

# PARLIAMENTARY IMMUNITIES

## The Press & The Public

By S. P. T.

**D**ISCUSSION on Clause 85 of the Draft Constitution in the Constituent Assembly showed considerable confusion in the minds of the members as to the rights of the public in the matter. The clause lays down the privileges and immunities of members of the legislature. While members were vociferous in defending their rights and immunities, not many spoke of the like immunity for the newspaper publication of the proceedings. Under sub-section (2) of this clause it is provided that "no person shall be so liable (to any legal proceedings) in respect of the publication *by or under the authority of either House of Parliament* of any report, paper or votes or proceedings."

One Madras member, the Deputy President of the Assembly, argued the case for the denial of immunity to the newspaper Press. These arguments are not new; and as will shortly be shown they were the stock-in-trade of British-born Home Members in the previous regime. I shall here only point out that the legislature is not a forum where any member can speak wildly, as the Deputy President seemed to take for granted. It is always open to the Speaker to pull up speakers transgressing well-understood canons of discussion. For example, matters that are *sub judice* or which may lead to a court action are generally not open for ventilation in the Assembly.

### POINT AT ISSUE

The subject is nothing new in this country and had been agitated more than once. There was the famous case of Pandit Krishna Kant Malaviya's "Abvudhaya," in which it had been held that the publication of the proceedings of the Indian legislature is not privileged. In 1932 the matter came before the Assembly in the shape of an adjournment motion. The point at issue was if the freedom of speech which the Government of India Act secured to the members extended to the publication of their speeches in the Press. Sir B. L. Mitter, the then Law Member, was coaxed by the President into giving a written reply. According to him, "the ordinances have made no change in the ordinary law of the land in the matter of publication in the Press or otherwise of the proceedings of the legislature."

The official view was set forth with cogency by the Home Member of Bengal at the time. The province of Bengal, stated Mr. Reid, only wanted "to check the publication of these privileged utterances by an irresponsible Press in such a manner as to poison the minds of the young men." And how were the minds of our young men poisoned? Mr. Reid condescended to explain, and dwelt on the venal arts of the Press. "It was easy," he added, "with all the tricks of the journalists' trade, by leaded head-lines, by tactical juxta-positions, by omissions and additions here and there, entirely to misrepresent statements made on the floor of the House in perfect good faith and without the slightest intention that they should be used in that way." Here spoke the precursor of Mr. Anantasayanam Iyengar.

### OBJECTED TO FORM

The matter however was not allowed to rest there. In 1945, Mr. Mohammed Ahmed Kazmi brought in a bill to amend the Indian Penal Code so as to right the grave wrong done to the Press. It is interesting to recall now that the then Law Member, Sir Asoke Roy, had nothing to say on the substantive issue raised, but only objected to the form in which the bill was cast. He spoke an idle word about the competence of the provincial legislatures and evaded a straight answer to the question why, if the Kazmi bill was defective, the Government of India should not undertake legislation themselves.

Now, after all these years of agitation, the result is the bland an-

nouncement that Clause 85 has been adopted with minor inconsequential amendments. Sympathy involuntarily goes to the old Bengal member who expressed his surprise that members who had formerly denounced the British Government for stifling the freedom of the Press should today come forward and support a provision limiting immunity only to official documents.

### FAMOUS JUDGMENT

It is not known what the newspaper press of India is going to do in the matter. At Bangalore they were more concerned with fundamental rights. It may be pointed out that in England a fair newspaper report of the proceedings of the Houses of Parliament is privileged. Mr. Justice Charles in a famous judgment once laid down the commonsense view of the matter and made certain observations that cover wider ground. He very sensibly ruled that "newspapers did not vouch for the truth of everything contained in the report of a public meeting. What are we coming to, if newspapers cannot report a public meeting without sending emissaries all over the country to ascertain that everything said at the meeting and accurately reported is true?"

Nor is this all. It is not a mere question of parliamentary immunity and press privilege. The fundamental issue arises of the right of the public to have a frank, full and unabridged report of the proceedings of the legislatures and the doings of their representatives. Democracy and representative government are not mystical things. One of the surest bulwarks of democracy is the right of the public to hear and read what its representatives in Parliament say and do, without some authority interposing its opaque medium and shutting off light. It is symptomatic of the consequences of one-party government that this aspect of the matter was lost sight of in the debate in the Constituent Assembly.