

“Dear Shri Mahesh Jethmalani ji and distinguished participants!

I am indeed happy to have got this opportunity of recollecting and reflecting on the life and works of late Shri Ram Jethmalani, who needs no introduction. In compliment Shri Mahesh Jethmalani, the distinguished son, for instituting this lecture series in the memory of his distinguished father.

Ram Boolchand Jethmalani was a remarkable person by all counts and standards. He lived for 95 long years and his journey was marked by a rare demonstration of energy and passion till the end.

Having become a law graduate at the young age of 17, he began practice in his hometown of Shikarpur in Sindh at the age of 18 after successfully contesting the prevailing norm of minimum age of 21 years for being a lawyer. Having won the first case, he never looked back during the incredibly long journey of 77 years as a lawyer. He courted controversies by defending some controversial persons but strongly defended himself saying that it was his duty to defend whoever came to him seeking justice. In a lighter vein Shri Jethmalani used to say that his mission was to empty the pockets overflowing with pirated cash.

What made Shri Jethmalani such a successful lawyer was the innovation he used to impart to the process of legal inquiry offering new interpretations and possibilities, which the Judges sitting on the bench could not ignore and had to even acknowledge, grudgingly at times. With every case Shri Jethmalani argued, he became more and more sharper and even famous. Being a lawyer is very demanding on one's time and energy and he sustained it for 77 long years, opening new vistas of legal understanding in almost every major case he argued.

Of these 77 years of eventful journey, Shri Jethmalani was a Member of Parliament for 37 years having been in Rajya Sabha six times from four different States and once a nominated member and twice elected to Lok Sabha. He was also the Minister of Urban Development and Law & Justice. It is rare to wear two hats successfully and only men of the caliber of late Shri Ram Jethmalani could do.

Shri Jethmalani described himself as a maverick. He was a maverick with conscience; a Maverick: Unchanged and Unrepentant; a luminary who had witnessed 'Conflict of Laws' and seen big egos of small men. These descriptions were titles of the books he wrote. The dictionary meaning of 'maverick' is a person who is unorthodox, independent minded and innovative. Late Shri Jethmalani was all about it all through his life and so, was unique.

Now, let us come to the theme of the lecture, which being that “Is Disruption of Parliamentary Proceedings an MP's Privilege and/or a facet of parliamentary democracy?”

I can not but appreciate the acumen of Shri Mahesh Jethmalani in posing such a question and that too, to a Presiding Officer. He is clever seeking to force the Chairman of Rajya Sabha to answer such a tricky question knowing pretty well that I don't have the luxury of being ambivalent that the highly cerebral lawyers can be. Particularly so, in the context of what had happened in the Rajya Sabha during the last monsoon session. However, having accepted the proposition, I venture to answer it. In the process, I am conscious that it is for the first time that a Presiding Officer of any legislature would be taking a position on such a question.

To begin with, we need to understand as to why the disruptions in our legislatures, including the Parliament have come to be a matter of serious concern.

Legislatures are meant to make laws for the people and the country with the members effectively articulating the concerns and aspirations of the people by deliberating on various issues of wider public concerns besides ensuring the accountability of the executive to the legislatures. In essence, the legislatures are to function on behalf of the people and for the people. They are supposed to be productive and not disruptive. This warrants us to take a look at the functioning of our Parliament since Independence.

Rajya Sabha, after much deliberations in the Constituent Assembly on its need and relevance, came into being in May 1952. Its productivity is being quantified with all relevant data since 1978. During 1978-1996, the productivity of the House has been more than 100%. The average annual productivity of the House, measured in term of effective utilization of available time has been 100% or more for 16 of those 19 years. However, the scenario has begun to change thereafter. During the 24 years between 1997 and 2020, the productivity of the House clocked 100% or more only in two years in 1998 and 2009. Not even once during the last 12 years. This is the area of concern which brings out the consequences of rising disruptions.

The overall productivity of Rajya Sabha during 2004-2014 has been about 78% and since then it has come down to about 65%. The productivity of the last 11 sessions that I have had the honour of presiding over comes to 66.50%. Three of these 11 sessions clocked low productivity of 6.80%, 27.30% and 28.90%. During the year 2018, Rajya Sabha has recorded the lowest ever annual productivity of 35.75%.

Question Hour is an important instrument of seeking accountability of the executive for implementation of the government's policies and programmes and pinning down the executive on the lapses thereof. During the last six years, over 60% of the valuable Question Hour time has been lost due to disruptions. This state of affairs justifies the growing concern over persistent disruptions.

It is in this context that the question whether disruption of parliamentary proceedings being the privilege of the Members of Parliament needs to be understood and answered. In doing so, we need to understand the context and the framework in which MPs are required to function and why some privileges are given to the Parliament and its members.

There is an elaborate scheme of Rules of Procedure and Conduct of Business in the Council of States, a Code of Conduct, a detailed Parliamentary Etiquette, the Constitutional provisions, customs and conventions of the House and rulings of the Chair which are to be complied with by the Members. The stated objective of all these rules and guidelines is to enable smooth functioning of the House and upholding its dignity and stature. Certain privileges granted to the Parliament and its members are also intended to enable effective functioning of the Houses.

Let us now briefly examine various rules and provisions.

Rules 235 to 241 of Rajya Sabha provide for the conduct of the Members during the proceedings of the House. Rule 235 clearly stipulates that Members shall not obstruct the proceedings of the House and interrupt members while speaking by disorderly expression or noises or in any other disorderly manner and shall maintain silence while not speaking in the Council. Rule 243 requires that the Chairman whenever he rises shall be heard in silence and any member who is speaking or offering to speak shall immediately sit down. But these Rules are being violated too often.

The 14-point Framework of Code of Conduct recommended by the Ethics Committee of Rajya Sabha and adopted by the House on December 15, 1999 requires that members must not do anything that brings disrepute to the Parliament and affects its credibility. The question is whether disruptions enhance the reputation of the Parliament?

Further, there is an elaborate 42-point Parliamentary Etiquette which the Members are required to follow which helps in upholding the dignity of the House and the Members. This scheme is drawn from the Rules of the House, Rulings of the Chair, conventions and parliamentary practices. This code also requires the members not to converse among themselves to avoid disturbing the proceedings of the House; not to rise to speak unless called by the Chair; not to repeat the arguments of the previous speakers or one's own; not to interrupt or argue with a member speaking; not to use offensive and un-parliamentary language and not use the right of speech for the purpose of obstructing the business of the House. It is clear that the objective of this scheme is also to have order in the House so that it functions effectively. This code even requires the members not to read newspapers, periodicals etc in the House; not to leave once the speech of the member is over and to be present when the Minister is replying to the debate in which the member has participated. These norms of behavior are meant to uphold the solemnity of the proceedings of the House and enhance the dignity of the House. But, what is happening is to the contrary on a regular basis.

The origin and significance of certain powers, privileges and immunities of the Houses of parliament and its members has been discussed and elaborated at length in the publications of the renowned Kaul & Shakdar and of Rajya Sabha as well.

Some privileges are granted to Members of Parliament and other legislatures to enable them to perform their duties without any hindrance. They are available to members only in so far as they are necessary for the House to freely perform its functions. These privileges are outlined in the Constitution, in the statutes, in the Rules of Business and some are based on precedents.

Some of these privileges are: Freedom of speech in the House; immunity to a member from any court proceedings for anything said or vote given in the House or any Committee thereof; immunity from any court proceedings in respect of publication of any report, vote or proceedings; prohibition on the courts to enquire into proceedings; freedom from arrest of members in civil cases during a session and 40 days before its commencement and 40 days after conclusion; right of the House to receive information about arrest, detention, conviction, imprisonment and release of a member; exemption from arrest within the precincts

of the House; not to be compelled to give evidence in the courts without the permission of the House and right to communicate with the Chairman during the detention of a member.

These privileges were adopted from those available to the House of Commons of the United Kingdom. Article 105 of the Constitution while conferring the right to Free Speech and immunity from court proceedings required that the privileges may further be defined by an Act of Parliament, which is still to be done. The issue of codification of the privileges was examined at length including by the Committee of Privileges of Lok Sabha, which in April, 2008 concluded that the preponderance of the opinion collected in the matter was against such codification.

The Committee of Privileges of Lok Sabha significantly noted that Privileges are enabling rights of members to put across the views and voice the concerns of their constituents fearlessly. These could, therefore, be termed as indirect rights of member's constituents (the people who elected the member). It is this essence of privileges that needs to be understood.

Thomas Erskine May, former Clerk of the House of Commons of the United Kingdom and a constitutional theorist presented the parliamentary privileges in perspective in his seminal book "Parliamentary Practice". He said and I quote:

"Parliamentary privilege is the sum of certain rights enjoyed by each House collectively and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals... Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House can not perform its functions without unimpeded use of the services of its members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution (by expelling errant members) belong primarily to each House as a collective body, for the protection of its members and vindication of its authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members".

This clearly suggests that the privileges granted to the Members of Parliament are on behalf of the people and are to be exercised on their behalf and in such a manner that it enables effective performance of the individual members. It is the sum of the performance of the individual members of a House that constitutes the performance of a law making body. It then follows logically that the privileges of the House and its members are intended to enable performing legislatures and not disruptive ones. Disruption of proceedings negate the functioning of the legislatures.

The privilege of Freedom of Speech of legislators during the proceedings is the most talked about one and often perceived negatively. I would like to stress that it is not an unfettered right and it is qualified. To further illustrate this point, Rule 238 of the Rules of Rajya Sabha stipulates that a member while speaking shall not : refer to any matter which is under consideration of the judiciary; make a personal charge against a member; use offensive expressions about the conduct or proceedings of any other House; reflect on the conduct of persons in high authority unless the discussion is based on a substantive motion; reflect on any decision of the Council except on a motion for rescinding it etc. it is pertinent to note that the Chair can direct a member if his/her speech is repetitive in the interest of management of the time of the House which further highlights the limits of Freedom of House.

The Committee of Privileges of Rajya Sabha has rightly stressed that this privilege can only be secured, if it is not abused by the members.

Disregard of any of the rights, privileges and immunities either of members of Parliament or individually, or of the Houses in its collective capacity amounts to 'Breach of Privilege' and is punishable with admonition, reprimand, withdrawal and suspension from the House, imprisonment and expulsion of members from the House. The House has all the powers to deal with any situation and punish the errant members appropriately.

Let us now deal with 'disruptions' and their consequences and if disruption can be claimed as a 'privilege' by the disrupting members.

It is plain and simple that the legislatures have been conceived as deliberative and law making bodies. These functions are best discharged when the legislatures function smoothly and effectively without hindrance. Persistent disruptions forcing the House to be adjourned and impeding smooth functioning of Parliament and other legislatures is clearly against the scheme envisaged under the Rules of Business, Code of Conduct for members, Parliamentary etiquette and the privileges and immunities granted individually to members and collectively to the law making bodies.

Disruptions resulting in forced adjournments of the House lead to derailment of the business scheduled for the day, deprive other members willing to participate in the proceedings and accordingly identified, delay the course of law making etc. Besides the financial implications of rendering the legislatures dysfunctional through disruptions, the socio-economic impacts of delayed legislation and defective legislation are quite substantial. Accordingly, Members of Parliament are enabled in different ways to give out their best performance and certainly not empowered to disrupt the proceedings of the Houses.

Erskine May has defined the 'contempt of the House' and I quote:

Generally speaking, any act or omission which obstructs or impedes wither House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of offence".

Some cases of disruption depriving members willing to participate in the scheduled proceedings of the House were referred to the Committee of Privileges of Rajya Sabha. In its 59<sup>th</sup> Report, the Committee recommended step by step action against disruptors and recommended automatic suspension of repeat offenders from the House for five consecutive sittings or remainder of the session. This meant that disruptions have serious implications and are not acceptable.

Both the Houses of Parliament have passed Resolutions on the occasion of Golden Jubilee of Independence in 1997 and on the occasion of 60 years of the first sitting of Parliament in 2012, which *inter alia* required the members not to disrupt Question Hour; not to enter the well of the Houses; to uphold and maintain the dignity, sanctity and supremacy of Parliament. But those solemn commitments are being followed more in violation leading to widespread public concern.

In conclusion, disruption of the proceedings is a certain negation of the spirit and the intention behind of the Rules of the House, the Code of Conduct and the Parliamentary Etiquette and the scheme of parliamentary privileges, all aimed at enabling effective performance of individual members and the House collectively and given the consequences, disruption of proceedings clearly amount to contempt of the House, by the logic of which disruption can not be claimed as a privilege by errant members.

The other aspect of the theme of this lecture is if disruption is a facet of parliamentary democracy. The dictionary meaning of the word 'facet' is 'one aspect of something many sided'.

MPs have the right to protest against the perceived omissions and commissions of the government of the day. But it should be done in a civil manner without rendering the legislature dysfunctional. The executive can be taken to task during the debates through effective interventions; protesting members can either talk it out or walk out; reach out to the media/people highlighting their grievances etc.

Yes, disruption has emerged as a 'facet' of our parliamentary democracy over the last 25 years. Since 1952, only 10 members of Rajya Sabha were suspended for misconduct inside the house on 8 occasions. But, since 2010, 18 members were suspended in the last 11 years on five occasions including 9 on two occasions during the last one year.

These suspensions do not reflect the gravity of the situation since such action is not resorted to on all occasions for various reasons.

I have no hesitation in saying that the emergence of disruptions as an unacceptable facet of parliamentary democracy is a matter of serious concern and needs to be checked at the earliest.

In the 75<sup>th</sup> year of Independence which we are now celebrating, I urge upon all the stakeholders, including all political parties and the executive to introspect and commit themselves to do the needful to put an end to the unsavory saga of disruptions in the legislatures to enhance the quality and dignity our parliamentary democracy by restoring the credibility of its organs.

Thank you all for your patient audience."