

MPs more free in the street than in Parliament

 By [Anton Harber](#)

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I can stand in the street and call someone a thief. I can even call the president a thief. But I can't do it in Parliament. Something is topsy-turvy here...

If I say it in the street, I can be sued for saying it, and I will then be obliged to show that it was in the public interest to say it and that I took reasonable steps to verify it.

If my street celebration of free expression came in the context of the Nkandla scandal, I would at least have a case to argue in my defence. It is certainly in the public interest to discuss this (though I would depend on the courts still recognising what is so seldom recognised outside of the courts: that public and government interest are not the same thing) and I could present about five years of investigative reporting as proof of reasonable steps having been taken to find the truth.

If I were an MP and said it in Parliament, I could not be sued. Members of the National Assembly are "not liable to civil and criminal proceedings, arrest, imprisonment or damages for anything they have said" there, according to section 58(1)(b) of our fine constitution.

So I am protected if I say it in the hallowed halls of Parliament, but I am not allowed to say it. Freedom of speech in Parliament is "subject to its rules and orders".

In this case, there is a standing rule, dating back to Frene Ginwala's era as speaker, that states that a member (yes, that is what they call each other) cannot "impute improper motives to other members, or cast personal reflections on the integrity of members, or verbally abuse them in any way" except through a "separate substantive motion, comprising a clearly formulated and properly substantive charge".

Note the repeated use of the word substantive. No frivolous motions here. No loosely worded charges. No rush of blood to the head. Nothing without backing and evidence presented in the formal tones of a motion with all the necessary brackets and semicolons and tortured legal phrasing.

And, of course, nothing that does not get the nod of the speaker, in whose hands lies the execution of these rules.

Freedom of speech - if the speaker approves

Now we can see the function of that standing rule. It puts the power in the hands of the speaker to pre-approve any suggestions that others are thieves, scoundrels or crooks.

You have to prepare a motion, you have to table it, you have to make it substantive and you have to get the nod of the speaker, before you can say what anyone else can shout out on the street.

So MPs have less freedom of speech in Parliament than they have in the streets outside, they have less scope to be cheeky or provocative or bring in street language and culture.

I should add that they can make those allegations and get full parliamentary protection if they make it against a non-member, against an ordinary person who is not sitting in the room. They just cannot say it about each other.

Of course, the intention here, and one has to impute to Ginwala the best of intentions, was to avoid the kind of name-calling that leads to members punching each other. It was to try to ensure that even when things got heated, they remained orderly and dignified. Parliament is not meant to be a place of fun and games.

The critical factor... the speaker's conduct and attitude

But it is meant to be a place of free speech and open, unconstrained debate, where those with executive power are called to account.

The critical factor here is that the successful functioning of Parliament is dependent on the conduct and attitude of the speaker, and how he or she uses the rules. That person has to win the respect of all present on the basis that they will give everyone their say, cajole all parties to respect the rules, and serve parliamentary interests above those of their party or leader. If they have to use force, they have failed. If they are not protecting minorities and their right to speak out, they have definitely failed.

If MPs have more freedom of speech in the streets than in the house, something is wrong.

ABOUT ANTON HARBER

Anton Harber, Wits University Caxton Professor of Journalism and chair of the Freedom of Expression Institute, was a Weekly Mail (now Mail & Guardian) founding editor and a Kagiso Media executive director. He wrote Diepsloot (Jonathan Ball, 2011), Recht Malan Prize winner, and co-edited the first two editions of The A-Z of South African Politics (Penguin, 1994/5), What is Left Unsaid: Reporting the South African HIV Epidemic (Jacana, 2010) and Troublemakers: The best of SA's investigative journalism (Jacana, 2010).
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