



Free media Movement – Sri Lanka- Hot line- (+94)0777289289

Press release

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On parliamentary privilege and media freedom

The Free Media Movement (FMM) expresses its surprise and dismay at the statement issued by the United National Party (UNP) in response to FMM's statement concerning the remarks made by the Leader of the Opposition, Hon. Ranil Wickremasinghe M.P., alleging a breach of parliamentary privilege by sections of the media. In the view of the UNP, some media institutions had not reported on, or failed to give sufficient publicity to, a critical speech in Parliament by the Government Chief Whip, Hon. Jeyaraj Fernandopulle M.P., regarding security arrangements for former President Kumaratunga. According to the UNP statement, its enquiries in this regard have revealed that the non-reportage of Mr Fernandopulle's speech by some media institutions was due to fears of attracting contempt of court given that the said security arrangements had been the subject of litigation before the Supreme Court recently. Both Mr. Wickremasinghe in Parliament and the UNP's subsequent statement take the position that this constitutes a purported prima facie breach of parliamentary privilege and that accordingly the concerned institutions and / or editors should be summoned before the Committee on Privileges and called to account and, presumably, punished.

FMM is of the view that the UNP's position is only tenable through a perverse distortion of logic, democratic norms and modern international best practice and law relating to freedom of expression, parliamentary privilege and contempt. In its statement, the UNP has confused the fundamental purpose of the well known parliamentary privilege of freedom of speech – which is to protect individual Members from legal action as well as collectively to enable Parliament to discharge its constitutional function – with modern practice relating to media coverage of parliamentary debates and proceedings. The UNP is justified in asserting the rights of Parliament especially in relation to contempt of court, for which the source from House Commons practice is Article IX of the Bill of Rights 1689 and the recent precedent of Speaker Bandaranaike's ruling of 20th June 2001.

However, parliamentary privilege does not, and in a democracy cannot, regulate the media or seek to dictate editorial content and policy in relation to parliamentary proceedings or otherwise. This has been long been the practice of the House of Commons and which practice has been formalised since a series of resolutions in 1971, which set out the general principle that the House will not entertain complaints of breach of privilege or contempt in respect of the publication of debates or proceedings of the House except when these were conducted in private or publication was expressly prohibited. It is the necessary corollary of this principle that parliamentary privilege cannot be used to enforce publication, per se or in a particular form, of parliamentary debates or proceedings by the media.

Indeed, it is absolutely inconceivable in the United Kingdom or in any other parliamentary democracy that the kind of measure the UNP proposes will be treated with any seriousness let alone be allowed. A free and vibrant media and Parliament (and especially the Opposition) have central roles in a functioning democracy.

These roles are best served if Parliament respects the domain and independence of the media. The UNP's reference in this regard to the Editor's Guild Code of Ethics, which is for the best public policy reasons a self-regulatory code, is irrelevant as its enforcement is not the concern of Parliament or of any political party. Means and mechanisms of ensuring compliance with the Code are set out in the Code itself.

That certain media institutions have felt constrained in reporting the comments of the Government Chief Whip therefore indicate not some specious breach of parliamentary privilege, but a wider challenge to freedom of expression and the independence of the media represented by the law relating to contempt of court in Sri Lanka. Unlike in many modern democracies including the United Kingdom, the law relating to contempt of court is not statutorily regulated in Sri Lanka. The consequence has been an arbitrary and unrestrained use of contempt powers by the courts, the recent cases relating to the Sunday Leader, Anthony Michael Fernando and S. B. Dissanayake M.P. being representative examples. It is particularly remarkable in this context that the UNP wishes to further exacerbate this environment with its threat to use parliamentary privilege to secure media coverage to its own liking.

In order to promote and secure the enjoyment of the freedom of expression and other fundamental human rights by the people of Sri Lanka, therefore, FMM hopes that the Hon. Leader of the Opposition and the UNP as the principal parliamentary Opposition will commit forthwith to the following reforms, and seek to ensure their expeditious entry into the statute book:

- Enact legislation to enable live broadcasting and telecasting of debates and proceedings of the House and its Committees except where confidentiality is required in line with international best practice
- Repeal the provisions of the Parliament (Powers and Privileges) Act No. 21 of 1956 (as amended) relating to punishment by Parliament for breach of privilege and contempt so as to bring the Sri Lankan law in line with the modern practice of the House of Commons and other parliaments
- Enact a Contempt of Court Act in line with international best practice so as to confine, structure and regulate the use of judicial contempt powers consistent with the freedom of expression and other fundamental rights
- Enact a Freedom of Information Act to secure as of right the access to official information, draft legislation in respect of which had obtained Cabinet approval in 2003-4 during the then UNF administration

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