



EFF SUBMISSION ON PROPOSED CHANGES TO NATIONAL ASSEMBLY RULES AS REGARDS THE USE OF POLICE TO REMOVE MEMBERS OF PARLIAMENT FROM THE HOUSE

A. INTRODUCTION

1. The Ruling party has proposed an amendment to the rules of the National Assembly to allow the presiding officers to call police in instances where a member refuses to obey instructions to leave the house.
2. Such a rule must be assessed in terms of all provisions in the constitution and acts governing parliament, but above all in the interest of fulfilment of the remit of parliament. In the assessment of the EFF, which considers all these provision, constitutional remit of parliament and cases from other democratic countries, there can never be a need to use force, either police or any other security, to remove any member from the house for something they said.
3. In addition, as the rules stand, the presiding officers are well empowered by the rules to adequately deal with situations where members refuse to leave the house. Thus, requiring no need for such a stipulation or amendment which invites police. In essence, the EFF is of the view that under no circumstances should police be used except if there is a direct threat to physical harm of persons or property.

B. CONSTITUTIONAL SACROSANCTITY OF FREE SPEECH IN PARLIAMENT

4. Section 58 of the Constitution prohibits criminal or civil procedures from being brought against MPs for what they say in Parliament, and forbids their arrest in such matters. Section 58. (1) (b) of the Constitution of South Africa clearly states that: "Members of the National Assembly have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and are not liable to civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the Assembly or any of its committees; or anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees."

5. This is because the constitution regards the business of parliament as sacrosanct and thus it empowers it with absolute free of speech, only subject to its rules. This is because parliament makes laws that have impact on the lives of people, thus in making such laws a robust, radical and thorough assessment and critique of discussions is paramount. Such robust, radical and thorough assessment and critique of discussions is impossible under restricted speech.

6. Any rules that parliament may come up with to restrict the constitutional provision of "free speech" may not undermine or undo the very constitutional guarantee. Meaning, the spirit of the clause must remain intact in the practice of the rules, otherwise it undermines the supremacy of the constitution. Parliament can subject free speech to rules, but may not do so in way that undermines it.

7. Use of force in the form of police or security forces for something a member said in parliament not only undermines the constitutional provisions, it can be used in the future as intimidation. The idea that presiding officers have powers to order physical violence because they regard what members say as "unparliamentary" or not respectful of the "decorum" of the house is sheer hooliganism.

C. NATIONAL ASSEMBLY RULES AND CRIMINAL PROCEDURE

8. National Assembly Rule 51 reads:

"If the presiding officer is of the opinion that a member is deliberately contravening a provision of these Rules, or that a member is in contempt of or is disregarding the authority of the Chair, or that a member's conduct is grossly disorderly, he or she may order the member to withdraw immediately from the Chamber for the remainder of the day's sitting.

The proposal of use of police or security is meant to respond to defiance of this rule. However, the preceding officers have a other means to use in order to restore order in the house. However, the preceding officer still has options of referring the member to relevant disciplinary procedures where consequences carrying from apology, suspension and suspension without benefit are available.

9. The proposal by the ANC to use security or the police to remove MPs who refuse to withdraw from the Chamber when asked to do so is dangerous because:

- (a) The police are essentially an executive arm of government and may be bias towards those who employe them,
- (b) The Security or the Police availability of a clause in the rules, or a rule where the presiding officer can call Police or security to remove members may be used to undermine the provision of the Powers and Privileges Act which reads:

"A person may not by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means - (a) influence a member in the performance of the member's functions as a member; (b) induce a member to be absent from Parliament or a House or committee; or (c) attempt to compel a member to declare himself or herself in favour of or against anything pending before or proposed or expected to be submitted to Parliament or a House or committee."

10. Furthermore, the law does not empower police to apply force to any citizen as was the case during 13 November 2014 when a female EFF member of parliament was assaulted by the police. Section 49 of the Criminal Procedure Act 51 of 1977 (as amended) reads as follows in respect of the use of force in effecting arrest:

(1) For the purposes of this section-

- (a) 'arrestor' means any person authorised under this Act to arrest or to assist in arresting a suspect; and
- (b) 'suspect' means any person in respect of whom an arrestor has or had a reasonable suspicion that such person is committing or has committed an offence.

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing.

11. Section 49 of the Criminal Procedure Act provides for the police to use force when effecting arrest under certain conditions. Section 49 as above mentioned specifically prescribes conditions under which such force could be used, and in terms of provisions of this section, it is the use of deadly force. It is important to note that the law only provides for the application of force in effecting ARREST, and a person whom the police would be arresting would be a suspected criminal to be charged with intention to bring the arrested person before the court of law.

12. Failure by a member to obey an instruction of the presiding officer or the Speaker to withdraw from the chamber is not a criminal offence, thus it does not warrant an arrest or the need for the police to be called into the chamber to use physical force and possible violence while attempting to physically remove such a member.

13. Section 58(1)(b) of the Constitution specifically prescribes that members are not liable to civil, criminal proceedings, arrest, imprisonment or damages for anything they have said in the National Assembly.

14. Nothing in law empowers the police to enter the chamber and assault members of parliament, whether authorised by the Speaker or the rules of the National Assembly. Thus, any rule that seeks to intimidate members through the threat of assault by the police is unlawful and unconstitutional and must be rejected.

D. COMPARISONS WITH OTHER DEMOCRACIES

15. Rules of parliaments in other democracies provides for the Speaker, Chair or President of the Assembly to suspend the proceedings in the event of grave disorder, as consistent with rule 56 of the adopted Rules of the National Assembly. We cite below examples of rules of the following parliaments:

- European Parliament
- Parliament of India
- Parliament of Canada
- Parliament of Germany (Bundestag)

EUROPEAN PARLIAMENT

Under Chapter 4 dealing with measures to be taken in the event of non-compliance with the standards of conduct of members, Rule 165 prescribes the following:

- (1) The President shall call to order any Member who disrupts the smooth conduct of the proceedings or whose conduct fails to comply with the relevant provisions of Rule 11.
- (2) Should the offence be repeated, the President shall again call the Member to order, and the fact shall be recorded in the minutes.
- (3) Should the disturbance continue, or if a further offence is committed, the offender may be denied the right to speak and may be excluded from the Chamber by the President for the remainder of the sitting. The President may also resort to the latter measure immediately and without a second call to order in cases of exceptional seriousness. The Secretary-General shall, without delay, see to it that such disciplinary measures are carried out, with the assistance of the ushers and, if necessary, of Parliament's Security Service.

- (4) Should disturbances threaten to obstruct the business of the House, the President shall close or suspend the sitting for a specific period to restore order. If the President cannot make himself heard, he shall leave the chair; this shall have the effect of suspending the sitting. The President shall reconvene the sitting.
- (5) The powers provided for in paragraphs 1 to 4 shall be vested, mutatis mutandis, in the presiding officers of bodies, committees and delegations as provided for in the Rules of Procedure.
 - (1)(1)(1)(1)(1)(1) Where appropriate, and bearing in mind the seriousness of the breach of the Members' standards of conduct, the Member in the Chair may, no later than the following part-session or the following meeting of the body, committee or delegation concerned, ask the President to apply Rule 166.

PARLIAMENT OF INDIA

WITHDRAWAL AND SUSPENSION OF MEMBERS

Withdrawal of member

373. The Speaker may direct any member whose conduct is, in his opinion, grossly disorderly to withdraw immediately from the House, and any member so ordered to withdraw shall do so forthwith and shall absent himself during the remainder of the day's sitting.

Suspension of member

374. (1) The Speaker may, if he deems it necessary, name a member who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof.

(2) If a member is so named by the Speaker, the Speaker shall, on a motion being made forthwith put the question that the member (naming him) be suspended from the service of the House for a period not exceeding the remainder of the session:

Provided that the House may, at any time, on a motion being made, resolve that such suspension be terminated.

(3) A member suspended under this rule shall forthwith withdraw from the precincts of the House.

Automatic Suspension of a member

374A. (1) Notwithstanding anything contained in rules 373 and 374, in the event of grave disorder occasioned by a member coming into the well of the House or abusing the Rules of the House persistently and wilfully obstructing its business by shouting slogans or otherwise, such member shall, on being named by the Speaker, stand automatically suspended from the service of the House for five consecutive sittings or the remainder of the session, whichever is less:

Provided that the House may, at any time, on a motion being made, resolve that such suspension be terminated.

(2) On the Speaker announcing the suspension under this rule, the member shall forthwith withdraw from the precincts of the House.

ADJOURNMENT OF HOUSE OR SUSPENSION OF SITTING DUE TO GRAVE DISORDER

Power of Speaker to adjourn House or suspend sitting

375. In the case of a grave disorder arising in the House, the Speaker may, if he thinks it necessary to do so, adjourn the House or suspend any sitting for a time to be named by him or her

PARLIAMENT OF CANADA

ORDER AND DECORUM

Interruption of proceedings

2-6. (1) The Speaker may interrupt any proceeding in order to restore order or enforce the Rules.

Suspension of sitting

2-6. (2) In the event of grave disorder, the Speaker may suspend the sitting of the Senate for up to three hours.

LEAVES OF ABSENCE AND SUSPENSIONS

Authorized leaves and suspensions

15-2. (1) The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause.

Leaves of absence – preventive measure

15-2. (2) When a leave of absence is granted, it is solely to protect the dignity and reputation of the Senate and public trust and confidence in Parliament.

Absence obligatory

15-2. (3) Except as provided in subsection (4), a Senator on leave of absence or under suspension shall not attend any sitting of the Senate or its committees.

PARLIAMENT OF GERMANY (BUNDESTAG)

Rule 36

Calls for pertinence and calls to order, direction to discontinue speaking

(1) The President may call upon speakers who digress to keep to the subject under debate. The President may name and call to order Members of the Bundestag who commit a breach of order or fail to respect the dignity of the Bundestag. The call to order and the reason for it may not be referred to by subsequent speakers.

(2) If, during his or her speech, a speaker is called upon three times to keep to the subject under debate or is called to order three times after having on the second occasion been warned of the consequences of a third reminder to keep to the subject under debate or of a third call to order, the President must direct him or her to discontinue speaking and may not, during the remainder of the debate, grant him or her leave to speak on the same subject.

Rule 37

Fine

In the case of a non-minor breach of order or failure to respect the dignity of the Bundestag, the President may impose a fine of €1000 on a Member of the Bundestag even if he or she has not been called to order. Any repetition shall result in an increase in the fine to € 2000. Rule 38, paragraph (2), shall apply *mutatis mutandis*.

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Rule 38

Suspension of Members of the Bundestag

(1) The President may order a Member of the Bundestag who has committed a serious breach of order or failed to respect the dignity of the Bundestag to leave the Chamber for the remainder of the sitting even if he or she has not been called to order or no fine has been imposed. Before the sitting is closed the President shall announce for how many sitting days the Member in question will be suspended. A Member of the Bundestag may be suspended for up to thirty sitting days.

(2) A suspension of a Member from a sitting may be issued retrospectively, no later than the sitting subsequent to that in which the serious breach of order or failure to respect the dignity of the Bundestag took place, provided the President explicitly declares a breach of order or failure to respect the dignity of the Bundestag during the sitting in question and reserves the right to issue a suspension at a later point. The second and third sentences of paragraph (1) shall apply mutatis mutandis. The fact that a call to order has already been made shall not preclude the possibility of a suspension from a sitting being issued retrospectively.

(3) The Member concerned shall immediately leave the Chamber. If he or she refuses to obey the order, the President shall indicate to the Member that this behaviour will result in a prolongation of the suspension.

(4) The Member concerned shall also be excluded from committee meetings for the duration of his or her suspension.

(5) If the Member concerned attempts unlawfully to take part in sittings of the Bundestag or meetings of its committees, the second sentence of paragraph (3) shall apply mutatis mutandis.

(6) The Member concerned shall not be deemed to be on leave of absence. The Member may not enter his or her name in the attendance register.

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Rule 39

Objection to measures for the maintenance of order

The Member concerned may, by the next sitting day, lodge a reasoned objection in writing to the call to order (Rule 36), to the fine (Rule 37) or to his or her suspension (Rule 38). The objection shall be placed on the agenda of that sitting. The Bundestag shall decide thereon without debate. The objection shall not have a delaying effect.

Rule 40

Suspension of the sitting

If disturbances in the Bundestag threaten to obstruct the business of the House, the President may suspend the sitting for a specified period of time or terminate it. If the President cannot make himself or herself heard, he or she shall leave the Chair; this shall have the effect of suspending the sitting. The President shall reconvene the sitting.

E. CONCLUSION

18. There is only harm that inviting police in the rules of parliament will do. There is no need to write in such a rule as it is unnecessary and will only result in the violation of the rights of members as well as the constitution.