procedures had not been followed.

The same year, four Lok Sabha MPs were caught in another sting operation showing irregularities in allocation of the Member of Parliament Local Area Development Scheme (MPLADS) scheme. A seven-member inquiry committee, headed by Kishore Chandra Deo, was set up but it found that the “improper conduct” of the MPs did not “strictly relate to their parliamentary duties” and none of them were “actually shown as accepting money.” They were, however, suspended for a period of three months, most of which they had already served. Interestingly, the committee also spoke against media “sensationalism,” which implied that “all members are susceptible to corruption,” and that guidelines and norms should be laid down for sting operators.

For the sake of comparison if one looks at the UK House of Commons, the right to expel members has been rarely used with only three MPs having been expelled from the beginning of the twentieth century.¹⁰ However, just as in India, members have been suspended for varying periods in the House of Commons for violating its code of conduct.

The 2008 Trust Vote

Possibly the most infamous incident inside Indian Parliament was that of three BJP MPs on 22 July 2008 displaying wads of cash, telecast live on television, alleging that they had been offered money to vote for the government, then headed by the Congress-led United Progressive Alliance (UPA), during a trust vote. The parliamentary committee, chaired by Kishore Chandra Deo, set up to investigate the incident examined not only the three MPs but also a host of

⁹ *Committee to Inquire into Allegations of Improper Conduct on the part of some Members* (New Delhi: Lok Sabha Secretariat, 2005).

¹⁰ <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06487>.

intermediaries who were involved and a television channel that had conducted a sting operation. When the three MPs were examined, one of them said they did not want to “bring disrepute to Parliament” but wanted to show “the world what methods and means are being employed to save the Government.”¹¹

The committee concluded after 11 sittings that the MPs could be regarded as “volunteers” in a “whistleblowing operation.” Though the committee said that the MPs did not enjoy immunity under Article 105, it also said money accepted by the MPs had “no nexus to the vote cast by them.” It concluded that there was no case of the MPs having “been influenced.” It admitted too that the committee did not have the wherewithal of investigating agencies and that the matter be “probed further by an appropriate agency.”

The committee, however, also quoted eminent jurist and former Rajya Sabha MP Fali Nariman’s view that the MPs who took the money were aware that under a Supreme Court judgment “bribe takers were not answerable in any court, civil or criminal, for taking bribe for votes.” Nariman added that the “faith of the people would be restored just as it was restored when [in] the ‘Cash for Questions’ case Parliament took direct action and expelled those Members.”

The peculiar legal situation with regard to MPs who take bribes, which Nariman pointed to, can be ascribed to a 1998 SC ruling, *P.V. Narasimha Rao v. State*, better known as the Jharkhand Mukti Morcha (JMM) judgment. This was also the case where for the first time an Indian prime minister faced criminal charges and was sentenced by a trial court. The case centred around four JMM MPs, as well as a few other MPs, who in 1993 were allegedly paid money to ensure the survival of the P.V. Narasimha Rao government during a trust vote. The SC’s majority judgment controversially made a distinction between the bribe-taking MPs who voted during the trust vote and those who did not. It justified this by interpreting Article 105(2) as protecting a “Member of Parliament against proceedings in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament.” It thus ruled that the MPs who had voted during the trust vote were “not answerable in a court of law” and enjoyed immunity under Article 105(2). Importantly, however, the court also said

¹¹ *Report of the Committee to Inquire into the Complaint made by some Members regarding Alleged Offer of Money to them in Connection with Voting on the Motion of Confidence* (New Delhi: Lok Sabha Secretariat, 2008).

that MPs be treated as “public servants” for the purposes of the Prevention of Corruption Act and those MPs who were involved in giving bribes must face prosecution.

The minority opinion interpreted Article 105(2) by saying that the MPs, if they took a bribe, were not shielded by the Constitution irrespective of whether they cast their vote or not: “Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending considerations before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative.”

Conclusion

Though the Indian Parliament has since its inception used its powers to institute enquiry committees and penalise errant members, it has been less successful in complex corruption cases such as the one in 2008 where several players were involved. The SC’s 1998 judgment and its interpretation of Article 105(2) have also acted as a deterrent in penalising members. There are, however, calls to revisit that judgment.¹² At the same time, the court has intervened, in response to petitions from civil society, to address the larger issue of criminality in politics. The Supreme Court in 2013 held that chargesheeted members of Parliament and state legislatures, on conviction for offences, would be immediately disqualified from holding membership of the House without being given three months’ time for appeal, as was the case before.¹³ Though the Parliament might have been prompt in punishing Mann in 2016, it needs to do much more to restore confidence in its abilities to discipline members.

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¹² <http://timesofindia.indiatimes.com/india/JMM-judgment-needs-fresh-look-says-44658626.cms>.

¹³ <http://www.thehindu.com/news/national/mps-mlas-to-be-disqualified-on-date-of-criminal-conviction/article4901596.ece>.