CHAPTER XI

Powers, Privileges and Immunities of Houses, their Committees and Members

In parliamentary language the term privilege applies to certain rights and immunities enjoyed by each House of Parliament and committees of each House collectively, and by members of each House individually. The object of parliamentary privileges is to safeguard the freedom, the authority and the dignity of Parliament. Privileges are necessary for the proper exercise of the functions entrusted to Parliament by the Constitution. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and by each House collectively for the protection of its members and the vindication of its own authority and dignity[1].

In modern times, parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded as a protection of the members of Parliament against an executive authority not responsible to Parliament. The entire background in which privileges of Parliament are now viewed has changed because the Executive is now responsible to Parliament. The foundation upon which they rest is the maintenance of the dignity and independence of the House and of its members[2].

In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance"[3]. They apply to individual members "only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects"[4]. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so[5].

The fundamental principle is that all citizens, including members of Parliament, have to be treated equally in the eye of the law. Unless so specified in

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1. M.N. Kaul· *Codification of the Law on Privilege* (Note circulated at the Conference of Presiding Officers in August, 1950); *see* Subhash C. Kashyap: *Parliamentary Privileges*, New Delhi, 1988.
2. *Report of Committee of Speakers*, 1956, p. 9, para 16.
3. *Report of Committee of Privileges in Captain Ramsay Case*, H.C. 164 (1939-40), p. vi, para 19.
4. *Report of Committee of Privileges in Lewis Case*, H.C. 244(1951), p. ix, para 22.
5. *Report of Committee of Speakers*, 1956, p. 9 para 18.

the Constitution or in any law, a member of Parliament cannot claim any privileges higher than those enjoyed by any ordinary citizen in the matter of the application of law[6].

When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the members individually or of the House in its collective capacity or of its committees, the offence is termed a breach of privilege, and is punishable by the House. Besides, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its members or officers are also punishable, although these actions are not breaches of any specific privilege. Such actions, though often called 'breaches of privilege', are more properly distinguished as 'contempts'[7].

Each House is the guardian of its own privileges: it is not only the sole judge of any matter that may arise which in any way infringes upon those privileges but can, if it deems it advisable, punish, either by imprisonment or reprimand, any person whom it considers to be guilty of contempt. The penal jurisdiction of the House is not confined to its own members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls.

The power of the House to punish any person who commits a contempt of the House or a breach of any of its privileges is the most important privilege. It is this power that gives reality to the privileges of Parliament and emphasises its sovereign character so far as the protection of its rights and the maintenance of its dignity are concerned[8].

Question of Codification of Privileges

The powers, privileges and immunities of either House of Parliament and of its members and committees have been laid down in article 105 of the Constitution. In this article, the privilege of freedom of speech in Parliament and the immunity to members from "any proceedings in any court in respect of any thing said or any vote given" by them in Parliament or any committee thereof are specifically provided for. The article also provides that no person shall be liable to any proceedings in any court "in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings". In other respects, however, clause(3) of this article as originally enacted provided that "the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the House of Commons of the Parliament of the United

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6. *Report of Committee of Privileges in Deshpande Case*, I.L.S., para 17.
7. For details, *see* this Chapter under sub-head 'Breach of Privilege and Contempt of the House', *infra*.
8. Kaul, *op. cit.*

Kingdom, and of its members and committees, at the commencement of this Constitution", namely 26 January, 1950[9].

Article 105(3) was amended by the Constitution (Forty-fourth Amendment) Act, 1978[10]. Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978, which came into force with effect from 20 June, 1979 provides that in other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Privileges enjoyed by Parliament as on 20 June 1979, have thus been specified as the period of reference and specific mention of the House of Commons has been omitted. The purpose of this amendment, as stated by the then Law Minister while replying to the discussion on the Constitution (Amendment) Bill, was that "a proud country like India would like to avoid making any reference to a foreign institution in its own solemn constitutional document". The amendments made in the articles 105(3) and 194(3) were, however, of verbal nature and the position remains basically the same as on 26 January, 1950.

No comprehensive law[11] has so far been passed by Parliament to define the powers, privileges and immunities of each House, and of the members and the

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9. For observations of Alladi Krishnaswami Ayyar and Dr. B.R. Ambedkar, *see C.A. Deb.*, 19-5-1949, pp. 148-49; 3-6-1949, pp. 582-83. *See* also *C.A. Deb.*, 16-10-1949, pp. 374-75.

10. Similarly, article 194(3) relating to the powers, privileges and immunities of the Houses of State Legislatures has been amended [by section 26 of the Constitution (Forty-fourth Amendment) Act, 1978], so that the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978.

11. In 1956, Parliament enacted the Parliamentary Proceedings (Protection of Publication) Act, 1956, sponsored by a private member, section 3 of which provided:

    (1) Save as otherwise provided in sub-section (2), no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice.

    (2) Nothing in sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good.

    The Act also applied to parliamentary proceedings broadcast by wireless telegraphy. The said Act was repealed in February, 1976. However, the position as under the Act of 1956 was restored by the Parliamentary Proceedings (Protection of Publication) Act, 1977.

    Under section 135A of the Code of Civil Procedure, members of Parliament and State Legislatures are exempt from arrest and detention under civil process during the continuance of a session of the House or a committee meeting and during forty days before and after such session or committee meeting.

    Article 361A of the Constitution inserted by section 42 of the Constitution (Forty-fourth Amendment) Act, 1978, provides that:

    (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice:

committees thereof. In the absence of any such law, the powers, privileges and immunities of the House, and of the members and the committees thereof, continue to remain in actual practice the same as those of the House of Commons, U.K., and of its members and committees, at the time of the commencement of the Constitution.

The question of undertaking legislation on the subject has engaged the attention of the Presiding Officers since 1921. Speaker Frederick Whyte stated at the first Speakers' Conference held that year:

> The whole question of 'privileges' in respect of the Legislatures in India was one of great importance..., the point being whether legal powers should be asked for to enable the Legislatures to punish contempts.

He further observed that since no privileges resembling those of the House of Commons had been statutorily conferred on Legislatures in India, they possessed no powers to punish contempts.

The matter was considered from time to time at the Conference of Speakers and ultimately in 1933, when the discussions on the Government of India Bill were taking place in the Parliament of the U.K., the Secretary of the Central Legislative Assembly was authorized by the Speakers' Conference to address a memorandum to the Clerk to the Joint Select Committee, House of Lords, London. Paragraph 4 of the memorandum, which was approved and signed by Speaker Shanmukham Chetty, stated as follows:

> The unanimous opinion of the Conference of Speakers was that the future Legislatures, both Central and Provincial, in India must be given the privileges, immunities and powers enjoyed by the House of Commons... The Conference felt that in order to achieve this object it was essential that a section on the lines of section 18 of the British North America Act, 1867, as subsequently amended by the Parliament of Canada Act, 1875, should be incorporated in the Constitution of India..., for the purpose of the exercise and safeguarding these privileges and immunities, the Legislatures, both Central and Provincial, should be made a Court of Record to enquire into and punish contraventions of the Act.

The British Parliament, however, did not accept the proposal.

The question was again taken up at the Speakers' Conference in 1938.

Provided that nothing in this clause shall apply to the publication of any report of proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or as the case may be, either House of the Legislature of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme of service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation: In this article, "Newspaper" includes a news agency report containing material for publication in a newspaper.

Speaker Abdur Rahim addressed memorandum on the subject to the Government of India to be forwarded to the authorities concerned. Paragraph 5 of this memorandum stated as follows:

> The Conferences were unanimously and emphatically of opinion that the Government of India should be requested to take immediate steps to get sections 28 and 71 of the Government of India Act, 1935, amended so as to secure for the Central and Provincial Legislatures and the officers and members thereof all the powers and privileges which are held and enjoyed by the Speaker and members of the British House of Commons.
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> At the Presiding Officers Conference held in 1939, it was agreed that there should be a definition of privilege. However, no legislation on the subject was ultimately passed[12].

Subsequently, at the instance of Speaker Mavalankar, as far as the Centre was concerned, section 28 of the Government of India Act was amended by an Adaptation Order, dated 31 March, 1948. As adapted, S. 28(2) reads as follows:

> In other respects, the privileges of members of the Dominion Legislature shall be such as may from time to time be defined by Act of the Dominion Legislature and, until so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by the members of the House of Commons of the Parliament of the United Kingdom.

In September, 1949, when the question of enacting legislation on the subject was considered by the Conference, the Chairman (Speaker Mavalankar) expressed this view:

> It is better not to define specific privileges just at the moment but to rely upon the precedents of the British House of Commons. The disadvantage of codification at the present moment is that whenever a new situation arises, it will not be possible for us to adjust ourselves to it and give members additional privileges. Today, we are assured that our privileges are the same as those of the members of the House of Commons...
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> In the present set-up any attempt at legislation will very probably curtail our privileges. Let us, therefore, content ourselves with our being on a par with the House of Commons. Let that convention be firmly established and then we may, later on, think of putting it on a firm footing[13].

A Committee consisting of four Speakers was appointed to examine the recommendations received from the Provinces on the question of legislation on the subject.

In their Report, the Committee of Speakers, *inter alia*, made the following observations:

> The Committee is doubtful as to whether under article 194(3) a Legislature can enact a law defining the powers, privileges and immunities of its members in certain respects only and also providing therein that in other respects the powers, privileges and immunities will be those of the House of Commons. The Committee is of the opinion that if it is competent to a Legislature under this article to enact such a law, then only the

12. *P.O.C. Proceedings*, 18-7-1939, pp. 18–24.
13. *Ibid.*, 2-9-1949, pp. 28-29.

Legislature should undertake a legislation defining the powers, privileges and immunities of members. Otherwise, it would not be advisable to undertake any legislation at present[14].

The issue of the codification of privileges and the report of the Committee of Speakers were discussed in detail at the Conference of Presiding Officers held in August, 1950. In his opening address to the Conference, the Chairman (Speaker Mavalankar) observed:

> There will be two great difficulties and handicaps if we were to think of any legislation in respect of the privileges. These are:
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> (i) Any legislation at the present stage would mean legislation only in regard to matters acceptable to the Executive Government of the day. It is obvious that, as they command the majority, the House will accept only what they think proper to concede. It is important to bear in mind that the privileges of members are not to be conceived with reference to this or that party, but as privileges of every member of the House, whether he belongs to Government or the Opposition party. My fears are, therefore, that an attempt at legislation would mean a substantial curtailment of the privileges as they exist today.
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> (ii) My second reason is that any legislation will crystallize the privileges and there will be no scope for the presiding authorities to widen or change the same by interpretation. Today they have an opportunity of adapting the principles on which the privileges exist in the United Kingdom to conditions in India.
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> I may here invite your attention to the Secretary's note[15] on the subject which is being circulated to you[16].

The note referred to above, *inter alia*, emphasized:

> Our Constitution has one important peculiarity in that it contains a declaration of fundamental rights and the Courts have been empowered to say that a particular law or a part of law is void or invalid because it is in conflict with a particular fundamental right and therefore beyond the powers of Parliament.
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> At the present time the privileges of Parliament are part and parcel of the Constitution and, therefore, of what is known as the 'fundamental law'. The Courts will, therefore, be compelled to reconcile the existing law of privilege, which carries with it the power of the Speaker to issue a warrant without stating the grounds on the face of it, with the fundamental rights. It will be extremely difficult for the Supreme Court to say that what is so explicitly provided in a part of the Constitution in regard to the existing privileges of Parliament is in any way restricted by the fundamental rights[17].

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14. *Report of the Committee of Speakers, appointed to suggest Powers, Privileges and Immunities of Legislatures and Their Members*, 1950, p. 1, para 4.
15. Kaul, *op. cit.*
16. *P.O.C. Proceedings*, 21-8-1950, pp. 2-3.
17. In 1958, the Supreme Court in the *Searchlight Case* upheld this view and declared:
"It is true that a law made by Parliament in pursuance of the earlier part of art. 105(3) or by the State Legislature in pursuance of the earlier part of art. 194(3) will not be a law made in exercise of constituent power ... but will be one made in exercise of its ordinary legislative powers under art. 246 read with the entries.... (entry 75 of List I and entry 39 of List II of the Seventh Schedule), and that consequently if such a law takes away or abridges any of the fundamental rights, it will contravene the pre-emptory provisions of art. 13(2)

> Once, however, the privileges are codified by an Act of Parliament in India, the position changes entirely... The statute will be examined in the same way as any other statute passed by Parliament and the courts may well come to the conclusion that in view of the provisions in the fundamental rights, it is not open to any Legislature in India to prescribe that the Speaker may issue a valid warrant without disclosing the grounds of commitment on the face of the warrant...all matters would (then) come before the courts and Parliament would lose its exclusive right to determine matters relating to its privilege.

During the discussion that took place in the Conference, opinions were divided. Some expressed their views in favour of undertaking legislation while others opposed the idea. No decision was ultimately taken by the Conference on the subject[18].

The plea for codification of privileges was also put forward in 1954 by the Press Commission[19], but it was not upheld by Speaker Mavalankar who, in his address to the Conference of Presiding Officers at Rajkot on 3 January, 1955, observed:

> The Press Commission considered this matter purely from the point of view of the Press. Perhaps they may have felt the difficulties of the Press to be real; but from the point of view of the Legislature, the question has to be looked at from a different angle.
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> Any codification is more likely to harm the prestige and sovereignty of the Legislature without any benefit being conferred on the Press. It may be argued that the Press is left in the dark as to what the privileges are. The simple reply to this is that those privileges which are extended by the Constitution to the Legislature, its members, etc. are equated with the privileges of the House of Commons in England. It has to be noted here that the House of Commons does not allow the creation of any new privileges; and only such privileges are recognized as have existed by long time custom. No codification, therefore, appears to be necessary[20].

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and will be void to the extent of such contravention and it may well be that, that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliament had not made any under section 49 of their Constitution corresponding to art. 194(3)... It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of art. 105(3) and art. 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III.

Art. 19(1)(4) and art. 194(3) have to be reconciled and the only way of reconciling the same is to read art. 19(1)(a) as subject to the latter part of art. 194(3)... In our judgment the principle of harmonious construction must be adopted and so constructed that the provisions of art. 119(1)(a), which are general, must yield to art. 194(1) and the latter part of its clause (3) which are special." *M.S.M. Sharma* v. *Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.

18. *P.O.C. Proceedings*, 21-8-1950, pp. 35-51.
19. *Report of the Press Commission*, 1954, Part I, p. 421, para 1096.
20. *P.O.C. Proceedings*, 3-1-1955, p. 5.

The Conference debated the issue and unanimously decided that "in the present circumstances, codification is neither necessary nor desirable"[21].

Speaking in the Lok Sabha on private member's Bill—the Parliamentary Privilege Bill—which sought to include members' letters to Ministers within the meaning of the term "Proceedings in Parliament", the Minister of Law observed[22].

> After all, it is now acknowleged more or less universally that matters of privilege should be left uncodified rather than condified...It is all the more so in this country. Though in England, Parliament may, if it so chooses, pass any law concerning privilege without any limitation whatsoever either by way of extending it or restricting it, in this country the moment we think of passing any law we shall have to contend with limitations which the Constitution imposes upon us. That matter has been made quite clear in the recent judgment of the Supreme Court in the *Patna Searchlight Case* wherein it appears to have been laid down that if Parliament sought to pass a law seeking to confer some privilege which it now enjoys, it might have been bad in law as well as against the Constitution.
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> Therefore, I think it will be a good rule of caution and prudence if we do not indulge in large scale legislation or indiscriminate legislation concerning the privileges of this House or of the other House.

It was contended in a writ petition filed in the Madras High Court that article 194(3) was transitional or transitory in character, that non-enactment of any law on the subject was a deliberate inaction with the consequence that what was guaranteed under the second limb of the said article was no longer available, and must be held to have lapsed by default. In this connection, the Court observed:

> It is very difficult to see how any theory of automatic lapse, or lapse due to inaction, can apply to article 194(3) in its relation to the State Legislature... it is impossible to arrive at any conclusion that the inaction is deliberate; far more so, to sustain any theory that such inaction has the effect of a lapse or extinction. *Per contra*, where the Constitution intends setting a term to any situation of rights it explicitly says so, and articles 334, 337 and 343 are very clear instances[23].

A plea for the codification of powers, privileges and immunities of the Legislatures and members and committees thereof was made at the Conference of Presiding Officers held at Bombay in 1965. The Conference debated the issue and decided against codification.

The Second Press Commission, in its report submitted to the Government on 3 April, 1982, recommended that from the point of view of freedom of the Press it is essential that the privileges of Parliament and State Legislatures should be codified as early as possible. It was also recommended that the Rules of Procedure and Conduct of Business of the Houses of Parliament and State Legislatures dealing with the procedure for taking action against alleged breaches of privilege, etc., should be reviewed with a view to incorporating therein, provisions for affording reasonable opportunity to contemnors to defend themselves in the proceedings for breach of privilege.

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21. *Ibid.*, pp. 35-37.
    The dignity and independence of the two Houses are in great measure preserved by keeping their privilege indefinite—*H.C. Deb.*, Vol. 563, cc. 1300-01.
22. *L.S. Deb.*, 20-2-1959, cc. 2275-76.
23. *C. Subramaniam* v. *Speaker of the Madras Legislative Assembly*, A.I.R. 1969, Madras 10.

The question of codification of powers, privileges and immunities of the House and of the members and the Committees thereof was also considered during the First Conference of the Chairmen of Committees of Privileges of Parliament and State Legislatures in India, held in New Delhi on 14 and 15 March, 1992. It was unanimously decided by the Conference that 'there should be no codification of privileges'.

The matter was also taken up by the Committee of Privileges of the Tenth Lok Sabha for examination with the approval of the Speaker, Lok Sabha. The Committee adopted their draft Report on the issue of 'Codification of Parliamentary Privileges' on 18 July, 1994 which was laid on the Table of the House on 19 December, 1994. The Committee obtained the opinion of eminent persons from a cross-section of society on a questionnaire on codification of parliamentary privileges and other related matters. The Committee also undertook an in-depth study of various cases of privilege in the Lok Sabha and considered in detail other connected matters. On the basis of the findings emanating therefrom, the Committee felt that the ground reality is entirely opposite to the picture projected insofar as allegations of the misuse of parliamentary privileges are concerned. The Committee also held the view that the Legislature's powers to punish for contempt is more or less akin and analogous to the power given to the courts to punish for their contempt. The Committee, therefore, felt that what constitutes a breach of privilege or contempt of the House can be best decided according to the facts and circumstances of each case rather than by specifying them in so many words. In view of the foregoing, the Committee recommended against codifying parliamentary privileges.

The main arguments that have been advanced in favour of codification are—

(i) Parliamentary privileges are intended to be enjoyed on behalf of the people, in their interests and not against the people opposed to their interests;

(ii) unless the parliamentary privileges, immunities and powers are clearly defined and precisely delimited through codification, they remain vague and inscrutable for the citizens and for the Press—nobody really knowing what precisely the privileges of Parliament, its members and its committees are, thereby causing many an unintended violations;

(iii) the concept of privileges for any class of people is anachronistic in a democratic society and, therefore, if any, these privileges should be the barest minimum—only those necessary for functional purposes—and invariably defined in clear and precise terms;

(iv) sovereignty of Parliament has increasingly become a myth and a fallacy for, sovereignty, if any, vests only in the people of India who exercise it at the time of general elections to the Lok Sabha and to the State Assemblies;

(v) in a system wedded to freedom and democracy—rule of law, rights of the individual, independent Judiciary and constitutional government—it is only fair that the fundamental rights of the citizens enshrined in the Constitution should have primacy over any privileges or special rights of any class of people, including the elected legislators, and that all such claims should be subject to judicial scrutiny, for situations may

arise where the rights of the people may have to be protected even against the Parliament or against captive or capricious parliamentary majorities of the moment;

(vi) the Constitution specifically envisaged privileges of the Houses of Parliament and State Legislatures and their members and committees being defined by law by the respective Legislatures and as such the Constitution-makers definitely intended these privileges being subject to the fundamental rights, provisions of the Constitution and the jurisdiction of the courts;

(vii) it is best if matters which are amenable to judicial scrutiny are dealt with by courts and, in any case, there is hardly any reason why courts which have full power to enquire into the existence of privileges, powers and immunities claimed by the Houses of Parliament should not also look to their proper exercise, and to set aside any order made by the Houses or to give interim relief to a complainant pending final disposal of the complaint; and

(viii) in any case, there is no question of any fresh privileges being added inasmuch as (a) under the Constitution, even at present, parliamentary privileges in India continue in actual practice to be governed by the precedents of the House of Commons as they existed on the day our Constitution came into force; and (b) in the House of Commons itself, creation of new privileges is not allowed[24].

It would thus be seen that while the predominant view in the parliamentary fora has been against codification, the academic circles and the Press have been, by and large, in favour of codification. The main arguments against codification are as follows:

(i) The privileges of Parliament are part and parcel of the Constitution and, therefore, of what is known as the 'fundamental law'. As pointed out by the Supreme Court in the *Searchlight Case*, the provisions of article 105(3) and article 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and they are, therefore, as Supreme as the provisions of Part III.

(ii) As further pointed out by the Supreme Court in *M.S.M. Sharma v. Sri Krishna Sinha Case* (AIR 1959 SC 395), article 19(1)(a) and article 194(3) have to be reconciled and the only way of reconciling the same is to read article 19(1)(a) as subject to the latter part of article 194(3). The principle of harmonious construction must be adopted and so constructed the provisions of article 19(1)(a), which are general, must yield to article 194(1) and the latter part of clause (3) thereof which are special.

(iii) A law made by Parliament in pursuance of the earlier part of article 105(3) or by the State Legislature in pursuance of the earlier part of article 194(3) will not be a law made in exercise of constituent power... but will be one made in exercise of its ordinary legislative powers under article 246... and that consequently if such a law takes

24. *See* Subhash C. Kashyap: *Parliament of India*, New Delhi, 1988, pp. 212-13.

away or abridges any of the fundamental rights, it will contravene the pre-emptory provisions of article 13(2) and will be void to the extent of such contravention[25].

(iv) To say that parliamentary privileges are intended to be enjoyed on behalf of the people and not against the people pre-supposes a conflict of interest. This is a fallacious argument. In fact, there is or should be no dichotomy between the two.

It is to be stressed that these privileges do not belong to any feudal body or feudal lords; they belong to the representatives of the people elected to the Houses of Parliament and as such should not be seen as something antagonistic to the rights and interests of the people. The people of India, through the Constitution, have conferred these rights on members to be exercised by them collectively and individually in their capacity as representatives of the people in the wider interest of the people.

(v) The only purpose and justification for these privileges is that the representatives of the people should be enabled to discharge their responsibilities and duties to the people effectively and efficiently without any fear or favour and without any obstruction or hindrance.

(vi) The scope of parliamentary privileges is very well-defined and restricted. The litmus test is that no privilege of Parliament or a member of Parliament will be attracted if any obstruction, libel or reflection upon a member of Parliament does not concern his character or conduct in his capacity as a member of the House and is not based on matters arising in the actual transaction of the business of the House. The volume of case law built up in India over the last fifty years has clearly established this principle. It is, therefore, not correct to say that parliamentary privileges are vague and inscrutable.

(vii) The basic law that all citizens should be treated equally before the law holds good in the case of members of Parliament as well. They have the same rights and liberties as ordinary citizens except when they perform their duties in the Parliament. The privileges, therefore, do not, in any way, exempt members from their normal obligation to society which apply to them as much and, perhaps, more closely in that capacity as they apply to others.

(viii) To take for granted that the codification of privileges will *ipso facto* put an end to confrontation between makers of law and dispensers of justice is perhaps a naive notion; instead of solving any problems, may be, it will create other unforeseen problems in the matter of relations between the Legislature and the Judiciary.

(ix) The Legislature's power to punish for contempt is more or less akin and analogous to the power given to the courts to punish for their contempt. What constitutes a breach of privilege or contempt of the House can be best decided according to the facts and circumstances of each case rather than by specifying them in so many words.

25. *M.S.M. Sharma* v. *Sri Krishna Sinha*, A.I.R. 1959, S.C. 395.

(x) If there is mutual trust and respect between Parliament and courts, there is hardly any need to codify the law on the subject of privileges. With a codified law more advantage will flow to persons bent on vilifying Parliament, its members and committees and the courts will be called upon more and more to intervene... A written law will make it difficult for Parliament as well as courts to maintain that dignity which rightly belongs to Parliament and which the courts will always uphold as zealously as they uphold their own[26]; and

(xi) If the privileges are codified, all matters would come before the courts and the Legislatures would lose their exclusive right to determine matters relating to their privilege and precision will be gained at the sacrifice of substance.

Ambit and Scope of Privileges

In the Eleventh Lok Sabha, the Committee of Privileges decided to undertake a review of the entire gamut of parliamentary privileges and related matters. Consequently, a Study Group of the Committee of Privileges was constituted for undertaking a study of parliamentary privileges, ethics and related matters. The Study Group, however, decided to enlarge the scope of the study and undertook a comprehensive study of not only the privileges and rights but also responsibilities and obligations of members which brought the study within the realms of Ethics and Code of Conduct. The Study Group, after making a comparative study[27] of mechanisms existing in the United Kingdom, the United States of America and Australia for dealing with ethics, standards, privileges and related matters, arrived at its conclusions and submitted its Report to the Committee of Privileges on 14 October, 1997. The Committee of Privileges, after due deliberation and making certain modifications, adopted the Report on 'Ethics, Standards in Public Life, Privileges, Facilities to Members and other related matters' on 7 November, 1997.

As the House was not in session, the Chairman, Committee of Privileges presented[28] the Report to the Speaker on 27 November, 1997. However, before the Report could be presented to the House, the Eleventh Lok Sabha was dissolved on 4 December, 1997.

This Report covers in detail the various facets of parliamentary privileges and more particularly, ethical matters. The crux of the recommendations/conclusions made in the Report is based upon the Committee's considered opinion that privileges/obligations and ethics are all interlinked and hence should be dealt with by a single Parliamentary Committee. The pivotal recommendation has been that the Committee of Privileges be renamed as the Committee on Ethics and Privileges for dealing with both ethics and privilege related matters. There are various other vital recommendations in respect of obligations and privileges of

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26. Hidayatullah, M: *A Judge's Miscellany*, Bombay, 1972, pp. 210-11.
27. The Study Group also went on study tours to Australia, the United Kingdom and the United States of America in the context of its study.
28. *Dir.* 71–A read with Rule 280.

and facilities to members, electoral reforms, amendment of the Anti-Defection Law and criminalisation of politics. These recommendations, if and when implemented, would have far reaching ramifications inasmuch as they tend to redefine the legislators' role in our polity and to an extent amplify the scope of parliamentary privileges.

Main Privileges of Parliament

Some of the privileges of Parliament and of its members and committees are specified in the Constitution, certain statutes and the Rules of Procedure of the House, while others continue to be based on precedents of the British House of Commons and on conventions which have grown in this country.

Some of the more important of these privileges are:

(i) *Privileges specified in the Constitution*

Freedom of speech in Parliament[29].

Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof[30].

Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings[31].

Prohibition on the courts to inquire into proceedings of Parliament[32].

Immunity to a person from any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available in relation to reports or matters broadcast by means of wireless telegraphy[33].

(ii) *Privileges specified in Statutes*

Freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion[34].

(iii) *Privileges specified in the Rules of Procedure and Conduct of Business of the House*

Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member[35].

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29. Art. 105(1).
30. Art. 105(2).
31. *Ibid.*
32. Art. 122.
33. Art. 361A.
34. C.P.S. s. 135 A—For further details, *see* sub-head 'Freedom from Arrest in Civil Cases' *infra.*
35. Rules 229 and 230.

Exemption of a member from service of legal process and arrest within the precincts of the House[36].

Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House[37].

(iv) *Privileges based upon Precedents*

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House[38].

Members or officers of the House cannot be compelled to attend as witness before the other House or a committee thereof or before a House of State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required[39].

In addition to the above-mentioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are:

to commit persons, whether they are members or not, for breach of privilege or contempt of the House[40].

to compel the attendance of witnesses and to send for persons, papers and records[41].

to regulate its procedure and the conduct of its business[42].

to prohibit the publication of its debates and proceedings[43] and to exclude strangers[44].

Privilege of Freedom of Speech and Immunity from Proceedings

Constitutional Provisions: The privilege of freedom of speech of members of Parliament is embodied in clauses (1) and (2) of article 105, and is reproduced below:

1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
2. No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in

36. Rules 232 and 233.
37. Rule 252.
38. 1R (CPR-1LS).
39. 6R (CPR-2LS)
40. *P.D.*, 1961, Vol. V-2, Pt. III, pp. 51-52 (*Rajasthan Vidhan Sabha Case*, 10 April, 1954) 1974, Vol. XIX-2, pp. 42-43 and 1975, Vol. XX-1, pp. 7-8 (shouting of slogans and carrying of arms by visitors to Lok Sabha); *Homi D. Mistry v. Nafisul Hassan – the Blitz Case*, I.L.R. 1957, Bombay 218; *the Searchlight Case*, A.I.R. 1959 S.C. 395; *C. Subramaniam's Case*, A.I.R. 1968, Madras 10.
41. Rules 269 and 270, *Harendra Nath Barua v. Dev Kant Barua*, A.I.R. 1958, Assam 160.
42. Art. 118(1).
43. *The Searchlight Case*.
44. Rule 387.

respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

This privilege was expressly granted to the members of the Indian Legislature for the first time under the Montague-Chelmsford reforms and given statutory recognition[45]. Thereunder, a member of the Legislature had the immunity from any proceedings in any court in respect of his "speech or vote" in either Chamber of Indian Legislature[46]. In the Government of India Act, 1935, both as originally enacted and as adapted, and subsequently in the Constitution, the position was stated beyond doubt by using the words "anything said or any vote given[47]."

In a case, it was argued that the immunity granted by article 105(2) related to what was relevant to the business of Parliament and not to something which was utterly irrelevant. Rejecting the argument, the Supreme Court ruled:

> The article confers immunity *inter alia* in respect of "anything said... in Parliament", the word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of business of Parliament. Once it is proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none[48].

The provisions of article 105(2) also apply in relation to persons who by virtue of the Constitution have the right to speak in, and otherwise to take part in the proceedings of, either House or any committee thereof as they apply in relation to members of Parliament[49]. The immunity, however, is confined to "anything said or vote given" in Parliament or any committee thereof.

Speech and action in Parliament may be said to be unquestioned and free. However, this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House. The right to freedom of speech in the House is circumscribed by the constitutional provisions[50] and the Rules which also guard against making of unwarranted allegations against a person[51], and the procedure for inviting attention to

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45. Section 67(1) of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935.
46. Section 28(1) of the Government of India Act, 1935.
47. On the attainment of Independence by the country, section 28(1) of the Government of India Act, 1935, was adapted and remained in operation from 15 August, 1947, till the Constitution came into force.
48. *Tej Kiran Jain* v. *N. Sanjiva Reddy*. A.I.R. 1970 S.C. 1573.
49. Art. 105(4). Under article 88, every Minister and the Attorney-General of India have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but is not by virtue of this article entitled to vote.
50. For instance, *see* art. 121.
51. Rules 352 and 353. *P. Deb.* (II), 24-9-1951, c. 3243; *H.P. Deb.* (II), 1-8-1952, c. 5042; 30-3-1953, cc. 3252-53 and 3316-17.

incorrect statements made by Ministers or members is governed by Directions[52]. When a member violates any of these restrictions, the Speaker may direct him to discontinue his speech[53] or order the defamatory, indecent, unparliamentary or undignified words used by the member to be expunged from the proceedings of the House[54], or direct the member to withdraw from the House[55], or put the question for suspension of the member from the service of the House[56].

The freedom of speech conferred on members under article 105(2) is thus subject only to those provisions of the Constitution which regulate the procedure of Parliament and to the rules and standing orders of the House, but is free from any restrictions which may be imposed by any law made under article 19(2) upon the freedom of speech of an ordinary citizen[57].

Interpreting clause (1) of article 194[58], the Supreme Court observed[59]:

> ...the words 'regulating the procedure of the Legislature' occurring in cl. (1) of art. 194 should be read as governing both 'the provisions of the Constitution' and the rules and standing orders. So read, freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to the articles relating to procedure in Part VI, including arts. 208 and 211; just as freedom of speech in Parliament under article 105(1), on a similar construction, will become subject to the articles relating to procedure in Part V, including articles 118 and 121.

For his speech and action in Parliament, a member is subject only to the discipline of the House itself and no proceedings, civil or criminal, can be instituted against him in any court in respect of the same[60]. Absolute privilege has been given in respect of anything said or any vote given in Parliament or a committee thereof so that members may not be afraid to speak out their minds and freely express their views. Members are, therefore, completely protected from any proceedings in any court even though the words uttered by them in the House may be false and malicious to their knowledge[61]. Though a speech delivered by a member in the House may amount to contempt of court, no action can be taken against him in a court of law as speeches made in the House are

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52. Dir. 115(1), *L.S. Deb.*(II), 22-12-1956, cc. 4089-90; 4-12-1957, cc. 3550-51; 17-3-1959, cc. 6668-69.
53. Rule 356, *P. Deb.*, (II), 29-2-1952, c. 1626.
54. Rule 380, *L.S. Deb.*, 25-7-1952, c. 4633; 13-3-1953, cc. 1988-1991; 1-9-1954; c. 448, 7-5-1970, c. 201 and 10-6-1971, cc. 222-24.
55. Rule 373; *H.P. Deb.*, (II), 10-3-1954, c. 1732; *L.S. Deb.*, (II), 1-4-1959, c. 9041; and 17-8-1959, cc. 2809-10.
56. Rule 374, *See* also *Kamath's Case*, *L.S. Deb.*, (II), 26-8-1955, cc. 11329-31 and *Arjun Singh Bhadauria's Case*, *L.S. Deb.*, 9-4-1959, cc. 10861-64. *H.C. Kachwai's Case*, *L.S. Deb.*, 2-5-1972, cc. 443-50 and 3-5-1972, cc. 172-84.
57. *M.S.M. Sharma v. Sri Krishna Sinha (Searchlight Case)*, A.I.R. 1959 S.C. 395.
58. Corresponding provision for Houses of Parliament in article 105(1).
59. *Searchlight Case* (A.I.R. 1959 S.C 395, *op. cit.*)
60. *M.S.M. Sharma* v. *Sri Krishna Sinha* A.I.R. 1959 S.C 395, *Suresh Chandra Banerji* v. *Punit Goala*, A.I.R. 1951 Calcutta 176; *Surendra Mohanty* v. *Nabakrishna Choudhury and Others*, A.I.R. 1958 Orissa 168, *In the matter of Article 143 of the Constitution of India*, A.I.R. 1965 S.C 745; and *Tej Kiran Jain* v. *N. Sanjiva Reddy*, A.I.R. 1970 S.C 1573.
61. *Suresh Chandra Banerji* v. *Punit Goala*, A.I.R. 1951, Calcutta 176.

privileged[62]. Anything said or done in the House is a matter to be dealt with by the House itself[63]. On the same principle, proceedings for breach of privilege have not been allowed in the Lok Sabha in respect of a speech, allegedly casting reflections on members of Parliament, delivered by a member of a State Legislative Assembly in that Assembly[64].

The express constitutional provisions of clauses (1) and (2) of article 105 are thus a complete and conclusive code in respect of the privilege of freedom of speech and immunity from liability to proceeding in a court for anything said in the House or for publication of its reports. Anything which falls outside the ambit of these provisions is, therefore, liable to be dealt with by the courts in accordance with the law of the land. Thus, if a member publishes questions which have been disallowed by the Speaker and which are defamatory, he will be liable to be dealt with in a court under the law of defamation[65].

Maintaining Privilege of Freedom of Speech: It is the duty of each member to refrain from any course of action prejudicial to the privilege of freedom of speech which he enjoys. As declared by the House of Commons, U.K., by a resolution on 15 July, 1947:

> It is inconsistent with the dignity of the House, with the duty of a member to his constituents and with the maintenance of the privilege of freedom of speech of any member of this House to enter into any contractual agreement with an outside body, controlling or limiting the member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a member being to his constituents and to the country as a whole, rather than to any particular section thereof[66].

Protection of Witnesses, etc. concerned in Proceedings in Parliament

Witnesses, petitioners and their counsel, who appear before any House or any committee thereof, are protected under article 105(3) from suits and molestation in respect of what they say in the House or a committee thereof. This privilege may be regarded as an extension of the privilege of freedom of speech of the House as its purpose is to ensure that information is given to the House freely and without interference from outside.

Any molestation of, or threats against, persons who have given evidence before any committee thereof on account of what they may have said in their

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62. *Surendra Mohanty* v. *Nabakrishna Choudhury and Others*, A.I.R. 1958 Orissa 168.
63. *Ibid.*
64. *L.S. Deb.*, 26-3-1959, cc. 7965-69. For similar instances in State Assemblies, *see* P.D. 1971, Vol. XVI, 1, pp. 23-24, 1973, Vol. XVIII, 2, pp. 24-25; and 1975, Vol. XX, 2, pp. 46-47.
65. *In re Jatish Chandra Ghose*, A.I.R. 1956, Calcutta 433-37.
66. *H.C. Deb.*, (1946-47), 440, cc. 284-355; *see* also *H.C.* 118 (1946-47) for the Report of Committee of Privileges on *the case of Mr. Brown and Civil Service Clerical Association*, p. xii, para 13; and H.C. 85 (1943-44), the *case of Mr. Robinson and the National Union of Distributive and Allied Workers*.

evidence, is treated by the House as a breach of privilege[67].

It is also a contempt of House to molest any petitioner or counsel on account of his having preferred a petition to the House[68] or in respect of his conduct while discharging his professional duties as a counsel[69].

Similarly, the bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or in a committee thereof, is treated by the House as a breach of privilege[70]. Moreover, an action for slander based on statements made in evidence before a committee of the House will not be entertained by the courts[71].

Right to Exclude Strangers

Each House has the right to exclude strangers and to debate within close doors. This right flows as a necessary corollary to the privilege of freedom of speech as it enables the House to obtain, when necessary, such privacy as may secure freedom of debate. As observed by the Supreme Court[72]:

> ...the freedom of speech claimed by the House (House of Commons) and granted by the Crown is, when necessary, ensured by the secrecy of the debate which in its turn is protected by prohibiting publication of the debates and proceedings as well as by excluding strangers from the House... This right (to exclude strangers) was exercised in 1923 and again as late as on 18 November, 1958. This shows that there has been no diminution in the eagerness of the House of Commons to protect itself by secrecy of debate by excluding strangers from the House when any occasion arises.
>
> The object of excluding strangers is to prevent the publication of the debates and proceedings in the House...

In the Lok Sabha, the Speaker has the power to order the withdrawal of strangers from any part of the House whenever he may think fit[73]. During a secret sitting of the House no stranger is permitted to be present in the Chamber, the Lobby or the Galleries[74].

If any stranger is found to be present in any part of the precincts of the House which is reserved for the exclusive use of members, or if any stranger misconducts himself within the precincts of the Parliament House or does not withdraw when the strangers are directed to withdraw while the House is sitting, he may be removed from the precincts of the House or be taken into custody by the Joint Secretary, Security of the Lok Sabha[75].

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67. *Grady's Case, Parl. Deb.*, (1819) 39, cc. 976-77, 978-81, 986-87; *Parrott's Case*, Parl. Deb. (1845) 81, c. 1446; *Case of the Cambrian Railway Directors, Parl. Deb.* (1892) 5, cc. 595, 698, 883; *K. Ravindran's case, L.S. Deb.*, 10-7-1980, cc. 211-12.
68. May, Twenty-first Edn., p. 131.
69. *Ibid.*
70. *Case of Philips and others*, Parl. Deb. (1845) 81, c. 1436.
71. May, Twenty-first Edn., p. 132.
72. *M.S.M. Sharma v. Sri Krishna Sinha (Searchlight Case)*, A.I.R. 1959 S.C. 395.
73. Rule 387, *See* also Chapter XXXII—Admission of Strangers to the House.
74. Rule 248(2). *See* also Chapter XVII—Sittings of the House.
75. Rule 387. A.P.D. 1976, Vol. XXI, 1, p. 15. Instrusion of a Stranger in the Rajasthan Vidhan Sabha.

Right to Control Publication of Proceedings

The publication of report of debates or proceedings of Parliament is subject to the control of the respective House which has the right to prohibit the publication of its proceedings. In this regard the Supreme Court, *inter alia*, observed:

> Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to remake it[76].

The underlying object of the power of the House to control and, if necessary, to prohibit the publication of its debates and proceedings is to protect freedom of speech by ensuring privacy of debate whenever necessary, and prevails over the general right of the individual to freedom of speech and expression guaranteed by the Constitution[77].

In the Lok Sabha, the Secretary-General is authorised to prepare and to publish a full report of the proceedings of the House under the directions of the Speaker[78]. The Speaker may also authorise the printing, publication, distribution or sale of any paper, document or report in connection with the business of the House or any paper, document or report laid on the Table or presented to the House or a committee thereof. Such printing, publication, distribution or sale is deemed to be under the authority of the House within the meaning of the constitutional provisions in this regard[79]. If a question arises whether a paper, document or report is in connection with the business of the House or not, the question is referred to the Speaker whose decision is final[80].

Publication by any person in a newspaper of a substantially true report of any proceedings of either House of Parliament is protected under the Constitution from civil or criminal proceedings in court unless the publication is proved to have been made with malice[81]. Statutory protection has also been given by the Parliamentary Proceedings (Protection of Publication) Act, 1977, to publication in newspapers or broadcasts by wireless telegraphy, of substantially true reports of proceedings in Parliament[82].

If a member publishes his own speech made in the House separately from the rest of the debate, it becomes a separate publication unconnected with the proceedings in the House, and the member publishing it becomes responsible for any libellous matter contained therein under the ordinary law of the land[83].

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76. *M.S.M. Sharma* v. *Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.
77. *Ibid.*
78. Rule 379.
79. Art. 105(2).
80. Rule 382.
81. Art. 361A inserted by the Constitution (Forty-fourth Amendment) Act, 1978.
82. The Parliamentary Proceedings (Protection of Publication) Act, 1977, ss. 3 and 4. Between February, 1976 and April, 1977, the Act remained repealed.
83. *Rex.* v. *Creevey*, I.M. & S. 373.

Right of each House to be the sole Judge of the Lawfulness of its own Proceedings

Parliament is sovereign within the limits assigned to it by the Constitution. There is an inherent right in the House to conduct its affairs without any interference from an outside body. The Constitution specifically bars the jurisdiction of courts of law in respect of anything said or any vote given by a member in the House. In the matter of judging the validity of its proceedings, the House has exclusive jurisdiction[84].

The House has also collective privilege to decide what it will discuss and in what order, without any interference from a court of law:

> ...It is well known that no writ, direction or order restraining the Speaker, from allowing a particular question to be discussed, or interfering with the legislative processes of either House of the Legislature or interfering with the freedom of discussion or expression of opinion in either House can be entertained[85].

The House is not responsible to any external authority for following the procedure it lays down for itself, and it may depart from that procedure at its own discretion[86].

The validity of any proceedings in Parliament cannot be called in question in any court on the ground of any alleged irregularity of procedure. No officer or member of Parliament in whom powers are vested for regulating the procedure or the conduct of business, or for maintaining order, in Parliament, is subject to the jurisdiction of any court in respect of the exercise by him of those powers[87]. The Allahabad High Court in this regard held:

> ...This Court is not, in any sense whatever, a court of appeal or revision against the Legislature or against the ruling of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House.
>
> ...This Court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House[88].

The Kerala High Court have, however, in their full Bench decision held:

> The immunity envisaged in article 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular. If the

84. *Surendra Mohanty* v. *Nabakrishna Choudhury* and Others (A.I.R. 1958, Orissa 168), I.L.R. 1958, Cuttack 195.

85. *Raj Narain Singh* v. *Atmaram Govind Kher.*, A.I.R. 1954, Allahabad 319; *Hem Chandra Sen Gupta* v. *Speaker, West Bengal Legislative Assembly*, A.I.R. 1956, Calcutta 378; *C. Shrikishen* v. *State of Hyderabad* and Others A.I.R. 1956, Hyderabad 186.

86. Rule 388.

87. Art. 122, Art. 212 in case of State Legislatures.

88. *Raj Narain Singh* v. *Atmaram Gobind Kher*, A.I.R. 1954, Allahabad 319. *See* also *State of Bihar* v. *Kameshwar Singh*, A.I.R. 1952 S.C. 252; *Saradhakar* v. *Orissa Legislative Assembly*, A.I.R. 1952, Orissa 234; *C. Shrikishen* v. *State of Hyderabad and Others*, A.I.R. 1956, Hyderabad 186; *Hem Chandra Sen Gupta and others* v. *Speaker of Legislative Assembly of West Bengal*, A.I.R. 1956, Calcutta 378; *Godavaris Misra* v. *Nandakishore Das*, A.I.R. 1953, Orissa 111; *Rani Dubey* v. *Government of Madhya Bharat*, A.I.R, 1952, Madhya Bharat 57.

impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law[89].

Right of the House to punish its Members for their conduct in Parliament

Each House has the power to punish its members for disorderly conduct and other contempts committed in the House while it is sitting[90]. This power is vested in the House by virtue of its right to exclusive cognizance of matters arising within the House and "to regulate its own internal concerns."

> It has been observed by the Allahabad High Court that "a Legislative Assembly would not be able to discharge the high functions entrusted to it properly, if it had no power to punish offenders against breaches of its privileges, to impose disciplinary regulations upon its members or to enforce obedience to its commands[91]."

> Again in a case which related to an action for contempt of court arising out of a speech delivered in the Orissa Legislative Assembly, the Orissa High Court held that "anything said or done in the House is a matter to be dealt with by the House itself" and that the Legislature or the Speaker had the power "to take suitable action against a member who, while exercising his freedom of speech under clause (1) of art. 194, transgresses the limits laid down in that clause"[92].

The Speaker, who preserves order in the House, has "all powers necessary for the purpose of enforcing his decisions"[93]. The disciplinary powers of the Speaker and the House are partly embodied in the rules which provide for the withdrawal or suspension of any member whose conduct is grossly disorderly or who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing its business[94].

In a writ petition filed by some member of the Haryana Vidhan Sabha, the High Court of Punjab and Haryana observed *inter alia* that the power of the Speaker to regulate the procedure and conduct of business could not be questioned by the court and it was not competent to inquire into the procedural irregularities of the House[95].

Proceedings in Parliament

The term "proceedings in Parliament" or the words "anything said in Parliament" have not so far been expressly defined by courts of law. However, as technical term, these words have been widely interpreted to mean any formal action, usally a decision taken by the House in its collective capacity, including

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89. *State of Kerala* v. *R. Sudersan Babu* and Others, I.L.R. (Kerala) 1983, p. 661-70.
90. *See* art. 105(3).
91. *Raj Narain Singh* v. *Atmaram Gobind Kher*, A.I.R. 1954, Allahabad 319.
92. *Surendra Mohanty* v. *Nabakrishna Choudhury and Others*, A.I.R. 1958, Orissa 168.
93. Rule 378.
94. Rules 373 and 374.
95. *See* H.C. 101(1938-39), pp. iv-v.

the forms of business in which the House takes action, and in the whole process, the principal part of which is debate, by which it reaches a decision. The term thus connotes more than mere speeches and debates.

The term "proceedings in Parliament" covers both the asking of a question and the giving of written notice of such question, motion, Bill or any other matter and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of parliamentary business[96].

In this connection, the Orissa High Court, *inter alia*, observed:

> It seems thus a settled parliamentary usage that "proceedings in Parliament" are not limited to the proceedings during the actual session of Parliament but also include some preliminary steps such as giving notice of questions or notice of resolutions, etc. Presumably, this extended connotation of the said term is based on the idea that when notice of a question is given and the Speaker allows or disallows the same, notionally it should be deemed that the questions were actually asked in the session of Parliament and allowed or disallowed, as the case may be[97].

Under the Constitution, as already stated, the validity of any 'proceedings in Parliament cannot be called in question on the ground of any alleged irregularity of procedure'[98].

Evidence in Courts Regarding Proceedings in Parliament

Leave of the House is necessary for giving evidence in a court of law in respect of the proceedings in that House or committees thereof or for production of any document connected with the proceedings of that House or Committees thereof, or in the custody of the officers of that House. According to the First Report of the Committee of Privileges of the Second Lok Sabha, "no member or officer of the House should give evidence in a court of law in respect of any proceedings of the House or any Committees of the House or any other document connected with the proceedings of the House or in the custody of the Secretary-General without the leave of the House being first obtained"[99].

When the House is not in session, the Speaker may, in emergent cases, allow the production of relevant documents in courts of law in order to prevent delays in the administration of justice and inform the House accordingly of the

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96. *Jai Singh Rathi* v. *State of Haryana*, A.I.R. 1970, Punjab and Haryana 379; *see* also, *Kerala High Court Case, op. cit.*

97. In Godavaris *Misra* v. *Nandakishore Das*, A.I.R. 1953, Orissa 111.
While giving of a written notice of a question or a resolution is regarded as 'proceedings in Parliament', a letter written by a member of Parliament to a Minister on a public matter in the course of discharge of his duties as a member is not regarded as 'proceedings in Parliament'.

98. Art. 122(1).

99. IR. (CPR-2LS); adopted by the Lok Sabha on 13-9-1957, *L.S. Deb.*, 13-9-1957, cc. 13760-63; IR (CPR 8LS); adopted by the Lok Sabha on 6-5-1988, *L.S. Deb.*, 6-5-1988, cc. 259-60.
Where the document required to be produced in a court of law relates to an administrative matter connected with the service record of an officer of the Secretariat, the Speaker may himself give the necessary permission under Rule 383.

fact when it reassembles or through the Bulletin[100]. However, in case the matter invloves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, the Speaker may decline to grant the required permission without leave of the House[101].

Whenever any document relating to the proceedings of the House or any committee thereof is required to be produced in a court of law, the court or the parties to the legal proceedings have to request the House stating precisely the documents required, the purpose for which they are required and the date by which they are required. It has also to be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before the court[102].

In pursuance of the above recommendations of the Committee of Privileges and the discussion in the House thereon, the Government of India requested all States to discuss the matter with the Chief Justices of their respective High Courts for issue of suitable directions on the following points:

> that when parliamentary records are required to be produced before courts of law, a proper form of address should be adopted;
>
> that in most cases it would be sufficient to call for only the certified copies of the documents, at any rate in the first instance, and that the original documents might be called for at a later stage if the parties insisted upon their strict proof;
>
> that the courts should bear in mind the provisions of section 78(2) of the Indian Evidence Act, 1872, under which proceedings of the Legislatures can be proved by the production of the authorized parliamentary publications and ensure that Parliament is troubled only when unpublished documents in its custody are required in evidence.

A special form of letter of request is prescribed for use by the courts of law while requesting the House for the production of parliamentary records or for oral evidence of officers of the House in the courts.

When request is received during a session of the Lok Sabha for producing in a court of law a document connected with the proceedings of the House or committees thereof or a document which is in the custody of the Secretary-General[103], the case is referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion is moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report, and further action is taken in accordance with the decision of the House[104].

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100. A para in the Bulletin Part II was issued on 28 October, 1957, in regard to the case of Shankar Deo, M.P.

101. IR (CPR–2LS) para 8. *See* also *L.S. Deb.*, 13-9-1957, cc. 13760–63.

102. IR (CPR–2LS).

103. Custody of records, documents and papers belonging to the House or any of its Committees or the Secretariat vests in the Secretary-General. No such records, documents or papers are permitted to be taken out of Parliament House without the permission of the Speaker. Rule 383.

104. IR (CPR-2LS), *op. cit.*, paras 10 and 11; *see* also 2R and 10R(CPR–2LS), 9R(CPR–4LS) and *L.S. Deb.*, 26-11-1969, c. 211.

A question was raised whether it was necessary to refer to the Committee of Privileges every such request received and whether the Speaker himself could not grant such permission. The Speaker considered it correct, in the light of provisions of article 105(3), that the present procedure should continue to be followed[105].

Proceedings in Parliament and the Criminal Law

Since a member of Parliament is not liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof[106], it follows that a member is not amenable to the courts of law for anything said in debate, however criminal in its nature. Thus, the Orissa High Court held that "no law court can take action against a member of the Legislature for any speech made by him there"[107].

It has also been held that the disclosures made in the House either by speeches or questions cannot be made the subject matter of a prosecution under the Official Secrets Act[108].

A criminal act committed by a member within the House cannot be regarded as a part of the proceedings of the House for purposes of protection. Thus, in the Maharashtra Legislative Assembly when a member shouted at the operator to connect his mike to the loudspeaker, threw a paper-weight in the direction of the loudspeaker-operator and rushed towards the Speaker and grabbed the mike in front of the Speaker, he was not only expelled from the House but was subsequently convicted under different sections of the Indian Penal Code and sentenced to a rigorous imprisonment for six months[109].

JMM CASE – Immunity from Proceedings in Court for Voting in the House.

In the General Election for the Tenth Lok Sabha held in 1991, the Indian National Congress (I.N.C.) emerged as the single largest party and it formed the Government with Shri P.V. Narasimha Rao as the Prime Minister. During the Seventh Session of the Tenth Lok Sabha, on 28 July 1993, a No-Confidence Motion was moved against the Government by Shri Ajoy Mukhopadhyaya, a member belonging to CPI(M). At that time, the effective strength of the Lok Sabha was 528 and Congress(I) had a strength of 251 members, Congress(I) was short of 14 members for a simple majority. The Motion of No-Confidence was taken up for discussion in the Lok Sabha on 26 July, 1993 and the debate continued till 28 July, 1993. The Motion was, thereafter, put to vote that day. On 28 February 1996, Shri Ravindra Kumar of Rashtriya Mukti Morcha (R.M.M.) filed a complaint dated February 1, 1996 with the Central Bureau of Investigation (C.B.I.) wherein it was alleged that in July 1993, a criminal conspiracy was hatched by Sarvashri P.V. Narasimha Rao, Satish Sharma, Ajit Singh, V.C. Shukla,

105. *L.S. Deb.*, 25-4-1958, cc. 11486-97.
106. Art. 105(2).
107. *Surendra Mohanty* v. *Nabakrishna Choudhury and others*, A.I.R. 1958, Orissa 168.
108. Report of the Select Committee (House of Commons U.K.) on the Official Secrets Act, (1938-39), H.C. 101 (1938-39).

R.K. Dhawan and another person Lalit Suri to prove the majority of the Government on the floor of the House on 28 July, 1993 by bribing members of Parliament of different political parties, individuals and groups to an amount of over Rs. 3 crore and that in furtherance of the said criminal conspiracy a sum of Rs. 110 crore was handed over by the aforementioned persons to Shri Suraj Mandal. On the basis of the said complaint, the CBI registered four cases under Section 13(2) read with Section 13(1)(2)(iii) of the Prevention of Corruption Act, 1988 *inter alia* against Sarvashri Shibu Soren, Simon Marandi and Shailendra Mahto, members of Parliament belonging to the Jharkhand Mukti Morcha (JMM) Party.

These developments also found an echo in the Lok Sabha. During the Sixteenth Session of the Tenth Lok Sabha, on 11 March, 1996, a question of privilege was sought to be raised in the House regarding the issue of alleged pay off and inducements to members of JMM for not voting in favour of the No-Confidence Motion. The then Speaker, Shri Shivraj V. Patil, while disallowing the notice observed, "...The matter is before the court which may take a proper decision on the basis of the evidence that may be produced before it". Subsequently, in pursuance of the order dated 24 May, 1996 passed by the Delhi High Court in Civil Writ Petition No. 23/96, another case was registered on 11 June, 1996 against Sarvashri V.C. Shukla, R.K. Dhawan, Lalit Suri and others under Section 120-B IPC and Sections 7, 12, 13 (2) read with Section 13(1)(d)(iii) of the Prevention of Corruption Act, 1988. After completing the investigation, the CBI submitted three charge sheets dated 30 October, 1996, 9 December, 1996 and 22 January, 1997 in the court of Special Judge, New Delhi.

Meanwhile, in a related development in the Lok Sabha, in October, 1996, representations were made to the Speaker, Eleventh Lok Sabha, Shri P.A. Sangma by Sarvashri Shibu Soren, member, Eleventh Lok Sabha and Sarvashri Suraj Mandal, Simon Marandi and Shailendra Mahto, members of the Tenth Lok Sabha in the matter.

Shri Shibu Soren, in his representation dated 5 October, 1996 *inter alia* had posed a legal query *viz.* "an allegation of bribe against a member of House in connection with the voting in the House is a breach of privilege, which can only be inquired by the House and is not justiciable in a Court of Law."

Sarvashri Shibu Soren, Suraj Mandal, Simon Marandi and Shailendra Mahto, in their joint representation dated October 18, 1996, while referring to the ongoing case against them in the court of Shri Ajit Bharihoke, Special Judge, Delhi in response to a Civil Writ Petition filed by R.M.M., had *inter alia* contended that "the investigation which is being conducted by the CBI into the aforesaid allegations, (their) arrest and the proceedings which are being pursued by them and others in various courts in respect of the same, are not only unconstitutional or without any jurisdiction, but constitute a serious encroachment upon the supremacy of the Lok Sabha in its exclusive field, its powers and privileges."

On the point of immunity to the members of Parliament from proceedings in any Court of Law, in respect of anything said or any vote given by them in Parliament or any committee thereof, it had also been contended that "the entire

proceedings of the learned High Court are barred not only by article 105(2) of the Constitution of India, but also by the powers and privileges and the exclusive jurisdiction of the Lok Sabha to investigate any matter which involves breach of its privileges."

On examination of this matter, it was felt that as there was no definitive judicial pronouncement on these issues till that time, the proper forum for raising such legal and constitutional points would therefore be a Court of Law. Shri Shibu Soren was thereafter informed in writing that as the constitutional and legal issues raised in his representation regarding the scope and extent of the immunity to members under article 105 of the Constitution involve precise interpretation, and the proper forum for raising such issues was therefore a Court of Law. The member was accordingly requested that if he so desired, he might take up these constitutional and legal points through his counsel, with the appropriate court.

The Special Judge, after hearing the arguments, passed the order dated 6 May, 1997 wherein he held that there is sufficient evidence on record to justify framing of charges against all the appellants. The Special Judge also held that there is *prima facie* evidence of commission of offence under Section 193 of IPC by accused Nos. A-3 to A-5, *i.e.* Sarvashri Suraj Mandal, Shibu Soren and Shailendra Mahto.

Before the Special Judge, an objection was raised on behalf of the accused persons that the jurisdiction of the court to try the case was barred under article 105(2) of the Constitution because the trial is in respect of matters which relate to the privileges and immunities of the House of Parliament (Lok Sabha) and its members inasmuch as the foundation of the charge sheets is the allegation of acceptance of bribe by some members of Parliament for voting against the No-Confidence Motion and that the controversy to be decided in this case would be in respect of the motive and action of members of Parliament pertaining to the vote given by them in relation to the No-Confidence Motion. The Revision petition against the said order of the Special Judge in the Delhi High Court was filed. After examination of the matter, the Delhi High Court found that there was no ground for interfering with the order passed by the Special Judge.

Feeling aggrieved by the said judgement of the High Court, the appellants moved in appeal to the Supreme Court of India. The appeals were heard by a bench of three Judges of the Supreme Court. After hearing the arguments of the counsel for the appellants, the following order was passed by that bench on 18 November, 1997:

> Among other questions a substantial question of law as to the interpretation of article 105 of the Constitution of India is raised in these petitions. These petitions are, therefore, required to be heard and disposed of by a Constitution Bench.

In pursuance of the said order, the matter was placed before the five-judge Constitution Bench of the Supreme Court. At the commencement of the hearing, the Court passed the following order on 9 December, 1997:

> By order dated 18 November, 1997 these matters have been referred to this Court for the reason that among the questions, a substantial

question of law as to the interpretation of article 105 of the Constitution of India is raised in these petitions. These petitions are, therefore, required to be heard and disposed of by a Constitution Bench. The learned counsel for the parties agree that the Constitution Bench may only deal with the questions relating to interpretation of article 105 of the Constitution and the applicability of the Prevention of Corruption Act to a member of Parliament and member of State Legislative Assembly and the other question can be considered by the Division Bench.

The five-judge Constitution Bench of the Supreme Court delivered their judgement in the matter on 19 April 1998.

The two basic questions formulated by the Court for its consideration were as follows—

(i) Does article 105 of the Constitution confer any immunity on a member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe?

(ii) Is a member of Parliament excluded from the ambit of the Prevention of Corruption Act, 1988 for the reason that – (a) he is not a person who can be regarded as a "public servant" as defined under Section 2(c) of the said Act, and (b) he is not a person comprehended in clauses (a), (b) and (c) of sub-section (1) of Section 19 of the said Act and there is no authority competent to grant sanction for his prosecution under the said Act?

Three separate decisions were delivered by the five-judge bench – first by Justice S.C. Agarwal and Justice A.S. Anand; the second by Justice G.N. Ray; and the third by Justice S.P. Bharucha and Justice S. Rajendra Babu.

The learned judges, put the accused/appellants into two broad categories – (a) the alleged bribe takers; and (b) the alleged bribe givers. The first category was further divided into two sub-categories – those who voted in the House on the Motion of No-Confidence and those who did not vote on the motion.

The majority and minority judgments on each of the above two points and the rationale adopted for the judgment may be summarised in brief as follows:

(i) Does article 105 of the Constitution confer any immunity on a member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe?

The Majority Judgement, delivered by Justice S.P. Bharucha and Justice S. Rajendra Babu, Justice G.N. Ray concurring with them in a separate judgement, held that the alleged bribe takers, other than Shri Ajit Singh, have the protection of article 105(2) and are not answerable in a Court of Law for the alleged conspiracy and agreement. Shri Ajit Singh, not having cast his vote on the Motion of No-Confidence, derives no immunity from article 105(2). The alleged bribe givers do not enjoy any immunity. The criminal prosecution against them must, therefore, go ahead.

"The charge against the alleged bribe takers is that they were party to a criminal conspiracy and agreed to or entered into an agreement with the alleged

bribe givers to defeat the No-Confidence Motion...by illegal means... The stated object of the alleged conspiracy and agreement is to defeat the No-Confidence Motion and the alleged bribe takers are said to have received monies as a motive or reward for defeating it. The nexus between the alleged conspiracy and bribe and the No-Confidence Motion is explicit. The charge is that the alleged bribe takers received the bribes to secure the defeat of the No-Confidence Motion... We do not think that we can ignore the fact that the votes were cast and, if the facts alleged against the bribe takers are true, that they were cast pursuant to the alleged conspiracy and agreement, it must then follow, given that the expression "in respect of" must receive a broad meaning, that the alleged conspiracy and agreement had a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings is in regard to the motivation thereof. It is difficult to agree with the learned Attorney-General that, though the words "in respect of" must receive a broad meaning, the protection under article 105(2) is limited to court proceedings that impugn the speech that is given or the vote that is cast or arise thereout or that the object of the protection would be fully satisfied, thereby. The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a Court of Law... Article 105(2) does not say, which it would have if the learned Attorney-General were right, that a member is not liable for what he has said or how he has voted. While imputing no such motive to the present prosecution, it is not difficult to envisage a member who has made a speech or cast a vote that is not to the liking of the powers that be being troubled by a prosecution alleging that he had been party to an agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe."

"The protections to be enjoyed by a member of Parliament as contained in sub-article(2) of article 105 essentially flows from the freedom of speech guaranteed under sub-article(1) of article 105. Both the sub-articles (1) and (2) complement each other and indicate the true content of freedom of speech and freedom to exercise the right to vote envisaged in article 105 of the Constitution. The expression "in respect of" appearing in several articles of the Constitution and in some other legislative provisions has been noticed in a number of decisions of this Court. The correct interpretation of the expression "in respect of" cannot be made under any rigid formula but must be appreciated with references to the context in which it has been used and the purpose to be achieved under the provision in question. The context in which the expression "in respect of" has been used in sub-article (2) of article 105 and the purpose for which the freedom of speech and freedom to vote have been guaranteed in sub-article (2) of the article 105 do not permit any restriction or curtailment of such right expressly given under sub-article (1) and sub-article (2) of article 105 of the Constitution. It must, however, be made clear that the protection under sub-article (2) of article 105 of the Constitution must relate to the vote actually given and speech actually made in Parliament by a member of Parliament."

"Mr. Rao submitted that since, by reason of the provisions of article 105(2), the alleged bribe takers had committed no offence, the alleged bribe givers had

also committed no offence. Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a member of Parliament and has a connection with his speech or vote therein. What is provided thereby is that a member of Parliament shall not be answerable in Court of Law for something that has a nexus to his speech or vote in Parliament. If a member of Parliament has by his speech or vote in Parliament, committed an offence, he enjoys, by reasons of article 105(2), immunity from prosecution therefore. Those who have conspired with the member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it."

The Minority Judgement delivered by Justice S.C. Agarwal and Justice A.S. Anand held that a member of Parliament does not enjoy immunity under article 105(2) or under article 105(3) from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committee thereof.

"The expression 'in respect of' precedes the words 'anything said or any vote given' in article 105(2). The words 'anything said or any vote given' can only mean speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given. The immunity would not be available in a case where a speech has not been made or a vote has not been given... If the construction placed by Shri Rao on the expression 'in respect of' is adopted, a member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter. Such an anomalous situation would be avoided if the words 'in respect of' in article 105(2) are construed to mean 'arising out of'. If the expression 'in respect of' is thus construed, the immunity conferred under article 105(2) would not be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a member in Parliament even though it may have a connection with the speech made or the vote given by the member if such an act gives rise to a liability which arises independently

and does not depend on the making of the speech or the giving of vote in Parliament by the member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the member in Parliament. The liability for which immunity can be claimed under article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament."

"The construction placed by us on the expression 'in respect of' in article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way".

"The offence of criminal conspiracy is made out when two or more persons agree to do or cause to be done an illegal act or when two or more persons agree to do or cause to be done by illegal means an act which was not illegal. In view of the proviso to Section 120A IPC, an agreement to commit an offence shall by itself amount to criminal conspiracy and it is not necessary that some act besides the agreement should be done by one or more parties to such agreement in pursuance thereof. This means that the offence of criminal conspiracy would be committed if two or more persons enter into an agreement to commit the offence of bribery and it is immaterial whether in pursuance of that agreement the act that was agreed to be done was done or not.

The criminal liability incurred by a member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner thus arises independently of the making of the speech or giving of vote by the member and the said liability cannot, therefore, be regarded as a liability 'in respect of anything said or any vote given' in Parliament. We are, therefore, of the opinion that the protection granted under article 105(2) cannot be invoked by any of the appellants to claim immunity from prosecution".

(ii) Is a member of Parliament excluded from the ambit of the Prevention of Corruption Act. 1988 for the reason that: (a) he is not a person who can be regarded as a "public servant" as defined under Section 2(c) of the said Act, and (b) he is not a person comprehended in clauses (a), (b) and (c) of sub-section (1) of Section 19 of the said Act and there is no authority competent to grant sanction for prosecution under the said Act?

On this issue, strictly speaking there were no majority or minority decisions. All the three judgments held that members of Parliament are 'public servants'.

However, according to Justice Bharucha and Justice Rajendra Babu, the members of Parliament cannot be prosecuted for offences under Section 7, 10, 11 and 13 of the Prevention of Corruption Act, 1988 because of want of authority competent to grant sanction.

According to Justice Agarwal and Justice Anand, since there is no authority competent to remove a member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Act, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before, filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the Prevention of Corruption Act, 1988 against a member of Parliament in a criminal court, shall obtain the permission of the Chairman, Rajya Sabha/Speaker, Lok Sabha as the case may be.

Justice G.N. Ray concurred with this judgement.

"Although in the Constitution the word 'office' has not been used in the provisions relating to members of Parliament and members of State Legislatures but in other parliamentary enactments relating to members of Parliament the word 'office' has been used. Having regard to the provisions of the Constitution and the Representation of the People Act, 1951 as well as the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the meaning that has been given to the expression 'office' in the decision of this Court, we are of the view that membership of Parliament is an 'office' inasmuch as it is a position carrying certain responsibilities which are of a public character and it has existence independent of the holder of the office. It must, therefore, be held that the member of Parliament holds an 'office'.

The next question is whether a member of Parliament is authorised or required to perform any public duty by virtue of his office. As mentioned earlier, in *R.S. Nayak v. A.R. Antulay*, this Court said that though a member of the State Legislature is not performing any public duty either as directed by the Government or for the Government but he no doubt performs public duties cast on him by the Constitution and by his electorate and he discharges constitutional obligations for which he is remunerated fees under the Constitution."

"In the 1988 Act, the expression 'public duty' has been defined in Section 2(b) to mean a duty in the discharge of which the State, the public or the community at large has an interest".

"The Form of Oath or Affirmation which is required to be made by a member of Parliament (as prescribed in Third Schedule to the Constitution) is in these terms:

"I, A.B. having been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter".

"The words 'faithfully discharge the duty upon which I am about to enter' show that a member of Parlilament is required to discharge certain duties after he is sworn in as a member of Parliament. Under the Constitution, the Union Executive is responsible to Parliament and members of Parliament act as watch-dogs on the functioning of the Council of Ministers. In addition, a member of Parliament plays an important role in parliamentary proceedings, including enactment of legislation, which is sovereign function. The duties discharged by him are such in which the State, the public and the community at large have an interest and the said duties, are therefore, public duties. It can be said that a member of Parliament is authorised and required by the Constitution to perform these duties and the said duties are performed by him by virtue of his office".

"We are, therefore, of the view that a member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties are in the nature of public duties. A member of Parliament would, therefore, fall within the ambit of sub-clause (viii) of clause (c) of Section 2 of the 1988 Act."

One important observation made by the learned judges (Justice Bharucha and Justice Rajendra Babu) is that Parliament may proceed against the alleged bribe givers as well as the bribe takers for breach of privilege and contempt.

Subsequent developments

In November 1998, the Union Government filed a petition seeking review of the above judgement of the Supreme Court. On 16 December, 1998, a five-judge Constitution Bench of the Supreme Court dismissed the Union Government's review petition on the ground of inordinate delay in filing of the same. The Bench was headed by Chief Justice A.S. Anand and consisted of Justices S.P. Bharucha, K.Venkatasami, B.N. Kirpal and S. Rajendra Babu. The Chief Justice, in his order, observed:

> "There is inordinate delay in filing the review petition. The application seeking condonation of the delay contains no reasonable or satisfactory explanation. It is merely mentioned that the delay occured due to paucity of staff... It is hardly any ground for condonation of delay. The application for condonation of delay is dismissed and as a consequence, the review petition is also dismissed as time barred."

On 5 May, 1999, the Supreme Court of India while disposing of all appeals to it moved by Shri P.V. Narasimha Rao and others against the order of the Delhi High Court dismissing the appellants' revision petition against the order of Special Judge Shri Ajit Bharihoke, Delhi High Court, *inter alia,* passed the following order:

> "During the pendency of these appeals, as this Court had not granted any stay of further proceeding, the trial has already commenced and is continuing. In view of the questions already answered by the Constitution Bench on the issues posed before their Lordships, it is not necessry for us to go into any other questions raised in these appeals since those questions have to be answered by the learned Trial Judge bearing in mind the law laid down by the Constitution Bench in the aforesaid case."

In pursuance of the above order of the Supreme Court, the alleged bribe takers moved applications for their discharge claiming immunity from prosecution in view of their parliamentary privilege under article 105(2) of the Constitution.

These applications were contested by the prosecution *vide* its reply dated 31 May, 1999 wherein it was alleged that the judgment of Constitution Bench of the Supreme Court dated 17 April, 1999, cannot be construed to have conferred immunity to alleged bribe takers (applicants) for the act of abetment of commission of offence punishable under Section 7 of the P.C. Act, 1988. Therefore, this trial against them should proceed under Section 12 of the P.C. Act, 1988. It was further alleged that the accused Sarvashri Shibhu Soren, Suraj Mandal and Simon Marandi had also been charged with offence punishable under Section 193 IPC, which was allegedly committed during the pendency of investigation of this case. Thus, the aforesaid act having no direct nexus with the votes given by the said applicants in the Parliament, the trial on the aforesaid charge should proceed. It was also alleged that so far as accused Shri Ajit Singh was concerned, Supreme Court had categorically held that he was not entitled to protection of article 105(2) of Constitution of India; therefore, there was no merit in his plea seeking immunity under article 105(2) of the Constitution of India as well as discharge in this case.

After consideration of the submissions by the applicants and the prosecution, the Special Judge, CBI delivered the following Judgment on 4 June, 1999:

(i) "All the applicants have been charged for having committed offence of conspiracy punishable under Section 120-B IPC read with Section 7, 12 and 13 (2) read with 13(1)(d) of P.C. Act, 1988 as well as substantive offences punishable under Section 7 of the P.C. Act, 1988 and 13(2) read with 13(1)(d) of P.C. Act, 1988. Besides that, accused Suraj Mandal, Shibu Soren and Simon Marandi have also been charged for the offence punishable under Section 193 IPC. There is a factual difference pertaining to voting pattern on No-Confidence Motion in the role of accused Ajit Singh and other applicant-accused persons. As per record, the applicants except Ajit Singh voted against the No-Confidence Motion, whereas Ajit Singh voted in favour of No-Confidence Motion...

(ii) "It is obvious that as per majority view of the Constituion Bench of the Apex Court all the applicants except Ajit Singh are entitled to immunity conferred by article 105(2) of the Constitution of India. Now the question arises as to how far this immunity can be extended in case of the applicants who admittedly were members of Parliament at the relevant time." Clue to answer to this question can be found in para nos. 134 to 137 of the judgment and para no. 143 of the judgment which reads as follows:

"Our conclusion is that the alleged bribe takers, other than Ajit Singh, have the protection of article 105(2) and are not answerable in a Court of Law for the alleged conspiracy and agreement. The charges against them must fail. Ajit Singh, not havingt cast a vote on the No-Confidence Motion, derives no immunity from article 105(2)."

(iii) "Perusal of the observation of Honourable Justice Bharucha in the above referred judgment makes it clear that majority view of the Constitution Bench of Honourable Supreme Court is that article 105(2) of the Constitution should be given a broader interpretation and immunity granted *vide* said article is not only available to the applicants against the criminal proceedings regarding their alleged act of taking bribe for voting against the No-Confidence Motion, but it is also available against the alleged conspiracy by the bribe takers to defeat the No-Confidence Motion by illegal means because the nexus between the alleged conspiracy and the bribe and No-Confidence Motion is explicit. Conclusion of Honourable Justice Bharucha in para no. 143 of the judgment reported in (1998) 4 SCC 425 makes it clear that after analysing the facts of the case and Article 105(2) of the Constitution. *vis a vis* the provisions of Prevention of Corruption Act, majority have concluded that alleged bribe takers other than Ajit Singh have protection of article 105(2) of the Constitution and they are not answerable in the Court of Law for the alleged conspiracy and agreement. The charges against them must fail... Thus conclusion of majority view of Constitution Bench is clear that applicants namely Suraj Mandal, Shibu Soren, Simon Marandi, Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Charan Das, Abhay Pratap Singh and Haji Gulam Mohammed Khan are entitled to immunity under article 105(2) of the Constitution, so far as the charges under section 120-B IPC, read with sections 7, 12, and 13(2) read with 13(1)(d) of P.C. Act, 1988 and substantive charges under Sections 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988 are concerned. Thus, in my view, they cannot be proceeded against the aforesaid charges and said charges must be dropped."

(iv) "Now the question arises, if the aforesaid immunity under article 105(2) of P.C. Act, 1988 can be extended to accused Suraj Mandal, Shibu Soren and Simon Marandi who have charges for the offence punishable under Section 193 IPC. Allegations against them are that during the pendency of investigation of the present case, while writ petition no. 789/96 was pending disposal in Honourable High Court of Delhi in between February and April 1996 at Delhi, Ranchi and other places, said accused persons caused to bring false evidence into existence by fabricating or causing to fabricate the documents or records, *i.e.* to JMM Central Office, Ranchi in order to create an evidence to the effect that the amounts deposited in their accounts were actually donation received by the party and not the alleged bribe amount."

(v) "As per evidence collected by investigating officer, voting on No-Confidence Motion was done in July 1993 and fabrication of the evidence have allegedly been done during February to April, 1996 when the investigation of this case was going on. Considering such a long time gap between the voting and the alleged fabrication of evidence/ record, it cannot be said that there is any nexus between the actual

vote given by these accused persons in the Parliament and the fabrication. Alleged fabrication of the evidence is a subsequent act on the part of applicant-accused persons not only to create a defence for use in judicial proceedings against them, but said fabricated evidence can be used as a defence against the accused persons who are being prosecuted for having conspired to abet the act of taking bribe by the alleged bribe takers. Thus, in my opinion, the charge under Section 193 IPC framed against Suraj Mandal, Shibu Soren and Simon Marandi may be having a remote connection to the other charges against them, but it has no direct nexus with the vote given by them in the Parliament. As such, aforesaid charges cannot be dropped. Immunity under article 105(2) of the Constituion is only in respect of anything said or any vote given by member of Parliament in the Parliament. But alleged act which is subject matter of charge under Section 193 IPC, has been committed outside the Parliament and after a lapse of more than 2½ years from the vote given by these accused persons in the Parliament. Now, therefore, no nexus can be drawn between vote given by accused and fabrication. Thus, I am of the view that applicants can be tried for charges under Section 193 IPC..."

(vi) "His (Shri Ajit Singh's) role in the episode is different from the role of other alleged bribe takers. As per evidence collected during investigation, other alleged bribe takers had voted against the No-Confidence Motion and they had allegedly received bribe in furtherance of conspiracy for defeating the Confidence Motion by voting against it. However, in the case of accused Ajit Singh as per his own contention he has voted in favour of No-Confidence Motion, whereas charges against him are that he entered into a criminal conspiracy with others to defeat No-Confidence Motion by illegal means and agreed to obtain illegal gratification other than this legal remuneration from the alleged bribe givers as a motive or reward for defeating the No-Confidence Motion and in furtherance of said agreement he also accepted and obtained illegal gratification of Rs. 300 lakh for self as well as other Janata Dal (Ajit Group) MPs. If we analyse aforesaid charges framed against the accused, Ajit Singh's alleged motive of his having entered into conspiracy and having accepted illegal gratification for self and others, was to defeat the No-Confidence Motion by voting against it. However, admittedly he has voted in favour of No-Confidence Motion, therefore, no nexus can be derived between the alleged motive of Ajit Singh for voting in favour of No-Confidence Motion and his motive relating to conspiracy in question and acceptance of illegal gratification. Thus, in my view, immunity under article 105(2) cannot be extended to him. It may not be out of place to mention that after judgment of Constitution Bench was pronounced, Ajit Singh admittedly filed a review petition in Honourable Supreme Court. He admittedly took the plea in his review petition that he has actually voted in favour of No-Confidence and he has been denied immunity by the judgment of Constituion Bench on mis-conception of the fact that he

did not vote on No-Confidence Motion. Said review petition was admittedly dismissed by Honourable Supreme Court. Mere fact that Honourable Supreme Court dismissed the review petition even after the fact of vote given by Ajit Singh on No-Confidence Motion was brought to their notice, makes it clear that as per Apex Court, Ajit Singh is not entitled to the immunity under article 105(2) of the Constitution. Reason is obvious. The motive of vote given by Ajit Singh in favour of No-Confidence Motion is entirely different from the motive of his having allegedly accepted the bribe. Thus no nexus could be drawn between the motive of Ajit Singh voting in favour of No-Confidence Motion and his motive of entering into alleged conspiracy and taking illegal gratification. Thus, in my opinion, in view of categoric finding of majority view of Constitution Bench, Ajit Singh is not entitled to be discharged on the basis of immunity under Article 105(2) of the Constituition of India."

(vii) "The act of abetment by alleged bribe takers has a direct nexus with their having accepted illegal gratification pursuant to the abetment as well as the motive behind the vote given in the Parliament. Therefore, in view of the majority view of the Constitution Bench, of Apex Court, immunity under article 105(2) of the Constitution also extends to the alleged act of conspiracy and abetment."

(viii) "In view of my discussion above, I conclude that all the applicants except Ajit Singh are entitled to immunity under article 105(2) of the Constitution in relation to charges under Section 120-B IPC read with section 7, 12 and 13(2) read with 13(1)(d) of P.C. Act, 1988, but prosecution of accused persons Suraj Mandal, Shibu Soren and Simon Marandi shall proceed for offence punishable under Section 193 IPC. I further conclude that applicant Ajit Singh is not entitled to immunity under article 105(2) of the Constitution and his trial on charges framed against him shall proceed. As a result of above said conclusion, accused Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Charan Das, Abhay Pratap Singh, and Haji Gulam Mohammed Khan are hereby discharged and all the charges except under Section 193 IPC against accused Suraj Mandal, Shibu Soren and Simon Marandi are dropped."

Privilege of Freedom from Arrest or Molestation

Need of the Privilege: The privilege of freedom from arrest in civil cases for the duration of the session and for a period of forty days before and after the session, like other privileges, is granted to members of Parliament in order that they may be able to perform their duties in Parliament without let or hindrance. The object of this privilege is "to secure the safe arrival and regular attendance of members on the scene of their parliamentary duties".

Scope of the Privilege: A review of the development of this privilege reveals a tendency to confine it more narrowly to cases of civil character and to

exclude not only every kind of criminal case, but also cases which, not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with the Lords in 1641 that "privilege of Parliament is granted in regard to the service of the Commonwealth and, is not to be used to the danger of the Commonwealth".

In India, the exemption from arrest and detention in prison under civil process was conferred in 1925 on the members of legislative bodies by the Legislative Members Exemption Act[110], which inserted section 135A in the Code of Civil Procedure, 1908. This section, subsequently adapted by the Adaptation of Laws Order, 1950[111] provides that a member of a Legislature is not liable to arrest or detention in prison under civil process during the continuance of any meeting of the House of Legislature or any committee thereof, of which he may be a member, and during fourteen days before and after such meeting. However, with the enforcement of the Constitution on 26 January, 1950, the scope and duration of the privilege of freedom from arrest in India came to be the same as that obtaining in the United Kingdom[112], *i.e.* forty days before and after a session of the House and not merely for fourteen days as provided in section 135A of the Code of Civil Procedure, 1908[113]. Thus, the Madras High Court ruled:

> There is immunity extending for a period of forty days prior to the meeting and forty days subsequent to the conclusion of the meeting for a member of Parliament from being arrested for a civil debt; that is, if there is a decree against him, or, if he is sought to be arrested before judgment, he can certainly claim the immunity and freedom from arrest. It is also clear that such immunity cannot extend or be contended to operate, where the member of Parliament is charged with an indictable offence[114].

The arrest of a member of Parliament in civil proceedings during the period when he is exempted from such arrest is a breach of privilege and the member concerned is entitled to his release. In a case in the Rajasthan Vidhan Sabha, the House agreed with the report of its Committee of Privileges that the arrest of a member in revenue proceedings was a breach of privilege of the House, revenue proceedings being in the nature of civil proceedings[115].

Freedom from arrest does not extend to criminal offences: The privilege of freedom from arrest "cannot extend or be contended to operate, where the member of Parliament is charged with an indictable offence"[116]. The House will not allow even the sanctuary of its walls to protect a member from the process

110. S. 3 of the Legislative Members Exemption Act, 1925.

111. Issued under art. 372(2).

112. Art. 105(3).

113. This view was also expressed by the Ministry of Home Affairs, Government of India in their letter No. 91/51 Police I, dated 5 May, 1952, addressed to the Secretary, Government of the erstwhile Madhya Bharat State.

114. *In the matter of Venkateswarlu*, A.I.R. 1951, Madras 272, *See* also in *re. K. Anandan Nambiar*, A.I.R. 1952, Madras 117; *Ansumali Majumdar* v. *State of West Bengal*, A.I.R. 1952, Calcutta 632; *A. Kunjan Nadar* v. *The State*, A.I.R. 1955, Travancore-Cochin 154.

115. *See* the *Case of Gurdayal Singh Sandhu, Raj. V.S. Deb.*, 27-9-1956.

116. *See in the matter of Venkateswarlu*, A.I.R. 1951, Madras 272.

of criminal law though service of a criminal process on a member within the precincts of Parliament may be a breach of privilege[117]. A member released on parole cannot attend the sittings of the House[118].

In a case where the petitioner, a member of the then Travancore-Cochin Legislative Assembly, was under arrest in connection with two criminal cases pending against him, the Travancore-Cochin High Court observed:

> ...It is clear from May's Parliamentary Practice (15th Ed. p. 78) that 'the privilege of freedom from arrest is not claimed in respect of criminal offences or statutory detention' and that the said freedom is limited to civil causes, and has not been allowed to interfere with the administration of criminal justice or emergency legislation...
>
> So long as the detention is legal...the danger of the petitioner losing his seat [under art. 190(4)] or the certainty of his losing his daily allowance cannot possibly form the foundation for relief against the normal or probable consequences of that detention[119].

In the *Dasaratha Deb Case* (1952), the Committee of Privileges of the Lok Sabha *inter alia* held that the arrest of a member of Parliament in the course of administration of criminal justice did not constitute a breach of privilege of the House.

On 24 December, 1969, a question of privilege was raised in the Lok Sabha regarding arrests of some members while they were stated to be on their way to attend the House. The Chair ruled that since the members were arrested under the provisions of the Indian Penal Code and had pleaded guilty, no question of privilege was involved[120].

Any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member. References made in the First Information Report and affidavits filed in court by the Central Bureau of Investigation to the disclosures made by a member in the Lok Sabha and the documents laid by him on the Table of the House have been deprecated by the Chair[121]. But where disclosures made by a member on the floor of the House indicate that he is in possession of vital information in a criminal case which is under investigation by the police, the Committee of Privileges, Rajya Sabha, recommended the following procedure–

> If in a case a member states something on the floor of the House which may be directly relevant to criminal investigation and is, in the opinion of the investigating authorities, of vital importance to them as positive evidence, the investigating authority may make a report to the Minister of Home Affairs accordingly. If the Minister is satisfied that the matter requires seeking the assistance of the member concerned, he would

117. H.C. 185 (1970-71), p. 7.
118. *L.S. Deb.*, 24-11-1965, c. 3615.
119. In *A. Kunjan Nadar* v. *The State*, A.I.R. 1955, Travancore-Cochin 154; *see* also May, Twentieth Edn. p. 102.
120. *P.D.* 1970, vol. XV, 2 p. 42; 1976, Vol. XXI, 1 p. 12.
121. *L.S. Deb.*, 17-12-1981, cc. 303-05.

request the member through the Chairman to meet him. If the member agrees to give the required information the Home Minister will use it in a manner which will not conflict with any parliamentary right of the member. If, however, the member refuses to respond to the Home Minister's request, the matter should be allowed to rest there[122].

In pursuance of the recommendations of the Committee, suitable instructions were issued by the Ministry of Home Affairs to all State Governments and Union territory Administrations[123].

Freedom from arrest not claimed in respect of Preventive Detention: The privilege of freedom from arrest does not extend to preventive arrest or detention under statutory authority by executive order.

In *Deshpande Case* (1952), the Committee of Privileges of Lok Sabha reported that the arrest of a member under the Preventive Detention Act, 1950, did not constitute a breach of the privileges of the House., The Committee *inter alia* observed:

> Preventive detention is in its essence as much a penal measure as any arrest by the police, or under an order of a Magistrate, on suspicion of the commission of a crime, or in course of, or as a result of, the proceedings under the relevant provisions of the Criminal Procedure Code and no substantial distinction can be drawn on the ground that preventive detention may proceed merely on suspicion and not on the basis of the commission of an offence on the part of the person directed to be detained. The Constitution authorizes preventive detention in the interests of the State and it is well settled that "the privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth", and further every detention by whatever name it is called—preventive, punitive or any other, as was pointed out by the Committee of Privileges in the House of Commons in *Ramsay's Case*, has this in common: 'the protection of community as a whole'...

The above position has also been reiterated by courts of law in India. The Calcutta High Court, *inter alia*, observed:

> Preventive detention partakes more of a criminal than of a civil character. The Preventive Detention Act only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is true that such orders are made when criminal charges possibly could not be established but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities...[124].

In a case before the Madras High Court, a member of the Madras Legislative Assembly, who was in detention under the Maintenance of Public Order Act when he received the summons for a session of the Madras Legislative Assembly, prayed to the court for the issue of a writ by way of *mandamus*

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122. 12th Report of the Committee of Privileges, Rajya Sabha.
123. Ministry of Home Affairs, letters Nos. 32/2/66/68-Poll. I. (A) DS dated June, 1969 and 2 August, 1969.
124. In *Ansumali Majumdar* v. *State of West Bengal*, A.I.R. 1952, Calcutta 632; *see* also *in the matter of Venkateswarlu*, A.I.R. 1951, Madras 269.

or other appropriate writ to declare and enforce his right to attend the sittings of the Madras Legislative Assembly either freely or with such restrictions as might be reasonably imposed. The Court held that a member could not claim any privilege from arrest and detention under the preventive detention legislation and observed:

> Once a member of a Legislative Assembly is arrested and lawfully detained, though without actual trial under any Preventive Detention Act, there can be no doubt that under the law as it stands, he cannot be permitted to attend the sittings of the House. A declaration by us that he is entitled to do so, even under armed escort, is entirely out of the question[125].

In this context, the Supreme Court observed:

> Rights of a member of Parliament to attend the session of Parliament, to participate in the debate and to record his vote are not constitutional rights in the strict sense of the term and quite clearly, they are not fundamental rights at all. So far as a valid order of detention is concerned, a member of Parliament can claim no special status higher than that of an ordinary citizen[126].

Exemption from Attending as Witness in Courts

The privilege of exemption from attending as a witness in a court is akin to the privilege of freedom from arrest in a civil case and is based on the principle that attendance of a member in the House takes precedence over all other obligations and that the House has the paramount right and prior claim to the attendance and service of its members.

In the Madras Legislative Assembly, a member sought to raise a question of privilege that he had been served with a subpoena to attend a court as a witness when the Assembly was in session. The Chair took pleasure of the House whether it would give leave to the member to attend to the court as a witness. On the House not agreeing, the Chair observed that the member could claim privilege and remain in the House[127].

On 1 May, 1974, the Speaker of the Lok Sabha received a notice from the Supreme Court in the matter of the Special Reference under article 143 of the Constitution regarding Presidential election. The notice required the Speaker to appear before the Court through an Advocate of the Court and take such part in the proceedings before the Supreme Court as he may deem fit. The General Purposes Committee before whom the matter was placed advised that neither Lok Sabha nor the Speaker should enter appearance in this matter. The House agreed with this decision and the Supreme Court was informed accordingly[128].

A similar notice from the Supreme Court was also received by the Chairman, Rajya Sabha. As advised by its General Purposes Committee no action was taken in the matter by the Rajya Sabha[129].

125. In *re. K. Anandan Nambiar*, A.I.R. 1952, Madras 117.
126. *K. Anandan Nambiar and R. Umanath* v. *Chief Secretary to the Government of Madras*, A.I.R. 1966 S.C. 657.
127. *Madras L.A. Deb.*, 17-11-1959.
128. *L.S. Deb.*, 9-5-1974, cc. 222-24.
129. *R.S. Deb.*, 9-5-1974.

In another case, the Chairman of the Public Accounts Committee received summons from a court regarding a suit involving certain observations made in a report of that Committee. The Speaker of Lok Sabha while placing the matter before the House on 1 August, 1975, advised the Chairman of the Public Accounts Committee to ignore the summons and not to put in any appearance in the court[130].

Immunity from Service of Legal Process and Arrest within the Precincts of the House

No arrest can be made within the precincts of the House nor a legal process, civil or criminal, served without obtaining the permission of the Speaker, and this permission is necessary whether the House is in session or not[131]. Precincts of the House have been defined in the Rule[132].

> The Punjab Vidhan Sabha, in a case where a police officer attempted to execute a warrant of arrest against a member within the precincts of the House without first obtaining the leave of the House, held the police officer guilty of breach of privilege. The police officer concerned tendered an unqualified apology which was accepted by the House[133].

However, in a case of arrest of employees of the Legislature Secretariat within the precincts of the House, the Speaker of the Kerala Legislative Assembly, disallowing the question of privilege, ruled:

> The prohibition against making arrest, without obtaining the permission of the Speaker, from the precincts of the House is applicable only to the members of the Assembly. I do not think it is possible, nor is it desirable to extend this privilege to persons other than the members, since it would have the effect of putting unnecessary restrictions and impediments in the due process of law[134].

The Government of India have issued instructions to the authorities concerned to the effect that courts of law should not seek to serve a legal process, civil or criminal, on members of Parliament through the Speaker or the Secretariat. The appropriate procedure is for the summons to be served direct on the member concerned outside the precincts of Parliament, *i.e.*, at their residence or at some other place[135].

Instructions have also been issued by the Government of India to the police and other authorities concerned, through the State Governments and Administrations, to the effect that requests for seeking the permission of the Speaker to make arrests within the precincts of the House should not be made by the authorities concerned as a matter of routine. Such requests should be confined

130. *L.S. Deb.*, 1-8-1975, cc. 4-5. *See* also, p. 219, *infra*.

131. Rule 232 and 233.

132. Rule 2(1) and Dir. 184.

133. *Punjab V.S. Deb.*, 19-2-1959 and 19-3-1959.

134. *P.D.* 1973, vol. XVIII, 2, p. 34.

135. Ministry of Home Affairs Letters No. 35/2/57-P. II, 7 October, 1958 addressed to all State Governments and Administrations and No. I/1602/25/95-IS (D. III), 19 June, 1996 addressed to the Chief Secretaries of all State Governments and Union territories [F.No. 16/76/95/ LB-I (Priv.)].

only to urgent cases where the matter cannot wait till the House adjourns for the day. The request in each case should be signed by an officer not below the rank of a Deputy Inspector-General of Police and should state the reasons why arrest within the precincts of the House is necessary[136].

House to be informed of the Arrest, Detention, Conviction and Release of Members

When a member is arrested on a criminal charge or for a criminal offence or is sentenced to imprisonment by a court or is detained under an executive order, the committing judge, magistrate or executive authority, as the case may be, must immediately intimate such fact to the Speaker indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member, in a prescribed form. In *Jambuwant Dhote Case* (1973), the Committee of Privileges recommended that when a member is arrested and detained under the Maintenance of Internal Security Act, 1971, or under any other law providing for preventive detention, the authorities should, besides sending to the Speaker immediate information regarding the arrest and detention of the member together with the reasons for arrest and detention, send a copy of the detailed 'grounds' to the Speaker, Lok Sabha, simultaneously, when those grounds are supplied to the detenue as per law for preventive detention[137]. When a member is arrested and after conviction released on bail pending an appeal or is otherwise released, such fact is also required to be intimated to the Speaker by the authority concerned in the prescribed form[138].

> Even when a member has not been arrested within the strict legal meaning of the term "arrest" but has been detained by the police for sometime and then let off, failure on the part of the authorities concerned to send the necessary intimation in the matter to the Speaker has been held to constitute, technically, a breach of privilege of the House[139].

It is the committing judge or magistrate who is to inform the Speaker about the arrest or detention or conviction of a member, because it is he who has prevented the member from attending the House and discharging his duty. Where a panel of judges has awarded the punishment, it is the senior-most judge who has to intimate the fact. Only a person in lawful authority may arrest or detain

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136. Ministry of Home Affairs, Letters No. 56/58-Judi., 14 April and 30 September, 1953, and No. 35/2/57-P.II, 8 February, 1958.

137. *P.D.* 1975, Vol. XX, 2 p. 37–41.

138. Rules 229, 230 and Third Schedule to the Rules.
The Government of India have advised the State Governments and Administrations that when a member was released from jail on any ground, for example, on bail pending appeal or on the sentence being set aside on appeal or on the remission of sentence by Government on appeal or on termination of preventive detention, such release should invariably be communicated to the Speaker. When a member, who is under detention or is undergoing a sentence of imprisonment, is transferred from one jail to another, the change in the place of detention or imprisonment is also required to be intimated to the Speaker. Ministry of Home Affairs, Letter No. 35/2/57-PII, 21 May, 1958.

139. *Swami Brahmanand Case*, IR (CPR-4LS); *K.C. Haldar Case*, P.D. 1976, Vol. XXI, 1, p. 2-4; also *Kumari Frida Topno Case*, IR (CPR-10LS).

any person and the House has, therefore, to see on receipt of the information whether the person had the authority to prevent a member from functioning.

In case a fine is imposed on a member, it is not incumbent on the authorities to send such intimation. Where it is so sent by an officer of a court *e.g.* the Registrar, it is not contrary to the Rules.

As soon as the intimation regarding the arrest, conviction or release of a member is received by the Speaker, he reads it out in the House if it is in session[140]. If the House is not in session, he directs that the information be published in the Bulletin for the information of the members[141].

When the intimation of the release of a member either on bail or by discharge on appeal is received before the House has been informed of the original arrest, the fact of his arrest, or his subsequent release or discharge need not be intimated to the House by the Speaker[142].

If a member has started attending the House before the House has been informed of his release, such intimation is not read out in the House, but is published in the Bulletin for the information of the members.

The failure on the part of a judge or a magistrate or other authority to inform the House of the arrest, detention or imprisonment of a member would constitute a breach of the privileges of the House.

> On 1 March, 1950, a member raised a question of privilege in the House regarding the removal from Delhi of another member, under the East Punjab Public Safety Act, 1949, without communicating the fact to the Speaker of the House. The matter was discussed by the House and when the Government expressed their regret, the House, on a motion moved by a member, decided to drop the matter[143].
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> The Hyderabad Legislative Assembly held a sub-inspector of police guilty of breach of privilege for failure to intimate to the Speaker of the Assembly the arrest of a member. The sub-inspector was called to the Bar of the Andhra Pradesh Legislative Assembly (the principal successor of the Hyderabad Legislative Assembly on reorganization of States) where he tendered an unconditional apology[144].

Although the failure to intimate to the Speaker the place of imprisonment or detention of a member, or his transfer from one jail to another or his release from custody would not by itself involve a breach of privilege, it would nevertheless be non-compliance with an established convention in this regard[145].

> It has been held by the Committee of Privileges in the *Dasaratha Deb Case* (1952), that where a member is arrested in the course of

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140. Rule 231.
141. *Ibid.*
142. Rule 231, Proviso.
143. *P. Deb.*, (II), 1-3-1950, pp. 1019–45.
144. *Hyd. L.A. Deb.*, 18-6-1952; 19-6-1952, pp. 353, 393-98; 10-12-1952, pp. 1106-24 and *Andh. Pr. L.A. Deb.*, 25-3-1957, pp. 327-30; and 15-4-1957, p. 96.
145. Minutes recorded by Speaker Ayyangar on 23 August, 1957 and Ministry of Home Affairs Letter No. 35/2/57-P II, 21 May, 1958, to all State Governments and Administrations.

administration of criminal justice and immediately released on bail, there is no duty on the part of the magistrate concerned to inform the House.

It was also held by the Committee in their Fourth Report (1958) that no breach of privilege had been committed by the authorities concerned in not sending intimation to the Speaker of the release of a member on bail pending trial.

If a member is bound over under section 107 of the Code of Criminal Procedure for keeping the peace, it is not necessary for the magistrate passing the order to inform the Speaker of the matter since such an order does not prevent the member concerned from attending the sittings of the House.

In order to determine whether in a particular case the required intimation has been immediately sent to the Speaker, all the circumstances of that case are taken into account. The Committee of Privileges have held that "while it is well recognized that such intimation should be given promptly, it is not possible to lay down any hard and fast rule on the subject. Much would depend upon the surrounding circumstances of each case[146]."

In case where delays have occurred in sending the required intimation to the Speaker, the authorities concerned have expressed regret for the same[147].

Communications from a member in custody to the Speaker or the Chairman of a Parliamentary Committee not to be withheld

It is a breach of privilege to withhold any communication addressed by a member in custody to the Speaker, Secretary-General or the Chairman of a Parliamentary Committee. No breach of privilege is, however, involved where the government withholds a letter written from jail by a member to another member[148]. The Madras High Court in 1952 held that a member of a Legislature, in detention, was "entitled to the right of correspondence with the Legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence[149]."

The Committee of Privileges recommended in 1958 that provisions might be incorporated in the Jail Codes, Security of Prisoners Rules, etc. of State Governments and Administrations to the effect that all communications addressed by a member of Parliament, under arrest or detention or imprisonment for security or other reasons, to the Speaker of Lok Sabha or the Chairman of Rajya Sabha, as the case may be, or to the Chairman of a Parliamentary Committee or of a Joint Committee of both Houses of Parliament, should be immediately forwarded by the Superintendent of the jail concerned to the Government so as to be dealt

146. *The Deshpande Case* (1952) (CPR-1LS). *See also Mahavir Tyagi's Case R.S. Deb.* 30-8-1973, and *Jambuwant Dhote Case, P.D.* 1975, Vol. XX 2, pp. 37–47.

147. A member was released on bail on 9 June, 1952. In communicating the fact of release of the member to the Speaker on 12 March, 1953, the Magistrate concerned tendered apologies for the delay in sending the intimation–*See L.S. Deb.* (II), 19-3-1953, cc. 2346-7; *see* also *L.S. Deb.*, 20-10-1982, cc. 326-27.

148. 4R (CPR-2LS), pp. 11-12.

149. *In re K. Anandan Nambiar*, A.I.R. 1952, Madras 117.

with by them in accordance with the rights and privileges of the prisoner as a member of the House to which he belongs[150]. In the interests of uniformity, the Committee also suggested making of similar provisions in respect of members of the State Legislatures.

The Ministry of Home Affairs accordingly advised all State Governments and Administrations to make necessary provisions in their relevant rules[151].

Use of Handcuffs

There is no privilege specifically exempting a member of Parliament, who is under arrest on a criminal charge, from being handcuffed[152]. The Government of India have, however, issued instructions to the police and other authorities concerned, through the State Governments and Administrations, to the effect that persons in police custody and prisoners, whether under trial or convict, should not be handcuffed as a matter of routine and that the use of handcuffs should be restricted to cases where the prisoner is a desperate character or where there are reasonable grounds to believe that he will use violence or attempt to escape or where there are other similar reasons[153].

Extension of Privilege of Freedom from Arrest and Molestation to Witnesses, Petitioners, etc.

Upon the same principle which applies to members of Parliament, the privilege of freedom from arrest and molestation has been extended to witnesses summoned to attend before the House or any Committee thereof, and to others in personal attendance upon the business of the House, such as counsel of witnesses of parties appearing before the House or a Committee, in coming, staying and returning; and to officers of the House, in immediate attendance upon the service of Parliament[154].

Consequently, it is contempt of the House to arrest or procure the arrest on a civil process of witnesses, petitioners or other persons summoned to attend the House or any Committee thereof, while going to, attending, or returning from the House or any Committee of the House[155]. Similarly, to arrest or procure the arrest of an officer of the House in immediate attendance upon the service of the House, except on a criminal charge, is a contempt of the House[156].

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150 *Case of Kansari Halder*, 4R(CPR-2LS), pp. 11-12.

151. Ministry of Home Affairs Letter No. 35/8/58-P.II, 24-1-1959 and 14-5-1959.
Most of the State Governments and Administrations have since made required provisions in this regard and suitably amended their relevant rules.

152. 5R (CPR-2LS), p. 47.

153. Ministry of Home Affairs Circular Letter No. F. 2/13/67-P IV. 26 July, 1957, and No. 35/8/58-P II, 24 January, 1959; 5R (CPR-2LS), p. 48.
For instances of handcuffing of members, *see* P.D. 1975, Vol. XX, pp. 53-54, (U.P. Vidhan Sabha), and *L.S. Deb.*, 6-8-1974, cc. 123-26; 14-8-1974, cc. 203-08; 30-8-1974, cc. 165-72 (Bihar Satyagrahis).

154. May, Twenty-first Edn. p. 131.

155. *Ibid.*, p. 132.

156. *Ibid.* p. 131

Power of the House to punish for Breach of Privilege or Contempt and Commit to Custody and Prison

Each House of Parliament, as also a House of the Legislature of a State, has the power to secure the attendance of persons on matters of privilege and to punish for breach of privilege or contempt of the House and commit the offender to custody or prison.

Parliament and State Legislatures possess not only the power to punish for contempt but have also the right to judge for themselves what is contempt or what is not, as without this the privilege of punishing for contempt would be worthless[157].

The term "breach of privilege" means a disregard of any of the rights, privileges and immunities either of members of Parliament individually, or of the House in its collective capacity. After due inquiry, a breach of privilege is punished in the same way as courts of law punish for contempt of their dignity or authority.

In practice, the term "breach of privilege" is also applied to contempts generally. It is, however, properly applicable only to that type of contempt which consists in the violation or disregard of the privileges of the House or the individual members thereof.

Contempt of the House may be defined generally as "any act or omission which obstructs or impedes either 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, even though there is no precedent of the offence"[158]. Hence, if any act, though not tending directly to obstruct or impede the House in the performance of its functions, has a tendency to produce this result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority, it constitutes a contempt. Further, the House may punish not only contempts "arising out of facts of which the ordinary courts will take cognizance, but also those of which they cannot, such as contemptuous insults, gross calumny or foul epithets by word of mouth not within the category of actionable slander or threat of bodily injury"[159].

Contempts of Parliament may, however, vary greatly in their nature and in their gravity. At one extreme they may consist in little more than vulgar and irresponsible abuse; at the other they may constitute grave attacks undermining the very institution of Parliament itself[160]. Such offences are usually described as breaches of privilege, but this is not strictly correct. Whereas all breaches of privilege are contempts of the House whose privileges are violated, a person may be guilty of a contempt of the House even though he does not violate any of the privileges of the House, *e.g.* when he disobeys an order to attend a

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157. Hidayatullah, *op. cit.*, p. 193.
158. May, Twenty-first Edn. p. 115.
159. *Ibid.*, p. 129.
160. H.C. 112 (1947-48), pp. iii-iv, *Daily Mail Case.*

committee or publishes reflections on the character or conduct of a member in his capacity as a member[161].

The power of the House to punish for contempt or breach of privilege has been aptly described as the "keystone of parliamentary privilege" and is considered necessary to enable the House to discharge its functions and safeguard its authority and privilege[162]. This power is akin in nature and owes its origin to the powers possessed by the courts of law to punish for contempt. Without such a power, the House "would sink into utter contempt and inefficiency"[163].

The power of the Legislature to punish for contempt is of recent origin in this country. The Act of 1919 which conferred certain privileges on the members of the Indian Legislature, did not give the Legislature any power to punish for contempt or breach of privilege[164]. The Government of India Act, 1935, widened the ambit of privileges but it expressly stated that nothing in that Act or any other Indian Act, should be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any Committee or Office of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner[165]. With the commencement of the Constitution, however, the power to punish for contempt or breach of privilege and to commit the offender to custody or prison was conferred on the Houses of Parliament and State Legislatures, and was upheld by the Bombay High Court in 1957, when Coyajee, acting Chief Justice, *inter alia*, observed:

> ...the framers of the Constitution intended the House alone to be sole judge on a question of admitted privilege. To my mind, it is quite clear, therefore, that under article 194(3), when it prescribed that the privileges shall be those of the House of Commons of the Parliament of United Kingdom, the power to punish for contempt is expressly conferred on the House in clear and unequivocal terms and therefore it must follow that the exercise of that power is identical with that of the House of Commons.

And further:

> ...privilege is enjoyed by the House of Commons of committing for contempt, the most important ingredient of that right is of committing and arresting by a general warrant. Therefore, it cannot be contended that if in terms, the powers of the House of Commons are conferred, not by a statute but by the Constitution on a House of Legislature in India, the right to commit by a general warrant is a mere incident of the power to commit of the House of Commons and does not pass to the Legislature on whom the same power is conferred, because when the power is conferred, it is the power of the superior court, namely a Court of Record and the powers of the Court of Record or the superior court to issue a warrant must belong to the House of Commons and therefore it follows that such power to issue the warrant goes with the power[166].

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161. Abraham and Hawtrey, p. 76.
162. Cushing, *Legislative Assemblies*, para 532, 533; *see* also May, Twenty-first Edn. p. 110.
163. *See* the observations of Lord Ellenborough, C.J. in the *Case of Burdett* v. *Abbot* (14 East. 150).
164. S. 67(7) of the Government of India Act as set out in the Ninth Schedule to the Government of India Act, 1935.
165. Government of India Act, 1935, s. 28(3).
166. *Homi D. Mistry* v. *Nafisul Hassan*. I.L.R. 1957, Bombay 218.

This position was later reiterated by the Assam High Court in 1958:

> It is well established now that the House of Commons in England has certain well-defined rights and privileges, honoured and sanctified by tradition and custom, one of the most important of them being the right to commit a person for contempt of its high authority and for breach of its privileges. This power extends not merely to members of the House but even to persons outside it and when the House acts in vindication of these rights and privileges, the courts of the land have no right to interfere. The proper forum is the House itself where the person affected can claim the redress of his rights. By virtue of the Indian Constitution, these powers and privileges are enjoyed by Houses of Parliament in India and the Houses of State Legislature[167].

The power to secure the attendance of persons on matters of privilege, including the power to send for supposed offenders in custody, was exercised by the Uttar Pradesh Vidhan Sabha in 1952.

> Homi D. Mistry, the then acting Editor of *Blitz*, a weekly news magazine, was arrested by the police on 11 March, 1952[168], at Bombay in pursuance of a warrant issued by the Speaker of the Assembly to enforce the presence of Shri Mistry before the House on 19 March, 1952, to answer a charge of breach of privilege. Shri Mistry was kept in custody at Lucknow till 18 March, 1952, when he was released in pursuance of an order of the Supreme Court on a *habeas corpus* petition[169] on the ground that Shri Mistry had not been produced before a magistrate within 24 hours of his arrest which contravened the provisions of article 22(2). In a civil suit subsequently filed by Shri Mistry, claiming damages for wrongful arrest and detention, the acting Chief Justice Coyajee of the Bombay High Court held, *inter alia*, that the House had power to order the supposed offender to be arrested and brought before the Bar of the House to answer a charge of breach of privilege. In this connection, the Court observed:
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> > ...The Legislative Assembly of Uttar Pradesh was fully entitled to protect its dignity by the exercise of the privilege expressly conferred on it under article 194 and in exercise of that privilege it issued a warrant which on the face of it states that it is for contempt of the House and therefore that warrant being a general warrant is not subject to scrutiny and that it can be validly executed...[170].

The power to commit to prison for contempt or breach of privilege has been exercised by Parliament and State Legislatures in India[171].

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167. *Narendra Nath Barua* v. *Dev Kanta Barua and Others*, A.I.R. 1958, Assam 160.

168. The warrant was issued by the Speaker in pursuance of resolution adopted by the U.P. Vidhan Sabha on 7 March, 1952.

169. *Gunapathi Keshavram Reddy* v. *Nafisul Hassan*, A.I.R. 1954 S.C. 636.
This decision may, however, be deemed to be overruled by the Searchlight Case, A.I.R. 1959 S.C. 395-422, where the Supreme Court observed: "Our decision in *Gunapathi Keshavram Reddy* v. *Nafisul Hassan*, proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on the subject."

170. *Homi D. Mistry* v. *Nafisul Hassan*. I.L.R. 1957, Bombay 218.

171. *L.S. Deb.*, 15-12-1967, 15-11-1968, 9-4-1969, 13-12-1969, 31-8-1970, 23-7-1973, 21-12-1973, 11-4-1974, 26-7-1974, 6-9-1974, 26-11-1974, 6-3-1975, 14-11-1977, 6-3-1979, 28-8-1981, [illegible] 5-4-1982, 28-7-1982, 10-5-1983, 2-3-1984, 7-5-1984, 30-7-1985,

If contempt is committed in the immediate presence of the House, the contemner may not be heard. He is taken into custody immediately by the Joint Secretary, Security and detained for the minimum time necessary for interrogation. The contemner may apologize and the House may be pleased to accept it and let him off. If the contemner has to be punished, it can be done by the House only. For this purpose, a motion is moved by the Minister of Parliamentary Affairs. The motion may specify the period of imprisonment and the place or jail where the accused is to be lodged. On the motion being adopted by the House, a warrant of commitment addressed to the Superintendent in-charge of the jail is signed by the Speaker. The accused is, thereafter, taken to the place of imprisonment by the Joint Secretary, Security.

Period of Imprisonment

The period for which the House can commit an offender to custody or prison for contempt is limited by the duration of the session of the House[172]. A prisoner is automatically entitled to release when the House is prorogued. Where, however, the House considers that a prisoner, who has been released on account of prorogation, has not been sufficiently punished, he may be committed again in the next session and detained until the House is satisfied.

Forms of Warrants

No specific form to which warrants issued by the Speaker by order of the House should conform, is prescribed. In 1957, Coyajee, A.C.J. of the Bombay High Court observed[173]:

> ...the warrant in this case on a reading of it is clearly a general warrant indicating that the party was required in connection with a contempt proceedings and, therefore, no court would be entitled to scrutinize such a warrant and decide whether it was a proper and valid warrant or not.

Powers for the Execution of Warrants

Each House has the power to enforce its orders, including the power for its officers to break open the doors of a house for that purpose, when necessary, and execute its warrants in connection with contempt proceedings[174]. It can also direct the civil authorities to aid and assist in the execution of a warrant issued by its Presiding Officer under the authority of the House. Every branch of the civil government is considered by the House as bound to assist, when required, in executing the warrants and orders of the House.

23-7-1987, 23-11-1987; *R.S. Deb.*, 21-12-1967, 30-3-1973, 18-3-1982, 23-3-1982, 26-8-1983, 21-11-1983; *Bihar V.S. Deb.*, 2-3-1973; 22-8-1973; *Gujarat V.S. Deb.*, 15-6-1970; *Kerala L.A. Deb.*, 11-3-1969, 5-8-1969; *M.P.V.S. Deb.*, 2-4-1960, 5-3-1968, 9-9-1968, 7-3-1970, 21-9-1970, 26-3-1973, 28-3-1973; *Maharashtra V.S. Deb.*, 12-6-1972; *Rajasthan V.S. Deb.*, 10-4-1956; *U.P. V.P. Deb.*, 28-10-1965; *U.P. V.S. Deb.*, 19-7-1966.

172. *Susant Kumar Chand* v. *Orissa Legislative Assembly*, A.I.R. 1973, Orissa 111.

173. *Homi D. Mistry* v. *Nafisul Hassan*. I.L.R. 1957, Bombay 218.

174. *Howard* v. *Gossett*, 1842, Car & M. 382.

In the Bombay High Court it was argued that the execution of a warrant issued by the Speaker could be effected only through the machinery of the Legislature and not by employing a police officer or by seeking the aid of other officers of a State Government. Coyajee, A.C.J. observed[175]:

> Use of force for the purpose of enforcing the orders of the Assembly is an absolute ingredient of the privilege to commit and punish for contempt and merely because there are no officers corresponding to that of the Sergeant at Arms, it does not follow that the content of the privilege is thereby lessened or destroyed, but in my opinion...remains entirely unaffected... it cannot be that because of the lack of such prescribed machinery the Assembly has no power to implement its decision in connection with contempt and punishment... even if it is addressed to the Sergeant at Arms by the Speaker of the House of Commons, the Sergeant at Arms would take in aid in execution of the warrant through the police or even any civilian... an officer of the House, whoever he may be, can take other aid.

In the case of Lok Sabha, summons, letters, etc., have been served through the agency of Union or State Governments. When summons are issued to a witness or a person accused of breach of privilege or contempt of the House, to appear before the Committee of Privileges of Lok Sabha, a duplicate copy of the summons is served on him through the agency of the State Government concerned, the original copy of the summons being sent to the person concerned direct by registered post.

This procedure was adopted by the Committee on the Conduct of a Member in the Mudgal case (1951) for calling witness to appear before the Committee. The procedure was also followed in the *Blitz Case* (1961) while summoning the Editor of the *Blitz*, to appear at the bar of the House to receive the reprimand for committing a breach of privilege and contempt of the House.

The agency of the Government of Punjab was utilised for delivering a duplicate copy of a letter to H.L. Sally asking him to submit his written statement to and personally appear before the Committee of Privileges (1966)[176].

When government officers accused of committing a breach of privilege or contempt of the House are asked to appear before the Committee of Privileges, letters for securing their attendance are sent to the Ministry/ Department concerned, requesting them to direct the officer concerned to present himself before the Committee[177].

Protection to Officers Executing Orders of the House

Warrants for commitment issued by the Speaker by order of the House provide protection to the officers acting thereunder against actions for trespass, assault, or false imprisonment, unless the causes of commitment stated in the warrant appear to be beyond the jurisdiction of the House. If the officer does not exceed his authority, he will be protected by the courts, even if the warrants

175. *Homi D. Mistry* v. *Nafisul Hassan*, I.L.R. 1957, Bombay 218.
176. *Sally's Case*, 1966, 5R (CPR-3LS).
177. 2R, 4R and 8R (CPR-7LS).

are not technically formal according to the rules by which the warrants of inferior courts are tested. In this regard, Coyajee, A.C.J. of the Bombay High Court, observed[178]:

> ...all officers or anyone else aiding in the execution of the writ would be protected, because as laid down by May, both Houses consider every branch of the civil government is bound to assist when required, in executing their warrants and orders, and have repeatedly required such assistance.

Form of Punishment for Breach of Privilege or Contempt

In cases where the offence of breach of privilege or contempt is not so serious as to warrant the imprisonment of the offender by way of punishment, the person concerned may be summoned to the bar of the House and admonished or reprimanded by the Speaker by order of the House. Admonition is the mildest form of punishment, whereas reprimand is the more serious mark of the displeasure of the House. In Lok Sabha, there have been two cases of persons having been summoned to the bar of the House and reprimanded by the Speaker—one for breach of privilege and contempt of the House, for a libellous despatch appearing in a weekly magazine[179], and the other for contempt of the House in deliberately misrepresenting facts and giving false evidence before a parliamentary committee[180]. In another case, two police officers of the State of Maharashtra were summoned to the bar of the House to answer the charge of breach of privilege and contempt of the House for allegedly assaulting and abusing a member[181]. The two officers expressed apologies to the member concerned and to the House for whatever happened on that day. In view of the apologies tendered by them, the House decided to treat the matter as closed.

In Rajya Sabha also there has been a case where three persons–joint authors of a book—were summoned to the bar of the House and reprimanded by the Chairman for describing in the said book the Finance Bill, 1980 as Finance Act, 1980, before it had received the assent of the President[182].

Prosecution of Offenders: In the case of a breach of privilege which is also an offence at law, the House may, if it thinks that the punishment which it has the power to inflict would not be adequate to the offence, or where for any other reason, the House feels that a proceeding at law is necessary, either as a substitute for, or in addition to, its own proceeding, direct the prosecution of the offender in a court of law.

Lok Sabha, in the case of a Government Officer, directed that in addition to the reprimand administered to him, the Government should take departmental action against him. Subsequently, on 25 April, 1973, the Minister of Steel and Mines informed the House that certain constitutional difficulties had arisen in implementing the second part of the Resolution adopted by the House. The

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178. *Homi D. Mistry* v. *Nafisul Hassan*, I.L.R. 1957, Bombay 218.
179. *The Blitz Case*, 13R (CPR-LS); *L.S. Deb.*, 18-8-1961, cc. 3044-53; 19-8-1961, cc. 3318-80; 21-8-1961, c. 3786; and 29-8-1961, cc. 5501-02.
180. *Case of S.C. Mukherjee. L.S. Deb.*, 6-3-1969, cc. 219-226; Min. (CP), 16-7-1969, para 5; 12R (CPR-4LS); *L.S. Deb.*, 2-12-1970, cc. 393-462; 9-12-1970, cc. 203-05.
181. *Case of K.M. Kaushik, L.S. Deb.*, 18-11-1970, cc. 236-58; and 3-12-1970, cc. 184-88.
182. 19R and 20R (CPR-RS); *and R.S. Deb.*, 24-12-1980, cc. 1-2.

matter was, therefore, reviewed by the Committee on Privileges and upon its recommendations, the House adopted another resolution on 29 November, 1973, rescinding the latter part of its earlier resolution of 2 December, 1970[183].

In another case, a visitor was punished for shouting slogans in the Public Gallery and for possessing on his person two pistols and a cracker. Besides awarding punishment of one month's rigorous imprisonment for contempt of the House, the motion adopted by the House provided that the punishment would be without prejudice to any other punishment under the law. The matter was subsequently referred to the police authorities under the orders of the Speaker[184].

In two other cases in Lok Sabha, visitors who were carrying daggers and explosives on their persons were punished with rigorous imprisonment without prejudice to any other action to which they were liable under the law. Written reports were subsequently lodged in Police Station by the Watch and Ward Officer of Lok Sabha with the permission of the Speaker[185].

Punishment of Members: In the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly than by admonition or reprimand, namely, suspension from the service of the House and expulsion.

> On 8 June, 1951, a motion for appointment of a Committee to investigate the conduct and activities of a member of Lok Sabha was adopted. The Committee held that the conduct of the member was derogatory to the dignity of the House and inconsistent with the standard which Parliament was entitled to expect from its members.
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> In pursuance of the report of the Committee, a motion was brought before the House on 24 September, 1951, to expel the member from the House. The member, after participating in the debate, submitted his resignation to the Deputy Speaker. The House deprecated the attempt of the member to circumvent the effect of the motion and unanimously adopted the following amended motion on 25 September, 1951—
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> > "That this House, having considered the Report of the Committee appointed on the 8th June, 1951, to investigate the conduct of Shri H.G. Mudgal, Member of Parliament, accepts the findings of the Committee that the conduct of Shri Mudgal is derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its members, and resolves that Shri Mudgal deserved expulsion from the House and further that the terms of the resignation letter he has given to the Deputy Speaker at the conclusion of his statement constitute a contempt of this House which only aggravates his offence"[186].

183. *L.S. Deb.*, 29-11-1973, cc. 208-20.

184. *Ibid.*, 11-4-1974, cc. 218-64.

185. *Ibid.*, 26-7-1974, cc. 316-18; and 26-11-1974, cc. 300-14.

186. *P. Deb.*, 8-6-1951, cc. 10464-65; 24-9-1951, c. 3202; and 25-9-1951, c. 3289. For details *re.* the Committee on the Conduct of a Member (*Mudgal Case*), *see* Chapter XII–Conduct of Members.

A member of the Maharashtra Legislative Assembly was expelled from the House– *Maharashtra L.A. Deb.*, 13-8-1964, pp. 12-28.

On 18 November, 1977, a motion was adopted by the House referring to the Committee of Privileges a question of breach of privilege and contempt of the House against Shrimati Indira Gandhi, former Prime Minister, and others regarding obstruction, intimidation, harassment and institution of false cases by Shrimati Indira Gandhi and others against certain officials who were collecting information for answer to a certain question in the House during the previous Lok Sabha.

The Committee of Privileges were of the view that Shrimati Indira Gandhi had committed a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against the concerned officers who were collecting information for answer to a certain question in the House. The Committee recommended that Shrimati Indira Gandhi deserved punishment for the serious breach of privilege and contempt of the House committed by her but left it to the collective wisdom of the House to award such punishment as it may deem fit.

On 19 December, 1978, the House adopted a motion resolving that Shrimati Indira Gandhi be committed to jail till the prorogation of the House and also be expelled from the membership of the House for the serious breach of privilege and contempt of the House committed by her[187].

On 7 May, 1981, the Seventh Lok Sabha, however, rescinded the motion adopted by the Sixth Lok Sabha on 19 December, 1978 by adopting the following resolution[188]—

"Whereas the Sixth Lok Sabha by a Resolution adopted on 19th December, 1978, agreed with the ...recommendations and findings of the Committee (of Privileges) and on the basis thereof held Shrimati Indira Gandhi, Shri R.K. Dhawan and Shri D. Sen guilty of breach of privilege of the House and inflicted on them the maximum penalty possible in violation of the principle of natural justice.

*** ***

Now therefore this House resolves and declares that:

(a) the said proceedings of the Committee and the House shall not constitute a precedent in the law of parliamentary privileges;

(b) the findings of the Committee and the decision of the House are inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and the basic safeguards assured to all and enshrined in the Constitution; and

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In March, 1966, two members of the Madhya Pradesh Legislative Assembly were expelled, and their seats were declared vacant. On writ petitions by the two ex-M.L.A.s, the Madhya Pradesh High Court upheld their expulsion.

187. *L.S. Deb.*, 18-11-1977, cc. 235-37; 3R(CPR-6LS); *L.S. Deb.*, 19-12-1978, cc. 393-94; P.D. 1979, Vol. XXIV, 2, pp. 33-43; *see* also Gazette of India, 19-12-1978, Notification No. 21/5/78/T.

188. *L.S. Deb.*, 7-5-1981, cc. 336-441; P.D. 1981, Vol. XXVI, 2, pp. 2-5.

(c) Smt. Indira Gandhi, Shri R.K. Dhawan and Shri D. Sen were innocent of the charges levelled against them.

And accordingly this House:

rescinds the resolution adopted by the Sixth Lok Sabha on the 19th December, 1978."

After the expulsion of Shrimati Indira Gandhi, C.M. Stephen, Leader of the Opposition in Lok Sabha, had raised certain legal and constitutional issues before the Election Commission who called a public hearing and after hearing the various points of view put before him by the various political parties and individuals, made the following order—

"Sections 149(1) and 150 of the Representation of the People Act, 1951, deal with filling up of casual vacancies in the House of the People and a State Legislative Assembly, respectively. There are thus three categories mentioned in these sections in which a casual vacancy may arise, namely:–

(1) the seat becoming vacant;
(2) the seat declared vacant; and
(3) the election declared void.

These sections do not specify the circumstances in which a seat may become vacant or be declared vacant or void. Clauses (1) to (3) of article 101 of the Constitution deal with cases of seats becoming vacant, and clause (4) of article 101 deals with cases of seats being declared vacant. [Articles 190 and 191 of the Constitution correspond for State Legislative Assemblies]. It is not correct to say that these articles of the Constitution are exhaustive in their operation and do not admit of any other contingencies in which a seat may be deemed to have become vacant or may be declared vacant. Death is a contingency in which a seat becomes vacant; but it is not specified in this article. In contradiction, article 62(2) of the Constitution specifically mentions death as one of the contingencies in which a vacancy may arise in the office of the President. The election of a returned candidate may be declared void on the grounds other than the grounds of disqualification for membership in the House of the People as envisaged in article 102 of the Constitution. An election can be declared void if: (i) the nomination of a returned candidate has been improperly accepted; (ii) a nomination of a defeated candidate is improperly rejected; (iii) votes have been improperly received, accepted, refused or rejected materially affecting the result of the election; or (iv) if a returned candidate has not taken the oath as required under article 84(a) of the Constitution. If articles 101 and 102 are to be treated as exhaustive and section 149 of the Representation of the People Act, 1951, is to be completely co-related with the provisions of these articles only, the other contingencies which result in the vacation of a seat or the election being declared void as stated above cannot be given effect to under section 149.

Article 105(3) deals with the powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House and provides further that until defined by law, those powers, *privileges and immunities* shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and Committees at the commencement of the Constitution. The expression "in other respect" used in that article clearly implies the wide scope of the field of its operation. As we have seen earlier, actions of different authorities under the Constitution and the Representation of the People Act can result in a seat becoming vacant or a seat being declared vacant or void. This being so, article 101 or 102 are not exhaustive and article 105 should be regarded as supplemental to them in the matter of a further contingency in which a seat may become vacant by reason of expulsion."

* * * *

"Notwithstanding the judgement of the Punjab and Haryana High Court in Shri Hardwari Lal's case, the Lok Sabha has asserted its power to expel a member. The Election Commission is required under section 149 of the Representation of the People Act, 1951, to implement the decision of the House and to give effect to the order of expulsion by Lok Sabha."

* * * *

"The term 'expulsion' has not been defined in the Constitution, Rules of Procedure and Conduct of Business in Lok Sabha or any law relating to elections. Nevertheless, there are passages in the judgments of both Punjab and Haryana High Court and Madhya Pradesh High Court which clearly indicate that vacation of a seat is an automatic result of expulsion".

The following observations of the Punjab and Haryana and Madhya Pradesh High Courts are significant:

"(431) In the view held by the Majority, we allow this writ petition, hold the resolution of the Haryana Legislative Assembly dated 8 January, 1975, expelling the petitioner, to be unconstitutional, illegal and inoperative, and as a *necessary* consequence direct the Election Commission of India not to proceed to fill the vacancy supposedly resulting from the action aforesaid. We leave the parties *to bear their own costs.*"

[ILR (1977) 2 Punjab & Haryana 269 at p. 577].

"It is true that the privilege or right which the House of Commons has is of expelling a member and the vacation of a seat is only the result of expulsion. But the Madhya Pradesh Assembly is not claiming any privilege of creating a vacancy and of expelling a member for that purpose. *It is also not claiming the right to issue a direction* for filling a seat when a member is expelled. If a member's seat becomes vacant as a result of his expulsion then the seat is filled in accordance with the Representation of the People Act, 1951, by holding a by-election. Section 150 of the Representation of the People Act does not contain anything to rule out the application of that provision to a case where the seat of a member becomes vacant as a result of his expulsion. If the learned counsel by his argument intended to suggest that the Madhya Pradesh Assembly could expel a member but could not make his seat vacant and thus exclude him from the sittings of the House for all time, then the suggestion must be rejected as altogether untenable."

[AIR 1967 Madhya Pradesh 95 at p. 103].

"In our opinion, it cannot be contended with any degree of force that as there is no express provision in the Constitution providing for a member's seat becoming vacant as a result of his expulsion by the State Legislature, the right or privilege of expelling a member cannot be claimed by the Legislaure. So far as the exercise of the power of expulsion by the State Legislature is concerned, article 194(3) operates quite independently of articles 190 and 191 or any other article. There is nothing in the Constitution affording any ground or justification for subtracting from the powers, privileges and immunities declared as belonging to the State Legislature and the power of expelling a member having the result of making vacant the seat of the member expelled. The argument based on articles 190 and 191 cannot therefore be accepted."

"(25) It remains to consider the effect of the absence in the Rules of Procedure and Conduct of Business framed by the Madhya Pradesh Assembly of a rule dealing with explusion of members. The absence of a rule is in no way indicative of the fact that the Legislature has not the power of expelling a member rendering his seat vacant or of precluding the exercise of the power."

[AIR 1967 Madhya Pradesh 95 at pp. 103-104].

"In the above view, expulsion carries with it the automatic effect of vacation of the seat and there is no need to declare a seat vacant following the expulsion of a member by a separate order of the House."

"Confusion and doubts have arisen from the use of words 'Consequent on' and 'ceases to be a member' in the notification, implying thereby that the notification has declared the seat vacant after expulsion has taken place. This interpretation must be rejected in view of the conclusion reached by me about that expulsion includes vacation of seat simultaneously and there is no interval between the two events. The notification must be read as conveying the information only that the House has taken a decision to expel the member which means conclusively that a seat has become vacant concurrently".

* * * *

"The form in which information is communicated to the Election Commission that vacancy has arisen under sections 149 or 150 of the Representation of the People Act, 1951, is also important. In this connection, I refer to the communication received from the Madhya Pradesh Vidhan Sabha[189] in which a formal intimation was sent to the Election Commission regarding the vacancy arising from the expulsion of Shri Suresh Seth. The notification of the Lok Sabha Secretariat is a general notification and a copy thereof has been sent by an officer of the Secretariat to the Election Commission, among other officers of Government without any formal request to fill the vacancy. In order to avoid in

189. Letter No. 126421 Legn. 78, dated 8 September, 1978, from the Secretary, Madhya Pradesh Vidhan Sabha to the Secretary, Election Commission of India, is worded as follows—

"I am directed to inform you that consequent on adoption of a motion by the Madhya Pradesh Vidhan Sabha on the 7th September, 1978, expelling from the House, Shri Suresh Seth, a member elected from the Indore-5 Constituency No. 274 of Madhya Pradesh Vidhan Sabha, the said constituency has fallen vacant with effect from the 7th September, 1978, afternoon. A copy of this Secretariat Notification No. 125131 Legn. dated the 7th September, 1978 is enclosed."

future, objections and doubts such as were extensively raised in the present case the communication to be sent to the Election Commission should be a formal document as this is the basis on which election process begins. In the present case, I take note of the information contained in the Gazette Notification, dated 19-12-78 that Lok Sabha has expelled Smt. Indira Gandhi and I hold that expulsion means vacation of the seat simultaneously. I hold further that expulsion falls in the first category of a seat becoming vacant in section 149 of the Representation of People Act, 1951."

In the matter of its own privileges, the House is supreme. It combines in itself all the powers of Legislature, Judiciary and Executive, while dealing with a question of its privilege. The House has the power to declare what its privileges are, subject to its own precedents, name the accused who is alleged to have committed a breach of privilege or contempt of the House, act as a court either itself or through its Committee, to try the accused, to send for persons and records, to lay down its own procedure, commit a person held guilty, award the punishment, and execute the punishment under its own orders. The only limitations are — that the Supreme Court in the final analysis must confirm that the House has the privilege which is claimed, and, once confirmed, the matter is entirely in the hands of the House. The House must function within the framework of the Constitution, more particularly within the ambit of fundamental rights; act *bona fide*, observe the norms of natural justice and not only do justice but seem to have done justice which will satisfy public opinion[190].

In the Mudgal case, the Committee of the House gave all opportunities to the accused. He was allowed the services of a counsel, to cross-examine the witnesses, to present his own withnesses and to lead his defence through his counsel. The Committee was also assisted by the Attorney-General throughout the examination of the matter by it.

Power of Expulsion

The Punjab and Haryana High Court, in the Hardwari Lal Case (1977), declared that the Houses in India have no power of expulsion[191]. The

190. Determination of guilt and adjudication in disputes are judicial functions. In many countries, therefore, questions of breach of privilege, contempt of the House, etc. and punishment therefor are decided only by courts of law.

Professor S.S. de Smith, in his *Constitutional and Administrative Law*, suggests that "the unhappy combination of uncodified contempts, an unsatisfactory procedure for investigating allegations of contempt and the insistence of the House that it must have the first and last word in matters touching the interests of its members, irrespective of the impact of its decisions on the interests of members of the public, strongly suggests that the House should relinquish its jurisdiction over breaches of privilege and contempts to the courts, as it has in effect relinquished its privilege to determine disputed election returns."

Also, Prof. Harry Street, in his *Freedom, the Individual and the Law*, holds that "the House of Commons ought not to treat trials of citizens as one of its functions; disciplining its members is one thing, punishing outsiders is another. It may well be difficult for the House of Commons to behave like a Court; the solution then is for it to relinquish these powers of punishing citizens by imprisonment or otherwise just as it has surrendered its jurisdiction over disputed elections to the judges."

191. I.L.R. (1977) 2, Punjab & Haryana 269.

Madhya Pradesh High Court in 1966 declared that the House has power of expulsion[192].

There are, therefore, two conflicting decisions and the position is uncertain. In the absence of a decision by the Supreme Court, neither decision is a declared law under article 141 of the Constitution. Law of a certain and binding character can be laid down only by the Supreme Court.

Powers of Parliament within the Parliament House Estate

The Speaker is the authority under whose directions order is maintained in the Parliament House Estate. It is a contempt of the House if any executive authority issues any notifications or orders which are applicable to the Parliament House Estate or causes any inquiry to be made in any matter inside the Parliament House Estate or brings a charge against any one for any crime inside the Estate.

Prior to 4 April, 1970, orders issued by the District Magistrate, Delhi, under section 144 of the Criminal Procedure Code did not expressly exclude the Parliament House Estate. On the issue of a Direction by the Speaker on that day, the orders issued by the District Magistrate thereafter expressly exclude the Parliament House Estate. Even though an executive authority has powers under section 144 to issue an order which can be made applicable to the Parliament House Estate, executive authorities under the law of privilege are prohibited from exercising this power within the Parliament House Estate. The executive authorities cannot also enter the Parliament House Estate or apprehend any person for any cognizable offence within the Parliament House Estate without the permission of the Speaker.

The Direction issued by the Speaker on 4 April, 1970, reads as follows[193]—

(1) The Joint Secretary, Security of Lok Sabha shall be responsible for maintaining order within the compound of the Parliament House Estate and shall take all necessary steps to ensure that no obstruction or hindrance is caused to members of Parliament in that area, in coming to, or going from, the Parliament House.

(2) In order to keep the area and passages within the Parliament House Estate free and open for members of Parliament without any obstruction or hindrance, the following activities are prohibited within the area of the Parliament House Estate—

(i) holding of any public meeting;

(ii) assembly of five or more persons;

(iii) carrying of fire-arms, banners, placards, *lathies*, spears, swords, sticks, brick-bats;

(iv) shouting of slogans;

(v) making of speeches, etc;

192. A.I.R. 1967, Madhya Pradesh 95.

193. Dir. 124-A.

(vi) processions or demonstrations;
(vii) picketing or *dharna*; and
(viii) any other activity or conduct which may cause or tend to cause any obstruction or hindrance to members of Parliament.

(3) The Joint Secretary, Security of Lok Sabha may, subject to the instructions or permission of the Speaker, request the police to assist him in, maintaining order in the Parliament House Estate, as and when considered necessary.

The Joint Secretary, Security may apprehend any person for any breach of directions given by the Speaker, He shall then report the matter to the Speaker through the Secretary-General. The Speaker may order an inquiry into the matter and pass such orders as he may deem fit. The Speaker may direct that such a person be taken out of the Parliament House Estate to be let off or to be handed over to the police authorities. The police authorities cannot, however, bring a charge against the person for anything said or done by him inside the Parliament House Estate unless the Speaker has authorised them in this behalf[194]. If the Speaker comes to the conclusion *prima facie* that the person concerned has grossly violated the direction, he may report the matter to the House and the House may, on a motion moved in this behalf, punish him for contempt of the House.

Inquiry by Courts into Causes of Commitment by the House

The Supreme Court and the High Courts in India are empowered under the Constitution to issue writs of *habeas corpus* for production before them of persons committed by the House[195]. This power was exercised by the Supreme Court in 1954, in respect of a person who was in custody in pursuance of a warrant issued by the Speaker of the Uttar Pradesh Legislative Assembly in connection with contempt proceedings[196].

Summing up the position as it existed in the British House of Commons at the commencement of India's Constitution, *i.e.* on 26 January, 1950, Hidayatullah M., C.J. observed:

> The House had the right to commit for breach of its privileges or for conduct amounting to contempt of its authority but the Court acting under the *Habeas Corpus* Acts were bound to entertain the petition for *habeas corpus*. By resolution, the House of Commons accepted the position that the gaoler must make a return and exhibit the warrant. On their part the Courts respected the warrant which was treated as a

194. *L.S. Deb.*, 15-4-1974–Case of a visitor who was found carrying fire arms on his person.

195. *See* arts. 32(2) and 226.

196. *See Gunapathi Keshavram Reddy v. Nafisul Hassan and State of U.P.*, A.I.R. 1954 S.C. 636.

In *Homi D. Mistry v. Nafisul Hassan* (I.L.R. 1957 Bombay 218), Coyajee A.C.J. observed that in *the State of Punjab v. Ajaib Singh* (1953) S.C.R. (254), the Supreme Court had stated, "there is indication in the language of article 22(1) and (2) that it was designed to give protection against the acts of the executive or other non-judicial authority", but held that the warrant issued by the Speaker of the Uttar Pradesh Legislative Assembly in pursuance of a resolution of the House, fell within the category of judicial warrants and could not therefore "draw the protection afforded by article 22."

conclusive answer to the writ *nisi*. There was ordinarily no question of bail before the return but if the return was not filed or was defective the prisoner could be admitted to bail and also released. There was ordinarily no question of taking umbrage if a writ *nisi* issued, as was evident from the debate following *Sheridan's Case*. If the history of the writ of *habeas corpus* is studied, it will be found that the House had long ago abandoned the stand that the Courts offend its dignity when they do their duty and that is why the dualism in England is over[197].

The Courts of Law and Matters of Privilege[198]

The courts of law in India have recognised that a House of Parliament or a State Legislature is the sole authority to judge as to whether or not there has been a breach of privilege in a particular case. It has also been held that the power of the House to commit for contempt is identical with that of the House of Commons and that a court of law would be incompetent to scrutinize the exercise of that power[199].

As regards exclusive control of either House over its internal proceedings, article 105(2) specifically bars the jurisdiction of courts of law in respect of anything said or any vote given by a member in Parliament or any Committee thereof. The Orissa High Court in 1958, held that "no law court can take action against a member of the Legislature for any speech made by him there" even when a member in a speech in the House casts reflection on a High Court[200]. The courts have also held that they have no jurisdiction to interfere in any way with the control of the House over its internal proceedings[201] or call in question the validity of its proceedings on the ground of any alleged irregularity of procedure[202].

When some members of the House, including a former Speaker, were given notice to appear before the Supreme Court in a case relating to *Jagadguru Shankaracharya*, either in person or by an advocate, a question of privilege was raised. The members concerned were directed by the Speaker to ignore the notice and the Attorney-General was asked to bring to the notice of the Court that "what is contained in the case is something which is covered by article 105 of the Constitution[203].

197. *Hidayatullah, op. cit.*, p. 210.

198. Also *see* Chapter XLII, *Supra*.

199. *M.S.M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 395; *Homi D. Mistry v. Nafisul Hassan* I.L.R. 1957, Bombay 218; *Harendra Nath Barua v. Dev Kanta Barua*, A.I.R. 1958, Assam 160.

In *Keshav Singh v. Speaker, Legislative Assembly, U.P.*, the Allahabad High Court held that the Legislative Assembly has the same power to commit for its contempt as the House of Commons has A.I.R. 1965, Allahabad 349(354).

200. *Surendra Mohanty v. Nabakrishna Choudhury*, A.I.R. 1958, Orissa 168; I.L.R. 1958, Cuttack 195.

201. *Raj Narain Singh v. Atmaram Govind Kher*, A.I.R. 1954, Allahabad 319; *Hem Chandra Sen Gupta v. Speaker, West Bengal Legislative Assembly*, A.I.R. 1956, Calcutta 378; *C. Shrikishen v. State of Hyderabad and Others*, A.I.R. 1956, Hyderabad 186.

202. *State of Bihar v. Kameshwar*, A.I.R. 1952, S.C. 267; *Saradhakar v. Orissa Legislative Assembly*, A.I.R. 1952, Orissa 234; *Godavaris Misra v. Nandkishore Das*, A.I.R. 1953, Orissa 111; *Ram Dubey v. Government of Madhya Bharat*, A.I.R. 1952, Madhya Bharat 73.

203. *L.S. Deb.*, 3-4-1970, cc. 218-25 and 22-4-1970, cc. 235-59.

On some observations having been made by the Court with regard to the stand taken by the House inasmuch as the members had not been served with a 'summons' but only a 'notice of lodgement' had been sent to them, the matter was again discussed in the House. Thereupon, the Speaker ruled:

> Whether the Court issues a summons or a notice does not make any difference to us. Ultimately, the privileges of the House are involved when members are asked to defend themselves for what they said in the House[204].

When one of the members who had been served with the notice of lodgement of appeal by the Supreme Court expressed a desire to go and defend himself in the Court, the Speaker observed:

> If he appears before the Court, fully knowing article 105, I think we will have to bring a privilege motion against him[205].

Summons were received from the Court, requiring the Chairman, Public Accounts Committee, to appear before the Court to answer all material questions relating to certain observations made in the 71st Report of the Committee (5LS). The Speaker, thereupon, observed:

> As had been the practice of the House, he was asking the Chairman of the Committee to ignore the summons and not to put in any appearance in the Court. However, he was passing on the relevant papers to the Minister of Law for taking such action as he might deem fit to apprise the Court of the correct constitutional position in this regard[206].

On 11 April, 1979, a notice was received from the Karnataka High Court requiring the appearance of the Secretary, Lok Sabha, in person or through an Advocate, in that Court in connection with a writ petition challenging the validity of a resolution passed by the Lok Sabha expelling a member from the House. The Speaker, Lok Sabha placed the matter before the House on 12 April, 1979 and observed that the Secretary, Lok Sabha had been asked by him not to respond to the notice[207].

Similarly, a notice was received from the Patna High Court requiring the Chairman, Committee on Scheduled Castes and Scheduled Tribes to appear before the Court to show cause why the writ petition praying for the issue of a writ of *mandamus* for recognition of a community of Bihar as Scheduled Tribe be not allowed. The Speaker observed[208]:

> As per past practice of the House, the Chairman, Committee on the Welfare of Scheduled Castes and Scheduled Tribes has been asked not to respond to the notice. The Minister of Law, Justice and Company Affairs is being requested to apprise the Patna High Court of the correct constitutional position in this regard.

On 6 November, 1987, the Speaker informed the House that he had received a notice from the Assistant Registrar of the Supreme Court requiring his appearance before that Court in connection with a transfer petition seeking to

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204. *Ibid.*, 22-4-1970.
205. *Ibid.*
206. *Ibid.*, 1-8-1975.
207. *L.S. Deb.*, 12-4-1979, c. 268.
208. *Ibid.*, 5-4-1982, cc. 604-05; *P.D.* Vol. XXVII, 2, P 1.

transfer from the High Court of Delhi to the Supreme Court of India, a civil writ petition. The Speaker observed[209]:

> As per well established practice and convention of Lok Sabha, I have decided not to respond to the notice. I have passed on the relevant papers to the Minister of State in the Ministry of Law and Justice for taking such action as he may deem fit to apprise the court of the correct constitutional position and the well established conventions of the House.

On 27 July, 1988, the Speaker informed the House that he had received two notices from the Bombay High Court requiring his appearance before that Court for filing of an affidavit by him or by the Secretary-General, Lok Sabha, in connection with two writ petitions alleging that there was 'a variance between the Bill (The Central Excise Tariff Bill, 1985), as passed and gazetted with regard to the rate of the excise duty on the goods–cranes–Chapter sub-heading No. 8426-00'. The Speaker observed that as per well established practice and convention of the House he had decided not to respond to the notices and passed on the relevant papers to the Minister of Law and Justice for taking such action as he may deem fit to apprise the Court of the correct constitutional position and the well established conventions of the House[210].

On 27 December, 1990, the Speaker informed the House that on 7 December, 1990, he had received a notice from the Registrar of the High Court of Delhi requiring him to arrange to show cause in connection with Civil Writ Petition No. 3871 of 1990. The Writ Petition, *inter alia*, sought to challenge the validity and constitutionality of paragraphs 6 and 7 of the Tenth Schedule added by the Constitution (Fifty-second Amendment Act), 1985. The Speaker observed that as per well established practice and convention of the House, he had decided not to respond to the notice and passed on the relevant papers to the Minister of Law and Justice for taking such action as he may deem fit to apprise the High Court of the correct constitutional position and the well-established conventions of the House[211].

On 4 March, 1992, a notice was received by Shri Rabi Ray, member and former Speaker of the Lok Sabha, from the Assistant Registrar of the Supreme Court of India in the matter of Writ Petition No. 149 of 1992 requiring him to appear before the Supreme Court in person or through counsel on 10 March, 1992 to show cause to the Court as to why rule *nisi* in terms of the prayer of the Writ Petition be not issued. On the same day, the said notice, in original, was forwarded to the Speaker, Lok Sabha, by Shri Rabi Ray for his advice in the matter. On 9 March, 1992, the Speaker (Shri Shivraj V. Patil) placed the matter before the House and observed *inter alia* as follows:

> ...we had organised a meeting of the Presiding Officers of India and in that meeting nearly unanimously it was decided that the judgment given by the Supreme Court should be respected until the law is amended. We had also said in that meeting that the hon. Presiding Officers may not subject themselves to the jurisdiction of the Judiciary. We, as a very responsible institution, like to protect the prestige and dignity

209. *Ibid.*, 6-11-1987, c. 203, *P.D.* Vol. XXXIII, I, pp. 5-6.
210. *Ibid.*, 27-7-1988, c. 247.
211. *L.S. Deb.*, 27-12-1990, c. 581.

> of Judiciary as well as the prestige and dignity of the Legislature. Now here we have to strike a balance and that is very very important. ...I had expressed this point of view to the hon. leaders and to Shri Rabi Ray ji also. And I have said that the Speaker may not appear in the Court. The papers may be given to the Court and Court can decide in whatever fashion they want to. This matter can be brought to the notice of the Law Ministry also and the point of view of the Legislature can be presented to the Judiciary through the Law Ministry if it is necessary.
>
> But on the one hand, we will give the papers and we would accept and respect the decision, but on the other hand, we would not expect the Presiding Officers to go to the Court and subject themselves to the jurisdiction of the Court. That was the view I had expressed. And at the same time, I had said that I would bring this matter to the notice of this august House and with their agreement only we would come to a conclusion. So, I have brought this view to your notice. And, I think, if it is agreeable to us, we will follow this[212].

As regards privileges of Parliament *vis-a-vis* fundamental rights guaranteed to the citizen under the Constitution, the Supreme Court, in 1959, in a case involving freedom of speech and expression, held:

> The provisions of cl. (2) of article 194 indicate that the freedom of speech referred to in cl. (1), is different from the freedom of speech and expression guaranteed under article 19 (1) (a) and cannot be cut down in any way by any law contemplated by cl. (2) of article 19.

The Supreme Court also held that the provisions of articles 105(3) and 194(3) are constitutional laws and not ordinary laws made by Parliament or State Legislatures and that, therefore, they are as supreme as the provisions of articles relating to fundamental rights[213].

In 1964, however, there arose a case[214] giving rise to "important and complicated questions of law regarding the powers and jurisdiction of the High Court and its Judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the State Legislature and its members in relation to the High Court and its Judges in the discharge of their duties." The questions of law involved were of such public importance and constitutional significance that the President considered it expedient to refer the matter to the Supreme Court for its opinion. The main point of contention was the power claimed by the Legislatures under article 194(3) of the Constitution to commit a citizen for contempt by a general warrant with the consequent deprivation of the jurisdiction of the courts of law in respect of that committal.

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212. *L.S. Deb.*, 9-3-1992, c. 483.

213. *See M.S.M. Sharma v. Sri Krishna Sinha (Searchlight Case)*, A.I.R. 1959 S.C. 395.

214. The matter arose out of a conflict between the Legislative Assembly of Uttar Pradesh and the Allahabad High Court following the committal to prison of Keshav Singh by the Legislative Assembly of Uttar Pradesh for committing a breach of privilege and contempt of the House and his subsequent release on bail by the Lucknow Bench of the Allahabad High Court on a writ petition under article 226 of the Constitution and section 491 of the Code of Criminal Procedure, 1898.

The Allahabad High Court, however, dismissed the writ petition of Keshav Singh and ordered him to surrender to custody and serve out the remaining portion of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh– A.I.R. 1965, Allahabad 349.

The Supreme Court, in its majority opinion,[215] held that the powers and privileges conferred on State Legislatures by article 194(3) were subject to the fundamental rights and that the Legislatures did not have the privilege or power to the effect that their general warrants should be held to be conclusive. The Supreme Court held that in the *Case of Sharma* the general issue as to the relevance and applicability of all the fundamental rights guaranteed by Part III was not raised at all. Hence, it would not be correct "to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must yield to the former. The majority decision, therefore, must be taken to have settled that art. 19(1) (a) would not apply, and art. 21 would." The Court further held:

> In dealing with the effect of the provisions contained in clause (3) of art. 194, whenever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction.

The opinion of the Supreme Court was discussed by the Conference of Presiding Officers of Legislative Bodies in India held at Bombay on 11 and 12 January, 1965. The Conference unanimously adopted a resolution expressing its view that suitable amendments to articles 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and Committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution.

In the meantime, the Allahabad High Court upheld the power of the Legislative Assembly to commit for its contempt. The Government, therefore, decided that an amendment of the Constitution was not necessary. It was of the opinion that the Legislatures and the Judiciary would develop their own conventions in the light of the opinion given by the Supreme Court and the judgment pronounced by the Allahabad High Court[216].

In 1984, an Emergent Conference of the Presiding Officers of the Legislative Bodies was called to consider the issues arising and likely to arise out of two writ petitions filed before the Supreme Court in connection with two privilege cases before two State Legislatures, *viz.*, the Kerala Legislative Assembly and the Andhra Pradesh Legislative Council.

In the Kerala Legislative Assembly case, the Press Gallery pass of a press correspondent was cancelled by the Speaker, Kerala Legislative Assembly for casting reflections on the Speaker. The press correspondent filed a writ petition in the Kerala High Court challenging the cancellation of his pass which issued notices to the Speaker and Secretary, Kerala Legislature. The Kerala Government filed an appeal against this order of the High Court. The full Bench of the Kerala High Court considered the matter and upheld the order of the single judge observing that no interference was called for in appeal. The Full Bench also

215. *In the matter of Article* 143, A.I.R. 1965, S.C. 745.

216. *L.S. Deb.*, 8-3-1966, cc. 4082-83.

observed that "the immunity envisaged in article 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular. If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law[217].

Subsequently, the Kerala Government filed a special leave petition in the Supreme Court against the order and judgement of the Full Bench. On 7 February, 1984, the Constitution Bench of the Supreme Court admitted the appeal and stayed all further proceedings in the High Court.

In the Andhra Pradesh Legislative Council case, the Editor of *Eenadu* allegedly cast reflections on the House and its proceedings in his newspaper dated 10 March, 1983. The Chairman referred the matter to the Committee of Privileges who, in their report presented to the House on 27 February, 1984, reported that the Editor had committed serious breach of privilege and contempt of the House. The Committee recommended that the Editor be summoned to the Bar of the House and admonished. The Report of the Committee was adopted by the House without any discussion on 6 March, 1984. Before the House could take any action against the Editor, he filed a writ petition before the Supreme Court challenging the finding of the Committee.

On 25 April, 1984, an Emergent Conference of Presiding Officers of the Legislative Bodies in India was held at New Delhi to consider the issues arising out of the said cases pending in the Supreme Court. Addressing the Conference, the Chairman (Dr. Bal Ram Jakhar) stated *inter alia* as follows:

> It was only in January this year that we had met in Bombay for our annual deliberations. Since then important developments of considerable constitutional importance involving the Legislature, the Press and the Judiciary have taken place. Two privilege cases relating to the Andhra Pradesh Legislative Council and Kerala Legislative Assembly are now pending before the Supreme Court. We have specially assembled here today to consider the issues arising out of these privilege cases which are likely to vitally affect the effective functioning of our Legislatures ...We discussed this matter ...at our recent Conference of Presiding Officers in Bombay and, after a thorough consideration of all the aspects of the matter, adopted a resolution on 3 January, 1984, affirming that 'the Legislatures are supreme in their affairs in the conduct of the Business of the House and their powers, privileges and immunities granted by the Constitution of India, and no other authority shall have jurisdiction or power to interfere in that respect'.

After discussing the matter at great length, the Conference adopted the following Resolution unanimously:

> "The Presiding Officers of Legislative Bodies in India assembled in their Emergent Conference in New Delhi on 25th April, 1984, while reiterating the supremacy of the Legislature under the Constitution and faith in the independence of the Judiciary and the freedom of the Press, hereby unanimously resolve:
>
> (a) that under article 105/194 of the Constitution, the Legislatures in India had, and were intended by the founders of the Constitution to have, exclusive jurisdiction to decide all matters relating to the privileges of the House, their members and Committees without any interference from the courts of law or any other authority;

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217. *State of Kerala v. R. Sudarsan Babu and Others*, I.L.R. (Kerala) 1983, p. 661.

(b) that rules framed under article 118/208 are not subject to scrutiny by any court of law and the provision regarding their being subject to constitutional provisions refers to only the provisions regarding rules of procedure enshrined in the Constitution and not to all other provisions;

(c) that mutual trust and respect must exist between the Legislatures and courts, each recognizing the independence, dignity and jurisdiction of the other inasmuch as their roles are complementary to each other;

(d) that, if necessary, an amendment might be made in the Constitution so as to place the position beyond all shadow of doubt; and

(e) that the Committee of the Presiding Officers appointed at their Conference in Bombay in January, 1984 may continuously monitor further progress in the matter and from time to time make suitable recommendations to the Chairman of the Conference and finally to the Conference itself at its Calcutta meeting in October, 1984.

This Conference authorises the Chairman to take such other steps as he deems fit to achieve the above objectives".

Before, however, the writ petitions could come up for hearing before the Supreme Court, the Kerala Legislative Assembly was dissolved. The Andhra Pradesh Legislative Council was abolished on 1 June, 1985, by the Andhra Pradesh Legislative Council (Abolition) Act, 1985[218].

Typical Cases of Breach of Privilege and Contempt of the House

The power possessed by each House of Parliament and a House of the Legislature of a State to punish for contempt or breach of privilege is a general power of committing for contempt analogous to that possessed by the superior courts, and is in its nature discretionary. It is not possible to enumerate every act which might constitute a contempt of the House. However, some typical cases of breach of privilege and contempt are described below.

Misconduct in the Presence of the House or Committees thereof

Disrespect to the House collectively is the original and fundamental form of breach of privilege, and almost all breaches can be reduced to it. Any misconduct in the presence of the House or a Committee thereof, whether by members of Parliament or by members of the public who have been admitted to the galleries of the House or to sittings of Committees as witnesses, will constitute a contempt of the House. Such misconduct may be defined as a disorderly, contumacious, disrespectful or contemptuous behaviour in the presence of the House.

Some typical instances of misconduct on the part of strangers and witnesses in the presence of the House or Committees thereof, which have been treated as constituting contempt of the House, are—

interrupting or disturbing the proceedings of the House or of Committees thereof;

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218. Act No. 34 of 1985.

impersonating as a member of the House and taking the oath[219].

serving or executing a civil or criminal process within the precincts of the House while the House or a Committee thereof is sitting, without obtaining the leave of the House;

refusal by a witness to make an oath or affirmation before a Committee[220].

refusal by a witness to answer questions put by a Committee and refusal to produce documents in his possession;

prevaricating, giving false evidence[221], or wilfully suppressing truth or persistently misleading a Committee; and

trifling with a Committee[222], returning insulting answers to a Committee, or appearing in a state of intoxication before a Committee.

Disobedience of Orders of the House or its Committees

Disobedience to the orders of the House, whether such orders are of general application or require a particular individual to do or abstain from doing a particular act is a contempt of the House. Disobedience to the orders of a Committee of the House is treated as a contempt of the House itself, provided the order disobeyed is within the scope of the Committee's authority. To prevent, delay, obstruct or interfere with the execution of the orders of the House or a Committee thereof is also a contempt of the House. Examples of contempt are—

refusal or neglect of a witness or any other person, summoned to attend the House or a Committee thereof, to attend;

neglecting or refusing to withdraw from the House when directed to do so;

any stranger who does not withdraw when strangers are directed to withdraw by the Speaker while the House is sitting, may be removed from the precincts of the House or be taken into custody[223].

disclosure of proceedings or decisions of a secret sitting of the House in any manner[224].

disobedience to orders for the production before Committee, of papers or other documents;

absconding, in order to avoid being served with a summons to attend the House or a Committee thereof;

offering to give money or a situation of profit to a person for him to procure a letter in the possession of another person which the latter had been required to produce before a Committee;

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219. *B.K. Majumdar's Case*—L.S. Deb., 15-7-1957 and 12-8-1957.
220. *Smt. Indira Gandhi's Case*— P.D. 1979, Vol. XXIV, 2, pp. 33-44.
221. *S.C. Mukherjee's Case*—P.D. 1971, Vol. XVI, 1, pp. 1-8.
222. *A.P. L.C. Deb.*, 7-2-1975.
223. Rule 387A.
224. Rule 252.

endeavouring to persuade or induce a person to procure from another person a letter which such person had been required to produce before a Committee.

Presenting False, Forged or Fabricated Documents to the House or its Committees

It is a breach of privilege and contempt of the House to present false, forged or fabricated documents to either House or to a Committee thereof with a view to deceiving them. The necessity of preventing the production before the House of false or fabricated documents was emphasised by Speaker Mavalankar in the *Sinha Case*[225] when he stated in Lok Sabha:

> ...it is necessary, in the first instance, to examine the genuineness or otherwise of the documents laid on the Table of the House by Dr. Sinha; such an examination is necessary to prevent the production before the House of any documents which are not genuine or are fabricated, and to see that no member misleads intentionally or unintentionally any section of the House by referring to or placing on the Table of the House documents which are not genuine and are ultimately found to be forged or fabricated.

Tampering with Documents Presented to the House or its Committees

It is a contempt of the House to abstract any document from the custody of the Secretary-General[226] or to tamper with documents presented to the House or Committees thereof[227].

Speeches or Writings Reflecting on the House, its Committees or Members

It is a breach of privilege and contempt of the House to make speeches, or to print or publish any libels, reflecting on the character or proceedings of the House or its Committees, or any member of the House for or relating to his character or conduct as a member of Parliament[228].

Approaching an outsider against any decision of the House is tantamount to a reflection on the decision of the House and consequently a contempt of the House. If a member is not satisfied with a decision of the House, the proper course for him is to move the House itself to rescind its decision[229].

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225. *See* Report of Committee of Privileges in *Sinha Case* (1952); *H.P. Deb.* (II), 23-6-1952, c. 2334.

226. Rule 383.

227. Rule 269(3).

228. For casting aspersions on (i) the House, *see M.O. Mathai Case*, 9R(CPR-2LS); *Mulgaokar Case*, 4R (CPR-4LS); *Pratipaksha Case*, P.D. 1976, vol. XXI, 2, pp. 34-35; *Jagjit Singh Case* P.D. 1976, Vol. XXI, 2, pp. 38-39; *Thaniniram Case, Kerala L.A. Deb.*, 19-8-1971; *Hardwari Lal Case, Haryana v. S. Deb.*, 1-3-1973 and on (ii) a Parliamentary Committee, *see Sally's Case*, 5R (CPR-3LS); *Financial Express Case, L.S. Deb.*, 11-4-1969, cc. 220-22 and 16-4-1969, cc. 113-16, 7R (CPR-4LS); *Dainik Deshbandhu Case*, P.D. 1976, Vol. XXI, 2, p. 42; *P.R. Nayak and S.S. Khera Case*, P.D. 1974, Vol. XIX, 2, pp. 33-35; and *J.R.D. Tata Case*, IR (CPR-7LS).

229. *Balu's Case*, P.D. 1957, (1-1), p. 19.

Speeches and writings reflecting on the House or its Committees or members are punished by the House as a contempt on the principle that such acts "tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them." The House may punish not only contempts arising out of facts of which the ordinary courts will take cognizance, but those of which they cannot. Thus a libel on a member of Parliament may amount to a breach of privilege without being a libel under the civil or criminal law.

In order to constitute a breach of privilege, however, a libel upon a member of Parliament must concern his character or conduct in his capacity as a member of the House and must be "based on matters arising in the actual transaction of the business of the House." Reflections upon members otherwise than in their capacity as members do not, therefore, involve any breach of privilege or contempt of the House. Similarly, speeches or writings containing vague charges against members or criticising their parliamentary conduct in a strong language, particularly in the heat of a public controversy, without, however, imputing any *mala fides* are not treated by the House as a contempt or breach of privilege[230].

On a similar consideration, defamatory words against a particular section of the House or against a particular party in the House are not treated as constituting a contempt of the House, since the whole House is not affected. Thus, in a case in the Lok Sabha, where one political leader was reported in a newspaper to have said in a public speech that the representatives of a political party in the Legislatures were "people whom any first class magistrate would round up" and were "men without any appreciable means of livelihood", Speaker Ayyangar disallowed the question of privilege[231].

It is considered inconsistent with the dignity of the House to take any serious notice or action in the case of every defamatory statement which may technically constitute a breach of privilege or contempt of the House[232].

Similarly, the House may not necessarily take serious notice of defamatory statements made by irresponsible persons. In deciding such cases of libel, it is recognized that the extent and circumstances of the publication of a libellous statement as also the standing of the person making such a statement should be taken into account in considering whether privilege should be asserted in a particular case.

Examples of speeches and writings which have been held to constitute breach of privilege and contempt of the House may be categorized as under—

Reflections on the House[233].

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230. *Parl. Deb.*, (1888) 1323, c. 1312; and (1907) 171, c. 876; *H.C. Deb.*, (1919) 232, c. 2153; 8R (CPR-2LS), pp. 4-5; *L.S. Deb.*, 4-9-1972; and 7-4-1977.

231. *L.S. Deb.*, 20-4-1960, cc. 12729-34.

232. 9R (CPR-2LS).

233. *Case of Hindustan Standard*, 7R (CPR-2LS); M.O. Mathai, 9R (CPR-2LS); and *Dhirendra Bhowmick*, 11R (CPR-2LS); *Pratipaksha Case*, *L.S. Deb.*, 3-9-1974; *Hardwari Lal Case*, P.D. 1975, Vol. XXI, pp. 15-20; and *Shri Jyoti Basu's Case*, W.B. *L.A. Deb.*, 29-3-1972.

Reflections on the character and impartiality of the Speaker in the discharge of his duty[234].

Reflections on members in the execution of their duties[235].

Reflections on members serving on a Committee of the House[236].

Reflections on the conduct of the Chairman of a Committee of the House[237].

Statements made in Courts or in writ petitions or affidavits filed in Courts are not immune from action for breach of privilege or contempt of the House[238].

Publication of False or Distorted Report of Debates

Each House has the power to control and, if necessary, to prohibit the publication of its debates and proceedings[239]. Normally, no restrictions are imposed on reporting the proceedings of the House. But when the debates are reported *mala fide*, that is, when a wilful misrepresentation of the debates arises, the offender is liable to punishment for committing a breach of privilege and contempt of the House.

The publication of false or distorted, partial or injurious report of debates or proceedings of the House or its Committees or wilful misrepresentation or suppression of speeches of particular members, is an offence of the same

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234. *Cases of Amrita Bazar Patrika* (1950), P.D. (IV-1), p. 83; *Indian News Chronicle, P. Deb.*, (II), 20-9-1951 and 21-2-1951, cc. 2901-02, 2995-98; *Time* L.S. Deb., 17-11-1960, cc. 855-58, *Dhirendra Bhowmick* 11R (CPR-2LS), *Hindustan Times*, L.S. Deb., 28-7-1969, cc. 263-65, 268-70; 1-8-1966, cc. 242-43; 30-8-1972, cc. 200-211; 4-9-1974, c. 30; 8-3-1978, cc. 25-41; 11-6-1980, c. 183; *Hardwari Lal*, P.D. 1975, Vol. XX, 1, pp. 15-20; *Thaniniram, Kerala*, L.A. Deb., 19-8-1971, 23-10-1972 and 31-10-1972.

235. *Case of Daily Pratap, L.S. Deb.*, (II), 30-8-1955, cc. 11463-66; *Hindustan Standard Case*, 7R (CPR-4LS) *Maharashtra Times Case*, 6R (CPR-4LS); *Basumati Case, L.S. Deb.*, 21-3-1969, cc. 220-21, 9-4-1969, cc. 171-72; *Aryavarta Case, L.S. Deb.*, 24-4-1970, cc. 200-201 and 14-5-1970, cc. 229-30, *Assam Weekly Case, L.S. Deb.*, 23-6-1971 and 5-8-1971 *Nav Bharat Times Case, L.S. Deb.*, 10-8-1971; *Hindustan Case, L.S. Deb.*, 19-4-1973, *J.K. Organisation Case, L.S. Deb.*, 5-9-1973, cc. 44-49 and 19-11-1973, cc. 231-36; *Organiser Case, L.S. Deb.*, 23-4-1974, cc. 231-33 and 10-5-1974, cc. 215-16; *Patriot Case, L.S. Deb.*, 13-3-1974, cc. 227-29; *Hindustan Times Case, L.S. Deb.*, 16-7-1977, cc. 2-3, 18-7-1977, c. 223 and 3-3-1978, 2R (CPR-6LS); *National Herald Case, L.S. Deb.*, 29-8-1973, c. 211; *Illustrated Weekly of India Case, L.S. Deb.*, 22-12-1978, cc. 319-20; *R. Venkataraman Case, L.S. Deb.*, 16-9-1981, cc. 226-30; *Kerala Kaumudi Case*, R.S. Deb., 17-12-1970, cc. 123-26 and 5-4-1971; *T.A. Pai and Walamukhi Case*, R.S. Deb., 7-4-1972; *Organiser Case, Andhra Pradesh* V.S. Deb., 16-12-1968 and 10-12-1968; *All India Radio Case*, Andhra Pradesh *V.S. Deb.*, 1-7-1974; *Jansatta Case*, Guj. V.S. Deb., 29-3-1969, and *Arya Sandesh Case*, Guj. V.S. Deb., 28-11-1969.

236. *Case of Hindustan Standard*, 7R (CPR-2LS); *Dainik Deshbandhu Case*, P.D. 1976, Vol. XXI, 2, pp. 42-44.
See also P.Deb., (1857-58) 150, cc. 1022, 1063, 1198; H.C. Deb., (1909) 7, c. 235; (1921) 145, c. 831; *Bowles and Huntsman Case*, H.C. 95(1932-33).

237. *France's Case*, P. Deb., (1874) 219, cc. 752-755; *The Daily Herald Case*, H.C. 98(1924), H.C. Deb., (1924) 174, c. 748, *J.R.D. Tata Case*, IR (CPR-7LS), *L.S. Deb.*, 2-2-1980, cc. 1-2 and 19-8-1981.

238. *Madhu Limaye Case*, 4R (CPR-3LS), *P.R. Nayak and S.S. Kher Case*, 5R (CPR-5LS).

239. *M.S.M. Sharma v. Sri Krishna Sinha, (Searchlight Case)*, A.I.R. 1959, S.C. 395.

character as the publication of libels upon the House, its Committees or members; and the persons who are responsible for such publication are liable to be punished for a breach of privilege or contempt of the House[240].

> On 27 March, 1967, the Speaker informed the House that he had received notice of a question of privilege from two members against the *Hindustan Times* on the ground that the report published in its issue of 24 March, 1967, was a misrepresentation of the proceedings of the House of the previous day insofar as a statement attributed by the Special Correspondent of the paper to one member cast reflections on one of the signatories to the notice. The Speaker observed that according to the practice he would ask the Editor of the paper to state what he had to say before taking up the matter further[241].
>
> On 29 March, 1967, the Speaker read out to the House the letter of apology received from the Editor of the *Hindustan Times* to the effect that the publication of the news-item "was a genuine error". The House accepted the apology and directed that the letter of apology, together with the actual statement made by the member concerned in the House on 23 March, 1967, should be published on the front page of the newspaper in its next issue[242]. This was done by the newspaper.

However, the House may decide to refer the matter forthwith to the Committee of Privilege instead of the matter being first referred to the Editor of the newspaper concerned[243].

Thus, the breach of privilege or contempt of the House in this connection would be: (i) wilful misrepresentation of the proceedings in the House, or of the speeches of particular members; and (ii) wilful suppression of speeches of particular members.

It is not consistent with the dignity of the House to take too serious a view of every case of inaccurate reporting or misreporting. In most of the cases when an apology is tendered, investigation into the matter is not pursued but the matter is dropped by accepting the apology and asking the editor concerned to publish the apology in the subsequent issue of the newspaper[244].

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240. *Kalinga Case, L.S. Deb.*, 13-7-1967, cc. 11582-605, 3R (CPR-4LS); *Aryavarta Case, L.S. Deb.*, 26-8-1968, cc. 1645-46, 15-11-1968, cc. 245-47; *Hindustan Times Case, L.S. Deb.*, 28-7-1969, 1-8-1969, L.S. Bn. Pt. II, 2-8-1969; *All India Radio Case, L.S. Deb.*, 19-12-1974, cc. 191-208; 20-12-1974, cc. 238-42, *Times of India Case, L.S. Deb.*, 19-7-1978, cc. 245-52; 21-7-1978, cc. 227-28; 1-8-1978, cc. 275-85; 4R (CPR-6LS); *Satish Agarwal Case, L.S. Deb.*, 17-3-1982, cc. 288-90, 5R (CPR-7LS).

241. *L.S. Deb.*, 27-3-1967, cc. 978-79; *see* also, *L.S. Deb.*, 6-7-1967, 10-7-1967, 28-7-1969 and 28-4-1970, c. 189; 10-4-1972, c. 183; and 28-3-1974, cc. 199-203.

242. *Ibid.*, 29-3-1967–For the *Indian Express Case*, *see L.S. Deb.*, 6-7-1967 and 10-7-1967.

243. *L.S. Deb.*, 13-7-1967.

244. *Sami Sanj Case*, Report of the Privileges Committee, Gujarat Vidhan Sabha (presented to the House on 22-7-1967) and *Guj. V.S. Deb.*, 1-3-1968; *Aryavarta Case, L.S. Deb.*, 26-8-1968, cc. 1645-47 and 15-11-1968, cc. 245-47; *Indian Express Case, L.S. Deb.*, 7-8-1969, cc. 251-53 and 11-8-1969, cc. 209-10; *Janayugom Case*, 3rd Report of the Committee of Privileges, Kerala Legislative Assembly and *Kerala L.A. Deb.*, 11-8-1969; *All*

Publication of Expunged Proceedings

It is a breach of privilege and contempt of the House to punish expunged proceedings of the House[245]. In this regard, the Supreme Court has held:

> The effect in law of the order of the Speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech, *i.e.* including the expunged portion in derogation to the orders of the Speaker passed in the House may, *prima facie*, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news-item[246].

The Editor, publisher, printer or correspondent of a paper, in which the proceedings of the House, which had been expunged by the Speaker, have appeared may tender an unconditional apology and the House, if it accepts the apology, may agree to drop the matter.

The House may require the Editor of the paper in question to publish the correction and the apology in the next issue of the paper and, when he has done so, report the fact to the House through the Speaker[247].

Publication of Proceedings of Secret Sessions

Disclosures of the proceedings of decisions arrived at in a secret sitting of the House by any person in any manner, until the ban of secrecy is lifted by the House, is treated as a gross breach of privilege of the House[248] since the person concerned is purporting to disclose that which the House has ordered not to be disclosed. In such cases, the question whether the report or account is accurate or inaccurate is irrelevant.

Premature Publication of Proceedings, Evidence or Report of a Parliamentary Committee

It is a breach of privilege and contempt of the House to publish any part of the proceedings or evidence given before, or any document presented to a

India Radio Case, L.S. Deb., 22-12-1969, cc. 233-46; *Samachar Bharti Case, L.S. Deb.*, 10-3-1970; *Northern India Patrika Case, L.S. Deb.*, 28-4-1970, c. 189 and 13-5-1970, cc. 194-95; *and Indian Nation Case, L.S. Deb.*, 1-9-1970, cc. 237-38, *Times of India Case, L.S. Deb.*, 10-4-1972 and 21-4-1972; *Indian Express Case, L.S. Deb.*, 3-5-1973, cc. 143-63, 165-70 and 16-5-1973, *see* also *L.S. Deb.*, 8-8-1977, cc. 1-2, 24-4-1978, 22-3-1978, 29-8-1978, c. 211; 4-5-1979, c. 289, 8-7-1980, c. 270; *Alai O Sai Case, R.S. Deb.*, 1-8-1973, cc. 4514-29; *Motherland Case, R.S. Deb.*, 27-3-1973 and 31-3-1973, *see* also, *R.S. Deb.*, 23-8-1973, 10-5-1978, cc. 174-75, 24-7-1980, 18-3-1981, 29-4-1981, 18-8-1981, 19-2-1982; *Navjivan Case, U.P. V.S. Deb.*, 31-7-1972 and 1-8-1972; *Statesman Case, R.S. Deb.*, 1-6-1972; *Kanhaiyalal Mishra Case, U.P.V.S. Deb.*, 7-8-1974.

245. *See* Rules 380 and 381 for the powers of the Speaker to order expunction of words from debates.

246. *M.S.M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.

247. *Free Press Journal (Bombay) Case*; L.S. Deb., 21-12-1959, cc. 6264-66; 9-2-1960, cc. 110-11; Bn(II) 23-12-1959, para 3227; *Hindustan Times Case*, L.S. Deb., 10-11-1966, cc. 2549-52; 22-11-1966, cc. 4657-59; *Indian Express Case*, L.S. Deb., 25-3-1982, 31-3-1982, *Indian Express Case*, L.S. Deb., 24-7-1985.

248. Rule 251 and 252.

Parliamentary Committee before such proceedings or evidence or documents have been reported to the House[249].

The position was stated thus by the Committee of Privileges of Lok Sabha in the *Sundarayya* Case:

> It is in accordance with the law and practice of the privileges of Parliament that while a Committee of Parliament is holding its sittings from day to day, its proceedings should not be published nor any documents or papers which may have been presented to the Committee or the conclusions to which it may have arrived at referred to in the Press...It is highly desirable that no person, including a member of Parliament or Press, should, without proper verification, make or publish a statement or comment about any matter which is under consideration or investigation by a Committee of Parliament[250].

Similarly, any publication of a draft or approved report of a Parliamentary Committee, before such report has been presented to the House, is treated as a breach of privilege of the House.

Reflection on the Report of a Parliamentary Committee

No reflection can be made by anybody on the recommendations of a Parlaimentary Committee. The Committees are entitled to the same respect as Parliament. Therefore, if anybody casts reflection on the decisions or conduct of the Committee, it is a breach of privilege of the House[251].

Any person who is affected by the recommendation of a Parliamentary Committee can make a representation to the Committee and submit the true facts, according to him, to the Committee but he cannot ventilate them outside. Similarly, if the government wishes to say anything and contest any finding or conclusion or recommendation of the Committee, it has a right to put up its own case to the Committee direct, or to the Speaker who forwards it to the Chairman of the Committee for reconsideration of the matter. In a case, where a difference of opinion persists, both the statements are laid on the Table in a further report from the Committee[252].

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249. *Hindustan Standard Case*, 7R (CPR-2LS), *L.A.Deb.*, 6-3-1940, p. 979 and 12-3-1940, pp. 1183-84, P. Deb. (II) 27-3-1950, p. 2187; *Sundarayya Case* (CPR-ILS), *see* also 7R (CPR-2LS), *L.S. Deb.*, 2-8-1966, cc. 1941-72, 5-8-1966, cc. 2962-80, and 12-8-1966, cc. 4517-27; Rule and Dir. 55.

250. *Sundarayya Case*, (CPR-ILS), pp., 2-3.

251. *Bharat Sewak Samaj Case*, *L.S. Deb.*, 19-4-1965, cc. 9715-37; *Khadi and Village Industries Commission Case*, *L.S. Deb.*, 16-8-1965, cc. 95-96; *Financial Express Case*, L.S. Deb., 11-4-1969, cc. 220-22 and 16-4-1969, cc. 113-16, 7R (CPR-4LS); *Pipelines Inquiry Commission Case*, *L.S. Deb.*, 7-4-1972, cc. 168-82, 4R (CPR-5LS); *C.R. Das Gupta Case*, *L.S. Deb.*, 30-4-1974, c. 237-57 and 2-8-1974, cc. 141-42; *J.R.D. Tata Case*, L.S. Deb., 2-2-1980, cc. 1-2 IR (CPR-7LS), *L.S. Deb.*, 19-8-1981.

252. *L.S. Deb.*, 19-4-1965. cc. 9713-37; 16-8-1965, cc. 93-96; *P.R. Nayak* and *S.S. Khera Case*, *P.D.* 1974; Vol. XIX, 2, pp. 33-35; *Dainik Deshbandhu Case*, *M.P. V.S. Deb.*, 4-3-1974 and 14-8-1974; *C.R. Das Gupta Case*, *P.D.* 1975, Vol. XX, 1, pp. 1-2; *Deepika Case*, *P.D.* 1975, Vol. XX, 1, pp. 20-22.

Circulation of Petitions before presentation

Circulation of a document purported to be a petition to Parliament before its presentation to the House may be treated as a breach of privilege of the House.

On 2 August, 1966, a question of privilege was raised in the House *inter alia* on the ground that a person had got printed and circulated a pamphlet purporting to be a petition to Lok Sabha before its presentation to the House. It was also mentioned that the printed matter bore no printer's line[253]. On 23 August, 1966, the matter was referred to the Committee of Privileges for consideration and report.

The Committee concluded that there was no evidence in support of the allegation that the purported petition had been published and circulated by the person concerned except to the three members whom he had approached in connection with the presentation of the purported petition to Parliament. Though the circumstances of the case were very suspicious, particularly in view of the fact that the name of the printing press was not published in the pamphlet in question, the Committee recommended that in the absence of any proof of actual distribution and also in view of the apology tendered by the person concerned no further action need be taken in the matter[254].

Premature Publication of various other Matters connected with the Business of the House

According to the parliamentary practice, usage and convention it is improper, although technically not a breach of privilege or contempt of the House, to give for any reason premature publicity in the Press to notices of questions, adjournment motions, resolutions, answers to questions and other similar matters connected with the business of the House. If this takes place, the Speaker may express his displeasure against the person responsible for it. The following are instances of such improprieties and breaches of conventions—

Publication of questions before they are admitted by the Speaker and before their answers are given in the House or laid on the Table[255].

Publication of answers to questions before they are given in the House or laid on the Table[256].

Publication of notices of adjournment motions or resolutions before they are admitted by the Speaker or mentioned in the House[257].

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253. *L.S. Deb.*, 2-8-1966, cc. 1959-65.

254. 12R (CPR-3LS).

255. Rule 334A; *C.A.(Leg.) Deb.*, 6-2-1948, p. 336 and 10-2-1949, p. 511; *L.S. Deb.*, 10-9-1963, cc. 5314-20.

256. Rule 53; *see* also the Case of the Press Information Bureau in which apology of P.I.B. was accepted by the House—*L.S. Deb.*, 26-7-1957, cc. 5255-56 and 27-7-1957, cc. 5473-75.

257. *L.A. Deb.*, 27-3-1933, p. 2655; *C.A. (Leg.) Deb.*, 6-2-1948, p. 336; *H.P. Deb.*, 10-12-1952, cc. 1973-81; and 12-12-1952, c. 2123.

Premature publicity of notice of motion of no-confidence against the Speaker[258].

Premature publicity of resolution regarding removal of the Speaker[259].

Publication of the report of a Committee or Commission appointed by Government in pursuance of a resolution of the House or an undertaking given in the House[260].

Making of important policy announcements by Ministers outside the House while the House is in Session[261].

Obstructing Members in the Discharge of their Duties

Arrest of Members

Members of Parliament "should not be prevented by trifling interruptions from their attendance" on their parliamentary work. As ready noted, except on a criminal charge or under Preventive Detention Act or under Defence of India Act in the interest of public safety, it is a breach of privilege and contempt of the House to arrest or to cause the arrest of a member of Parliament, during the Session of the Parliament, or during the forty days preceding, or the forty days following, a Session.

Molestation of Members

It is a breach of privilege and contempt of the House to obstruct or molest a member while in the execution of his duties, that is while he is attending the House or when he is coming to, or going from, the House. Thus, insults offered to members on their way to or from the House have always been deemed high breaches of privilege[262]. Similarly, to molest a member on account of his conduct in Parliament is a breach of Privilege.

In the following instances members and others have been punished for molesting members—

Harassment and ill-treatment of a member while coming to or returning after attending the session of the House or a Committee meeting[263].

Assaulting members within the precincts of the House.

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258. *L.S. Deb.*, 14-3-1975, cc. 206–8.

259. *Ibid.*, 15-4-1987.

260. *P. Deb.*, (II), 5-4-1951, cc. 5981-82; *L.S. Deb.*, (II), 5-9-1955, cc. 12183–85; *Assam Tribune Case, P.D.* 1974, Vol. XIX, 1, p. 16.

261. *H.P. Deb.*, (II), 1-9-1953, cc. 1865-66; *L.S. Deb.*, 1-5-1959, cc. 14486-87; 26-11-1959, c. 1919; 4-12-1959, c. 3415; 17-12-1959, c. 5638; 18-3-1960, cc. 6718–22; 22-12-1960, c. 7074; 27-8-1963, cc. 2905-10; 18-12-1963, cc. 5418-21; 19-12-1963, cc. 5792-93; 2-5-1973, cc. 215-16; 6-4-1977, cc. 121–25; 30-11-1977, cc. 236-37; 7-12-1977, c. 222; 4-3-1974, cc. 223–34; 26-3-1980, 19-6-1980, c. 219; 26-6-1980, cc. 258-59; 2-4-1984, 16-8-1985; *R.S. Deb.*, 10-8-1970, 18-8-1970, cc, 255-56; 19-8-1970, c. 170; 4-3-1974, cc. 77–95; 19-6-1980 and 19-8-1985.

262. *Patwaris' Union Case, P.D.* 1974, Vol. XIX 2, pp. 46–47.

263. *Krishnan Manoharan's Case, P.D.* 1975, Vol. XX, 2 pp. 36-37; *Lalji Bhai Case, P.D.* 1976, Vol. XXI, 1, pp. 1-2; *A.K. Saha's Case, P.D.* 1976, Vol. XXI, 2, pp. 28–31.

Using insulting or abusive language against members within the precincts of the House;

Challenging members to fight on account of their behaviour in the House or any Committee thereof;

Sending insulting letters to members in reference to their conduct in Parliament;

Threatening to inflict pecuniary loss upon a member on account of his conduct in Parliament;

Intimidating and causing obstruction to a member in the discharge of his duties as a member by an outsider in the precincts of the House[264].

The privilege against assault or molestation is available to a member only when he is obstructed or in any way molested while discharging his duties as member of Parliament. In cases when members were assaulted while they were not performing any parliamentary duty it was held that no breach of privilege or contempt of the House had been committed[265].

Attempts by Improper Means to influence Members in their Parliamentary Conduct

Bribery

Any attempt to influence members by improper means in their parliamentary conduct is a breach of privilege. Thus, the offering to a member of a bribe or payment to influence him in his conduct as a member, or of any fee or reward in connection with the promotion of, or opposition to, any Bill, resolution, matter or thing, submitted or intended to be submitted to the House or any Committee thereof, has been treated as a breach of privilege. Further, it may be a contempt to offer any fee or reward to any member or officer of the House for drafting, advising upon or revising any Bill, resolution, matter or thing, intended to be submitted to the House or any Committee thereof. The offence, it may be emphasized, lies in making an offer of bribe and it has always been considered a breach of privilege even though no money has actually changed hands. Further, any offer of money, whether for payment to an association to which a member belongs or to a charity, conditional on the member taking up a case or bringing it to a successful conclusion, is objectionable[266].

An offer of money or other advantage to a member in order to induce him to take up a question with a Minister may also constitute a breach of privilege, since it is mainly because a member has the power to put down a question or raise the matter in other ways in the House that such cases are put to him.

It will, however, not constitute a breach of privilege or contempt of the House if the offer or payment of bribe is related to a business other than that

264. *Rajasthan V.S. Deb.*, 28-2-1969 and *11th Report of the Committee of Privileges*, 26-8-1969.

265. Cases of *Dr. Saradish Roy* and *B.S. Bhaura*, L.S. Deb., 17-11-1971; *Samar Guha's Case*, L.S. Deb., 19-11-1973; *Ram Hedaoo's Case*; L.S. Deb., 1-3-1974 and 16-3-1974, *Niren Ghosh's Case*, R.S. Deb., 19-2-1974, 14-5-1974 and 14-5-1975 and Cases of assault on Punjab M.L.A.s, *P.D.*, 1976, Vol XXI, 1, p. 14.

266. *Rajasthan V.S. Deb.*, 22-8-1969 and 26-8-1969 (Case of *Panchayat Pradhan*).

of the House. For instance, in the Import Licences case it was alleged that a member of Lok Sabha had taken bribe and forged signatures of the members for furthering the cause of certain applicants. The question of privilege was disallowed since it was considered that the conduct of the member, although improper, was not related to the business of the House. But, at the same time, it was held that as the allegations of bribery and forgery were very serious and unbecoming of a member of Parliament, he could be held guilty of lowering the dignity of the House[267].

Intimidation of Members

Any attempt to influence a member otherwise than by way of argument which has as its motive the intention to deter him from performing his duty, constitutes a breach of privilege. Thus, an attempt to intimidate members by threats with a view to influencing them in their parliamentary conduct is a breach of privilege.

Officers of Government can see, approach or write to members with a view to explaining to them the Government policies and administrative matters. But bringing pressure on members, obstructing them, impeding them, or using means which might restrict their freedom to work in the House is objectionable and would led to contempt of the House, depending upon the facts in each case.

In case, the members in their capacity as journalists, editors or practising lawyers are approached for professional work, that would not amount to influencing them in their work as members of Parliament[268].

> While there was no evidence to show that the then Chairman of the State Trading Corporation had attempted to influence the conduct of a member as a member of Parliament, by threats or any other improper means which might constitute a breach of privilege and contempt of the House, the Committee of Privileges felt, however, that the conduct of the Chairman in approaching the member and another with a view to influencing the member to stop writing articles or speaking in Parliament about the alleged irregularities and suspected malpractices of the State Trading Corporation was not proper. While the Committee were satisfied that the Chairman did not employ any improper means which might technically constitute a breach of privilege, they were of the view that as a public servant in a responsible position, he should have acted with more discretion[269].

Obstructing Officers of the House

The freedom from arrest and molestation in coming to, staying in and returning from the House is also extended to officers of the House in personal

267. *L.S. Deb.*, 2-12-1974, cc. 228-29; and *P.D.* 1975, Vol. XX, pp. 8–11.
See also the case of alleged attempt at bribing M.L.A.s in connection with election to Rajya Sabha—*U.P.V.S.Deb.*, 27-3-1974. For a fuller analysis of the Import License Case, *see S.L.Shakdher*: the Import Licenses Case: Some Important Privilege Issues, *JPI*, Vol. XXI, No. 3.

268. *L.S. Deb.*, 3-4-1968, cc. 1950-57.

269. *Patel Case*, 5R (CPR-4LS).

attendance upon the service of the House. It is consequently a breach of privilege and contempt of the House to arrest or to cause the arrest, except on a criminal charge, of any such person. Similarly, it is a contempt of the House to obstruct any officer of the House or any other person employed by the House, or entrusted with the execution of the orders of the House, while in the execution of his duty. Following are the examples of this kind of contempt:

> Insulting or abusing or assaulting or resisting an officer of the House, or any other person entrusted with or acting in the execution of his duty[270]

Refusal of civil officers of the Government to assist officers of the House when called upon to do so

In 1977, an important question arose as to whether a civil servant who is engaged in collecting information for answering a question in the House is protected by parliamentary privileges and whether any punishment given to him by a Minister will amount to contempt of the House. This question came up for consideration before the Committee of Privileges, Sixth Lok Sabha, pursuant to the adoption by the House on 18 November, 1977, of a motion referring to the Committee, a question of privilege against Shrimati Indira Gandhi, former Prime Minister, for allegedly causing obstruction, intimidation, harassment and institution of false cases against certain officials who were collecting information for answer to a certain question in the House.

The Attorney-General of India whose opinion was sought by the Committee was of the view that it was the responsibility of the Minister concerned to collect the required information to answer questions put to him in the House. Any agency employed by the Minister or public servants or persons entrusted with the work could not be regarded as servants or officers of the Lok Sabha. Therefore, the persons who suffered harassment were neither officers and servants of the House nor were they employed by, or entrusted with execution of the orders of either House. There were no orders given by the Lok Sabha; it was the Minister who had asked for material and no execution of any order of either House was involved. However, the question would remain whether the orders made by certain persons to carry out raids or arrests obstructed or impeded the Lok Sabha in the performance of its functions.

The Committee of Privileges, in their Third Report presented to the House on 21 November, 1978, were of the opinion that although, technically it was the responsibility of a Minister to furnish information to the House, any obstruction or harassment to officials through whom he collects the required information either to deter them from doing their duty or to impair the will or efficiency of others in similar situations, would impede and stifle the functioning of Parliament. "Such officials should, therefore, be deemed to be in the service of the House, and entrusted with the execution of the orders or the performance of the functions of the House, and any obstruction or harassment caused to them while doing their legitimate duties in collecting such information asked for by Parliament can be treated as a contempt of the House". In a broad sense, "all persons

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270. Case of *Raj Narain* and other members of *U.P. Vidhan Sabha* (1959), *P.D.*

who serve or advance the purpose and functions of Parliament are deemed to be its officers for the limited purpose of the law of contempt".

The Sixth Lok Sabha adopted a motion on 19 December, 1978 agreeing with the recommendation and findings of the Committee of Privileges contained in their Third Report.

The Seventh Lok Sabha, however, rescinded[271] the above motion of the Sixth Lok Sabha by a motion on 7 May, 1981, holding that the findings contained in the Third Report of the Committee of Privileges of Sixth Lok Sabha were in total contravention of parliamentary rules, precedents and conventions and they unduly extended the immunity enjoyed only by the officers of Parliament in the discharge of their duties to an indeterminate number of persons totally unconnected with Parliament. The House resolved that the findings of the Committee and the decision of the House were inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and the basic safeguards assured to all and enshrined in the Constitution.

Molestation of Officers of the House

Besides, acts directly tending to obstruct officers of the House in the execution of their duty, any conduct which may have a tendency indirectly to deter them from doing their duty in the future may also be treated by the House as a breach of privilege or contempt. Thus, it is a breach of privilege and contempt of the House to molest an officer of the House for executing its orders or the orders of its Committees or on account of anything done by him in the course of his duty. Similarly, vexation of officers of the House by proceeding against them in the courts for their conduct in obedience to the orders of the House or in conformity with its practice, is a breach of privilege.

The present practice is, however, that when an action is brought by a person in a court of law against an officer or servant of the House for his conduct in obedience to the orders of the House or in confirmity with its practice, the House instructs the Attorney-General to arrange for appearance and representation in the court on behalf of the officer concerned.[272]

Obstructing and Molestation of Witnesses

It is a contempt of the House to arrest a witness summoned to attend before the House or its Committees. Similarly, it is a contempt of the House to molest any witness during his attendance in the House or any Committee thereof, or later on account of his attendance or evidence as such witness.[273] Examples of this kind of contempt are—

Assaulting a witness in the precincts of the House;

Using threatening, insulting or abusive language to a witness in the precincts of the House;

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271. *L.S. Deb.*, 7-5-1981, cc. 440-41.
272. *Blitz Case, L.S. Deb.*, 25-8-1961, cc. 5048-58.
273. *K. Ravindran Case, L.S. Deb.*, 10-7-1980, cc. 211-12.

Calling any person to account or censuring him for evidence given by him before the House or any Committee thereof;

Assaulting persons for having given evidence before Committee or on account of the evidence which they have given before Committees; and

Bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or before any Committee thereof.

Tampering with Witnesses

It is a breach of privilege and contempt of the House to tamper with a witness in regard to the evidence to be given before the House or any Committee thereof, or to attempt, directly or indrectly, to deter or hinder any person from appearing or giving evidence before the House or any Committee thereof.

No Protection to Constituents and others from consequences of disclosure of information to Members of Parliament

Unlike witnesses who are protected by the House from the consequences of evidence given by them before the House or any Committee thereof, persons, including constituents, who provide information voluntarily to members of Parliament in their personal capacity, do not enjoy any protection, apart from the qualified privilege available under the ordinary law of the land.

Cases not amounting to a Breach of Privilege or Contempt of the House

As already stated, giving of premature publicity to various matters connected with the business of the House is an act of impropriety but not a breach of privilege or contempt of the House[274]. There are certain other actions which may be improper but they do not, technically speaking, constitute a breach of privilege or contempt of the House. Some typical cases in this category are described below—

If any statement is made on the floor of the House by a member or Minister which another member believes to be untrue, incomplete or incorrect, it does not constitute a breach of privilege. If an incorrect statement is made, there are other remedies by which the issue can be decided[275]. In order to constitute a breach of privilege or contempt of the House, it has to be proved that the statement was not only wrong or misleading but it was made deliberately to mislead the House. A breach of privilege can arise only when the member or the Minister makes a false statement or an incorrect statement wilfully, deliberately and knowingly[276].

When two members sought to raise a question of privilege against the Minister of Food or Agriculture on the ground that he had suppressed

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274. Rule 334A.
275. *Dir.* 115; *L.S. Deb.*, 13-12-1973, cc. 15064.
276. *L.S. Deb.*, 10-3-1964, cc. 4644–46; 18-4-1966, c. 11352; 2-12-1974, cc. 227-28.

the truth and misled the Public Accounts Committee, when he appeared before them, the Speaker *inter alia* ruled:

> Incorrect statements made by a Minister cannot make any basis for a breach of privilege. It is only a deliberate lie, if it can be substantiated, that would certainly bring the offence within the meaning of breach of privilege. Other lapses, other mistakes do not come under this category, because every day we find that Ministers make their statements in which they make mistakes and which they correct afterwards[277].

Leakage of budget proposals or official secrets does not form any basis for a breach of privilege.

> On 3 March, 1956, when notices of adjournment motions were given by two members in connection with an alleged leakage of budget proposals, another member contended that it constituted an express breach of privilege of the House. In this connection, the Speaker gave the following ruling:
>
> > The precedents of the United Kindom should guide us in determining whether any breach of privilege was in fact committed in the present case. So far as I can gather, only two cases occurred in which the House of Commons took notice of the leakage of the budget proposals. They are known as the Thomas case and the Dalton case. In neither of these cases was the leakage treated as a breach of privilege of the House nor were the cases sent to the Committee of Privileges for inquiry. The prevailing view in the House of Commons is that until the financial proposals are placed before the House of Commons, they are an official secret. A reference of the present leakage to the Committee of Privileges does not, therefore, arise[278].

Statements made by Ministers at party meetings are not privileged[279].

No privilege of Parliament is involved if statements on matter of public interest are not first made in the House and are made outside. Such actions are against conventions and propriety but do not constitute any basis on which breaches of privilege can be founded[280].

It is not a breach of privilege if documents intended for members are circulated to the Press and non-members first, but such acts are deprecated.

> A summary of the Bank Award Commission Report was laid on the Table. A question of breach of privilege was raised in the House on

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277. *Subramanyam Case, L.S. Deb.*, 17-8-1966, cc. 5165-78. *See* also, *L.S. Deb.*, 22-8-1966, cc. 6048-66; 24-8-1966, cc. 6765-84; 5-9-1966, cc. 9221-24; 13-12-1973, cc. 150-64; 2-12-1974, cc. 227-29; 2-2-1980, cc. 2-5; and 7-9-1981, cc. 313-17.

278. *L.S. Deb.*, (II), 19-3-1956, cc. 2912-13. *See* also, *L.S. Deb.*, 10-3-1959; 18-4-1964; 25-7-1974, cc. 171-87; 29-7-1974, cc. 186-99; 30-7-1974, cc. 124-27; 23-2-1981, cc. 288-90; and 25-2-1982, cc. 275-77.

279. Similarly, no privilege of Parliament is involved if—important statements regarding the Cabinet decisions are made by a party functionary when the House is in session–*L.S. Deb.*, 14-4-1965, cc. 9200-04; members of a party are allegedly threatened at a party meeting–*L.S. Deb.*, 1-9-1970, cc. 236-37; a directive is issued by a party to its members not to hob-nob with members of other parties–*L.S. Deb.*, 1-8-1973, cc. 4514-29; a member is allegedly intimidated by his party leader—*L.S. Deb.*, 8-8-1974, cc. 158-66; a meeting of parliamentary party is convened to bring about a party decision regarding action taken on a Report of Committee of Privileges–*L.S. Deb.*, 22-12-1978, c. 318.

280. *L.S. Deb.*, 5-9-1955, c. 12194; 19-12-1963, cc. 5792-93; 12-9-1963, cc. 5784-800; 18-12-1963, cc. 5418-21; 19-12-1963, cc. 5792-93; 26-3-1980; 16-8-1985; *R.S. Deb.*, 18-8-1970, cc. 255-56; 19-8-1970, cc. 255-56, 19-8-1985; cc. 250-252.

22 August, 1955. Thereupon, the Speaker observed:

> Whenever a report is to be presented to Parliament, Government have to be very particular to see that a summary of it or information therefrom is not published in the Press before the report is presented to Parliament. What has happened now is a very irregular practice and I do not know who is responsible for it. The Minister has promised to inquire and let us await the results of his inquiry[281].

On 5 September, 1955, the Minister expressed his inability in locating how the leakage had occurred. The member who had raised the question of privilege was not satisfied with the statement of the Minister and there was demand for reference of the case to the Committee of Privileges. The Speaker ruled *inter alia* as follows:

> It is equally the duty of the Press to help observance of parliamentary conventions; it is a wrong practice to obtain information in that manner and give publicity to it before a particular matter is placed before Parliament. It was undoubtedly improper for that paper to do so[282].

When the findings and conclusions of the Ganganath Committee which had been appointed by the Government to inquire into the allegations regarding the import of sugar in pursuance of the assurance given by the Prime Minister on the floor of the House on 17 November, 1950, were released to the Press before the report was laid on the Table, a question of privilege was raised. On 5 April, 1951, the Deputy Speaker ruled:

> ...this was not a Committee appointed by the House and it had no obligation to submit its report to the House...No doubt, if any Committee is appointed by Government in pursuance of any resolution or wishes of the House and not independently, while the House is sitting, naturally the House would expect that such Committee's proceedings should be disclosed to itself first. Subject to this observation, there is absolutely no breach of privilege in the present case[283].

Where the report of a Committee has been presented to the House, its publication by the Press before copies of the report have been made available to members is undesirable, but it is not a breach of privilege of the House[284].

Breaches of rules, conventions and practices are not regarded as breaches of privilege. If breaches of rules, etc., take place, they may invite the displeasure of the Speaker or censure of the House on a proper motion[285].

No breach of privilege is involved if a member's speech has not been covered in full or has been covered in a summary form in the Press or over the Radio or T.V. It is also not a breach of privilege if a particular speech is not covered as adequately as other speeches, or is not given prominence.

Seizure of a petition form addressed to the House and intended to be presented to it through a member from a person arrested by the Police on a criminal charge has not been considered a breach of privilege or contempt of the House[286].

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281. *L.S. Deb.*, (II), 22-8-1955, c. 10778.
282. *Ibid.*, 5-9-1955, cc. 12183-85.
283. *P. Deb.*, (II), 5-4-1951, cc. 5981-82.
284. *Parl. Deb.*, (1893-94) 14, c. 812; *H.C. Deb.*, (1947-48) 54, cc. 1125-26.
285. *L.S. Deb.*, 12-8-1966, cc. 4517-27; 15-4-1987, c. 560.
286. 3R (CPR-3LS).

Undesirable, undignified and unbecoming behaviour on the part of a member at the time of President's Address to both the Houses of Parliament assembled together under article 85 is not a matter involving a breach of privilege or contempt of the House, but is one of conduct of members and maintaining decorum and dignity by them[287].

Removal of offending members from the House under orders of the Governor at the time of his Address to members of the Legislature under article 176 is not a breach of privilege of the House or its members[288].

A statement reported to have been made by a Chief Minister that appointment of a parliamentary committee to study the situation in a part of his State would amount to interference in the affairs of that State has not been held to constitute a breach of privilege and contempt of Parliament[289]. Similarly, a statement reported to have been made by a Chief Minister opposing a suggestion made in the Lok Sabha for sending a parliamentary delegation to study the situation in his State has been held not to constitute a breach of privilege or contempt of the House[290].

Non-implementation of an assurance given by a Minister on the floor of the House is neither a breach of privilege nor a contempt of the House, for the process of implementation of a policy matter is conditional on a number of factors contributing to such policy[291]. In the *Import Licenses Case*, the Speaker *inter alia* ruled that the House "has various remedies available to it to call the Government to account and secure compliance with its directions, but inadequate compliance of an assurance or delay in its fulfilment will not constitute a breach of privilege[292]."

If the Appropriation Accounts are laid on the Table of the Legislative Council before they are so laid on the Table of the Legislative Assembly, there is no breach of privilege, though it would be more appropriate if they were first laid before the Assembly which votes or grants moneys to the Governments[293].

No question of privilege is involved if letters of members are intercepted by censor because censorship is provided under the law. Section 26 of the Post Office Act, 1898, authorises censorship on the occurrence of any public emergency or in the interest of public safety or tranquillity[294]. No question of privilege is likewise involved if the telephones of members are tapped[295].

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287. *L.S. Deb.*, 20-2-1968, cc. 2185-86, I and 2R of the Committee on the Conduct of a Member during President's Address (1971) presented to the House, on 15-11-1971 and 14-4-1972, respectively.
288. *Report of the Committee of Privileges, Rajasthan Legislative Assembly* (Adopted by the Assembly on 24-9-1966).
289. *L.S. Deb.*, 7-4-1969, cc. 241-65.
290. *Ibid.*, 21-4-1969, c. 2469.
291. *P.D.* (1957), Vol. I, No. 2, Pt. III, pp. 11-19; *L.S. Deb.*, 16-8-1965, cc. 145-55; and *P.D.* 1976, Vol. XXI, I pp. 14-15.
292. *L.S. Deb.*, 2-12-1974, cc. 225-26, S.L. Shakdher: *The Import Licenses Case, J.P.I.* XXI, 3.
293. *P.D.* (1962), Vol. VI, 2, Pt. III, pp. 31-32.
294. *Madras L.A. Deb.*, 1954, Vol. XIX, pp. 578-81; *P.D.* (1960), Vol. IV, No. 3, Pt. III, pp. 65-66.
295. *L.S. Deb.*, 29-4-1960, cc. 14709-11; 28-8-1981, cc. 251-55.

Curtailment of time allotted for discussion of certain business in the House by the Speaker is no breach of privilege. The Speaker is free to fix any time. The Speaker cannot be the subject of any breach of privilege motion since he is the protector of privileges[296].

If the correspondence of a member under detention, addressed to the Speaker, reaches him through the Secretary, Home Department, it does not involve a matter of privilege[297].

No question of privilege arises when a Minister decides not to make a statement in the House giving reasons for his resignation. However, if he releases such a statement to the Press without first making it in the House, it would amount to contempt[298].

Alleged use of forged signatures of certain members on a telegram or by a news agency, not being a reflection on Parliament as a whole, is not a breach of privilege. Though it is a serious matter, the remedy lies not with the House but outside it[299].

Reflection on the conduct of members of a Legislature as members of an electoral college is not a breach of privilege, because the allegations and aspersions have nothing to do with their duties to the House as such[300].

When the draft report of a parliamentary committee has been presented to the House, though not yet available to members in printed form, it is no offence against the House to publish the findings of the committee.

There is no breach of privilege if a member goes on tour and is not received by some officer[301].

Refusal by a Government official to show to the members of Parliament, files of his department is not a breach of privilege[302].

Announcing increase in levies by the Government on the eve of the Budget Session has been held not to be a breach of privilege[303].

Procedure for dealing with Questions of Privilege

The procedure for dealing with questions of privilege is broadly laid down in the Rules[304]. A question of privilege may be raised in the House only after obtaining the consent of the Speaker[305]; this has been made obligatory so that the time of the House is not taken up by raising a matter which, on the face of it, is not admissible[306]. A member who wishes to raise a question of privilege is,

296. *P.D.* (1963), Vol. VIII, pp. 11-12.
297. *Madras L.A. Deb.*, 5-2-1963, cc. 622-24.
298. *U.P. L.A. Deb.*, 21-8-1959, pp. 482-90.
299. *H.C. Deb.*, 19-4-1948, c. 1448 and 26-4-1948, c. 32.
300. *J.P.I.* Vol. XVI, No. 3, p. 97.
301. *L.S. Deb.*, 3-3-1969, c. 225.
302. *Ibid.*, 22-8-1973, cc. 226-35.
303. *Ibid.*, 9-6-1980, cc. 275-76; 22-2-1983; *R.S. Deb.*, and 19-2-1982, cc. 172-85.
304. Rules 222 to 228 and 313 to 316.
305. Rule 222.
306. *C.A. (Leg.), Deb. (II)*, 20-12-1949, pp. 829 and 847-49; *P. Deb. (II)*, 10-3-1950, p. 1338 and 13-11-1950, cc. 937-38; *H.P. Deb., (II)* 13-5-1953, c. 6479; and *L.S. Deb.*, 9-5-1957, cc. 2656-57; 29-5-1957, cc. 2652-58.

therefore, required to give notice in writing to the Secretary-General by 10.00 hrs. on the day the question is proposed to be raised[307]. If the question of privilege is based on a document, the notice must be accompanied by that document[308]. On receipt of the notice, the matter is considered by the Speaker who may either give or withhold his consent to the raising of the question of privilege in the House. The member concerned is then informed of the Speaker's decision. Where the matter is of an immediate nature and there is no time for a notice being given, the Speaker has permitted a member to raise a question of privilege without previous notice in writing[309].

The question whether a matter complained of is actually a breach of privilege or contempt of the House is entirely for the House to decide, as the House alone is the master of its privileges. The Speaker, in giving his consent to the raising of a matter in the House as a question of privilege, considers only whether the matter is fit for further inquiry and whether it should be brought before the House. In giving his consent, the Speaker is guided by the following conditions prescribed for the admissibility of questions of privilege[310]:

not more than one question shall be raised at the same sitting;

the question shall be restricted to a specific matter of recent occurrence; and

the matter requires the intervention of the House.

A question of privilege should thus be raised by a member at the earliest opportunity and should require the interposition of the House[311]. Even a delay of one day might prove fatal to the notice of privilege, provided the specific matter sought to be raised was of urgent importance at a particular time[312].

A matter which is postponed to suit the convenience of the House or to give the Speaker an opportunity to consider it fully does not lose priority when it is eventually allowed to be raised. It is for the Speaker to decide whether the subject matter of a question of privilege is a specific matter of recent occurrence[313].

The Speaker, before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether he should give his consent to the raising of the matter in the House, may give an opportunity to the person incriminated to explain his case to the Speaker[314]. The Speaker

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307. Rule 223.

308. *Ibid.*

309. *L.S. Deb.* (II), 12-9-1956, cc. 6791-92. The member had complained that he had been obstructed by police while entering the Parliament House Estate to attend the sitting of the House that day. *See* also, *L.S. Deb.*, 7-5-1959.

310. Rule 224.

311. *P. Deb.* (II), 30-11-1950, cc. 937-38.

312. *L.S. Deb.*, 17-8-1966, c. 5167. *See* also *P. Deb.* (II), 30-11-1950, cc. 937-38.

313. *M. S. M. Sharma* v. *Sri Krishna Sinha*, A.I.R. 1959 S.C. 395; and *M.S.M. Sharma* v. *Sri Krishna Sinha*, A.I.R 1960 S.C. 1186.

314. *L.S. Deb.*, 4-4-1961, cc. 9034-38; 2-5-1961, cc. 14904-08; 5-8-1966, cc. 2980-81 and cc. 2983-95; 3-3-1969, cc. 225-26; 18-3-1969, cc. 200-01; 9-4-1969, cc. 171-72; 10-8-1971, c. 219; 8-5-1973, cc. 186-87; 5-9-1973, c. 49; 23-4-1974, c. 233; 22-12-1978, cc. 314-25.

may, if he thinks fit, also hear views of members before deciding admissibility of a question of privilege[315]. When a member seeks to raise a question of privilege against another member, the Speaker, before giving his consent to the raising of the matter in the House, always gives an opportunity to the member complained against to place before the Speaker or the House such facts as may be pertinent to the matter[316].

> While seeking to raise a question of privilege, a member should lay before the House all the necessary evidence in support of his contention. Production of further evidence at a subsequent date is not admissible. No privilege issue can, therefore, be raised on a matter that has previously been decided on a question of privilege even though the member might have in his possession fresh material to support his contention. In such a case, the member has recourse to other remedies; he may raise an appropriate debate on the matter.

There has been, however, an occasion where although the Speaker had withheld his consent to the raising of a question of privilege, the members again sought to raise the matter in the House on the next day. The Speaker, thereupon, observed that if there were any documents or evidence, the members were free to adduce the same by way of further notices and he would examine those notices[317].

If a newspaper reports incorrectly the proceedings of the House or comments casting reflection on the House or its members, the Speaker may, in the first instance, give an opportunity to the editor of the newspaper to present his case before giving his consent to the raising of a question of privilege in the House[318]. The Speaker normally withholds his consent to the raising of a question of privilege after the editor or press correspondent of the newspaper concerned has expressed regret or published a correction[319].

Occasionally, members have raised as questions of privilege, matters affecting them personally at the hands of the police, *i.e.* for alleged abuses, ill-treatment or obstruction by the police authorities.

> When the Speaker receives any complaint or notice thereof from a member regarding an assault on or misbehaviour with him by the police authorities, the Speaker might, if he is satisfied, permit the member to

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315. *Ibid.*, 23-9-1958, cc. 8053-84; 27-9-1958, c. 8987; 7-8-1959, c. 1227; 21-4-1965, cc. 10238-75.
316. *Ibid.*, 7-5-1959, cc. 15576-79; 9-5-1959, cc. 16040-42–For *Sheel Bhadra Yajee Case, see R.S. Deb.*, 30-5-1967, 5-6-1967 and 19-6-1967.
317. *R. Venkataraman Case, L.S. Deb.*, 7-9-1981, cc. 313-25 and 8-9-1981, cc. 278-85.
318. *L.S. Deb.*, 4-4-1961, cc. 9034-38, 2-5-1961, cc. 14904-08; 5-8-1966, cc. 2980-81 and cc. 2983-95; 9-4-1969, cc. 171-72; 10-8-1971, c. 219; 8-5-1973, cc. 186-87; 22-12-1978, cc. 314-15.
319. *Ibid.*, 18-9-1963, cc. 6786-87; 5-8-1966, cc. 2980-81, cc. 2983-85; 3-3-1969, cc. 225-26; 18-3-1969; 25-3-1969; 9-4-1969; cc. 171-72; 14-5-1970, cc. 229-30; 22-11-1971; 15-5-1973, cc. 18-19; 10-5-1974, c. 233; 30-8-1976, cc. 185-87; 22-12-1978, cc. 319-20; *R.S. Deb.*, 29-11-1967 and 5-4-1971.

make a statement in the House under the Rule 377[320]. In such case, the member may be asked to submit to the Speaker in advance a copy of the statement that he would make in the House in this connection. Thereafter, the Speaker might get the Government version on the facts. In the light of the facts given by the two sides, the Speaker might decide whether he should allow the matter to be raised in the House as a question of privilege.

Successive Speakers have, however, held that an assault on or misbehaviour with a member unconnected with his parliamentary work or mere discourtesy by the police or officers of the Government are not matters of privilege, and such complaints should be referred by members to the Ministers direct.

Leave of the House for raising a question of privilege

After the Speaker has given his consent to the raising of a matter in the House as a question of privilege, the member who tabled the notice has, when called by the Speaker, to ask for leave of the House to raise the question of privilege[321]. While asking for such leave, the member concerned is permitted to make only a short statement relevant to the question of privilege[322]. The Speaker has, in his discretion, sometimes permitted other members also to make short statements relevant to the question of privilege[323]. If objection to leave being granted is taken, the Speaker requests those members who are in favour of leave being granted to rise in their places[324]. If twenty-five or more members rise accordingly, the House is deemed to have granted leave to raise the matter and the Speaker declares that leave is granted; otherwise the Speaker informs the member that he does not have leave of the House to raise the matter.

Leave to raise a question of privilege in the House can be asked for only by the member who has given notice of the question of privilege. He cannot authorise another member to do so on his behalf[325].

A question of privilege is accorded priority over other items in the List of Business. Accordingly, leave to raise a question of privilege is asked for after the question and before other items in the List are taken up[326].

Urgent matters requiring immediate intervention of the House may, however, be allowed by the Speaker to be raised at any time during the course of a sitting after the disposal of questions but such occasions are rare[327].

Consideration of a Question of Privilege

After leave is granted by the House for raising a question of privilege, the matter may either be considered and decided by the House itself, or it may be

320. The Rule deals with raising a matter which is not a point of order. *See Bhogendra Jha Case, L.S. Deb.*, 6-4-1981, cc. 306-08; *Satyanarayan Jatiya Case, L.S. Deb.*, 22-12-1981, cc. 359-64, *Dr. Golam Yazdani Case, L.S. Deb.*, 5-11-1982, cc. 354-56.

321. Rule 225(1).

322. *Ibid.*

323. *L.S. Deb.*, 11-5-1954, cc. 5999-6000; 12-5-1968, cc. 1046-81; 14-12-1987, c. 27.

324. Rule 225(2). *L.S. Deb.*, 27-9-1958, c. 8991; 10-2-1959, c. 149.

325. *L.S. Deb.*, 25-9-1958, cc. 8350-52.

326. Rule 225(1) and Dir. 2.

327. Rules 225(1), Second Proviso. *See* also *L.S. Deb.*, (II), 12-9-1956, cc. 6791-92 and *L.S. Deb.*, 25-9-1961, c. 6060.

referred by the House, on a motion made by any member, to the Committee of Privileges for examination, investigation and report[328]. The usual practice is to refer the matter of complaint to the Committee of Privileges, and the House defers its judgment until the report of the Committee has been presented[329]. However, in cases where the House finds that the matter is too trivial or that the offender has already tendered an adequate apology, the House itself disposes of the matter by deciding to proceed no further in the matter[330]. Further, in case there is difference of opinion in the House about the alleged breach of privilege, the House may decide the issue on the floor instead of referring the matter to the Committee of Privileges.

> On 5 April, 1967, a question of privilege was raised in the House alleging that the Ministers of External Affairs and Commerce and the Prime Minister had misled the House by making misleading and untruthful statements in the House[331]. A motion was moved to refer the matter to the Privileges Committee. The Minister of Parliamentary Affairs moved a counter motion to the effect that Ministers concerned had not committed any breach of privilege of the House.
>
> Thereupon, a point of order was raised that the second motion which had merely the effect of a negative vote, was out of order under Rule 344. Citing Rule 226, the Speaker observed that either one of the two motions or both the motions could be made thereunder, and ruled[332].
>
> The original motion states that a *prima facie* case of breach of privilege has been made out and the matter should be referred to the Committee of Privileges for investigation. If this motion is voted down, it only means that the matter is not referred to the Committee of Privileges, and the substantive part of the question of privilege, namely, whether a breach of privilege or contempt of the House has been committed remains, and the House has to give a decision on the merits of the case.
>
> Therefore, the Minister of Parliamentary Affairs is within his right to invite the House to come to a decision whether any breach of privilege or contempt of the House has been committed.
>
> I rule that both the motions are in order and they should be put to the vote of the House one after the other.

After a lengthy debate in which the Ministers of External Affairs and Commerce explained the facts of the matter, the original motion was put to vote first and negatived. Thereafter, the second motion was put to vote and adopted by the House.

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328. Rule 226. *See* also *Majumdar's Case, L.S. Deb.*, 15-7-1957, cc. 3535-39; and *K.M. Koushik's Case, L.S. Deb.*, 18-11-1970, c. 2361; 3-12-1970, cc. 185-86.

329. *Namboodiripad's Case, L.S. Deb.*, 27-11-1958, cc. 1669-1756; *Mathai's Case, L.S. Deb.*, 10-2-1959, cc. 140-72; *Bhowmick's Case, L.S. Deb.*, 30-8-1960, cc. 5652-54; *Blitz Case, L.S. Deb.*, 20-4-1961, cc. 12659-70.

330. *Shibban Lal Saksena's Case, P. Deb.*, (II), 1-3-1940, pp. 1019-45; *Press Information Bureau's Case, L.S. Deb.*, 26-7-1957, cc. 5255-56 and 27-7-1957, cc. 5473-75; *Liladhar Kotoki's Case, L.S. Deb.*, 19-12-1958, c. 6394; *Free Press Journal's Case*, L.S. Deb., 21-12-1959, cc. 6264-66 and 9-2-1960, cc. 110-11; and *the Time's Case*, L.S. Deb., 17-11-1960, cc. 855-58. *See* also *L.S. Deb.*, 5-8-1966, cc. 2983-95; 14-5-1970, cc. 229-30; 30-8-1976, cc. 185-87 and 22-12-1978, cc. 319-20.

331. *L.S. Deb.*, 5-4-1967, cc. 2914-3001.

332. *Ibid.*, 5-4-1967, cc. 2934-36. *See* also *L.S. Deb.*, 5-9-1974.

Complaints Against Members

When a complaint of an alleged breach of privilege or contempt of the House is made by a member, the proceedings in the House dealing with that complaint differ depending upon whether the person implicated is a member or a stranger. The main point of difference in the two cases is that before making a complaint against a member, a notice is given to him beforehand as a matter of courtesy. Further, when a member seeks to raise question of privilege against another member, the Speaker, as already stated, before giving his consent to the raising of the matter in the House, gives an opportunity to the member complained against, to place before the Speaker or the House such facts as he may have on the question. Where a complaint of an alleged breach of privilege or contempt of the House was based on a newspaper report of an alleged statement made by a member outside the House, which the member concerned denied having made, the Speaker accepted the statement of that member in preference to what had appeared in the newspaper and withheld his consent to the raising of the question of privilege[333].

Where a question of alleged breach of privilege was raised against a member for having cast aspersions on another member in a press interview, the Speaker allowed the member on whom aspersions were cast and the member who was alleged to have cast aspersions, to make personal explanations and thereafter, treated the matter as closed[334].

When a complaint against a member is brought before the House, it is essential that the member concerned should be present in the House; in case he is not present, the making of the complaint is deferred until the following sitting. Where the member complained against is present in the House when the complaint is made, he is heard in explanation and then directed to withdraw from the House by the Speaker.

In other respects, the procedure for dealing with a complaint of alleged breach of privilege or contempt of the House against a member is the same as that for dealing with a complaint against a stranger.

Complaints against Members or Officers of the Other House

Neither House of Parliament can claim or exercise any authority over a member of the other House. Consequently, neither House can take upon itself to punish any breach of privilege or contempt offered to it by a member or officer of the other House.

No case of a breach of privilege or contempt of the House can be founded on a speech made by a member in the other House or in any State Legislature in India, because the proceedings of each House of Parliament and all Legislatures are privileged and no action can be taken in one House for anything that is said in another House.

On 26 March, 1959, a member drew the attention of the House to a news item appearing in *Samaj*, an Oriya daily of Bhubaneshwar in its

333. *Ibid.*, 7-5-1959, cc. 15576-79 and 9-5-1959, cc. 16040-42.
334. *Ibid.*, 4-12-1981, cc. 326-27 and 17-12-1981, cc. 316-17.

issue of 18 March, 1959, wherein the Chief Minister of Orissa was alleged to have cast sweeping and general remarks against members of Parliament. The member said that the Chief Minister of Orissa and the Editor of *Samaj* might be called to the bar of the House to explain their conduct or, in the alternative, the matter might be referred to the Committee of Privileges for investigation and report.

While refusing his consent for the reason that each House is supreme as far as its own proceedings are concerned, the Speaker ruled:

> If really the hon. Chief Minister has said what he is alleged to have said, it is regrettable... if it is really true, this ought not to be continued. I hope and trust that this wholesome principle will be followed everywhere—no House will cast any aspersion and no member will cast any aspersion on any member of the other House or any other House in this way[335].

On 30 March, 1970, during the course of a debate in Rajya Sabha, a member of that House made certain allegations against a member of Lok Sabha. After some discussion in the House, the Speaker addressed a letter to the Chairman, Rajya Sabha inviting his attention to the matter and observing, *inter alia*, as follows:

> "You will agree that it is not desirable for members of one House to make allegations or cast reflections on the floor of the House on the members of the other House."

In his reply, the Chairman, Rajya Sabha, expressing his agreement with the Speaker, stated that the Deputy Chairman, Rajya Sabha had already expressed his disapproval of the member's speech[336].

However, notice of the breach of privilege or contempt of the House can be taken if the member of the other House or any other State Legislature has committed it outside the House to which he belongs.

On 11 May, 1954, a member raised a question of privilege in Rajya Sabha alleging that a member of Lok Sabha had, at the Thirty-first Session of the All India Hindu Mahasabha, cast reflection on the proceedings of Rajya Sabha and requested that steps might be taken to investigate the matter.

On the following day, the member incriminated against, raised a question of privilege in Lok Sabha that on the previous night he was served with a notice issued by the Secretary of Rajya Sabha. The Prime Minister argued that there was nothing objectionable in the letter and pointed out that in the *Sundarayya's Case* in 1952, a member of Rajya Sabha had helped an investigation being conducted by Lok Sabha.

On 15 May, 1954, the Chairman informed Rajya Sabha that he had received a communication from the Speaker enclosing a statement by the member concerned. In his covering note, the Speaker referred to the

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335. *Samaj Case*, *L.S. Deb.*, 26-3-1959, cc. 7968-69.

336. *L.S. Deb.*, 1-9-1970, cc. 234-37; *P.D.* 1971, Vol. XVI, 2, p. 49. *See* also *Hindustan Case*–Reported Speech of Bibhuti Mishra, *P.D.* 1973, Vol. XVIII, 2, pp. 24-26; *R.S. Deb.*, 19-6-1967, 22-6-1967 and 24-12-1969; and *Goa, Daman and Diu V.S. Deb.*, 24-3-1975.

suggestion which he had made in the House that the Privileges Committees of both the Houses should evolve an agreed common procedure for such matters. This was agreed to by the Rajya Sabha.

The Report of the Joint Sitting of the Committees of Privileges of Lok Sabha and Rajya Sabha was presented to both the Houses on 23 August, 1954, in which a procedure was laid down for cases where a member of one House committed a breach of privilege of the other. The Report was adopted by Lok Sabha on 2 December, 1954[337].

Accordingly, when a question of breach of privilege or contempt of the House is raised in either House in which a member, officer or servant of the other House is involved, the procedure followed is that the Presiding Officer of the House in which the question of privilege is raised, refers the case to the Presiding Officer of the other House, only if he is satisfied on hearing the member who raises the question or on perusing any document where the complaint is based on document that a breach of privilege has been committed[338]. Upon the case being so referred, it is the duty of the Presiding Officer of the other House to deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof. Thereafter, that Presiding Officer communicates to the Presiding Officer of the House where the question of privilege was originally raised, a report about the inquiry, if any, and the action taken on the reference.

If the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which the question of privilege is raised or to the Presiding Officer of the other House to which the reference is made, usually no further action in the matter is taken after such apology has been tendered[339].

At a meeting of the Congress Parliamentary Party, a member had made some allegation against two Ministers. On 20 June, 1967, the Prime Minister made a statement in the House that the allegations had not been substantiated on the basis of the material furnished by the member[340].

On 21 June, 1967, a question of privilege was raised in the House that since the allegations against the two Ministers who were members of the House had not been substantiated, the entire House had been brought into disrepute. A motion was moved that the question of privilege be referred to the Chairman, Rajya Sabha, for action in accordance with the procedure evolved by the Joint Report of the Privileges Committees of both Houses.

The Minister of Law, participating in the debate, observed that "the statement was not made in public but at a party meeting and made to the

337. For details of discussions in the two Houses, *see R.S. Deb.*, 11-5-1954, cc. 5999-6000; 14-5-1954, cc. 6424-33; 15-5-1954, cc. 6539-41; *H.P. Deb.* (II), 12-5-1954, cc. 7161-69; 13-5-1954, cc. 7275-83.

338. Report of the Joint Sitting of Committees of Privileges of Lok Sabha and Rajya Sabha and 32nd Report of the Committee of Privileges, Rajya Sabha.

339. *N.C. Chatterjee's Case*, *R.S. Deb.*, 8-12-1954, c. 1134.

340. *Arjun Arora's Case*, *L.S. Deb.*, 30-5-1967 and 20-6-1967.

leader of the party...by a person who is a member of the party, and, therefore, subject to the party discipline by the leader of the party, Prime Minister." He opposed the motion for two reasons: "first, because this is an internal matter of the Congress Party, and secondly, because if (such matters) are treated as breaches of privilege, party functioning will become impossible in the country."

After a lengthy debate, the motion was put to vote and negatived by the House[341].

On 17 August, 1987, the Speaker informed the House that he had received a notice of question of privilege against the Minister of State in the Department of Defence Research and Development (who was a member of the other House) for allegedly deliberately and knowingly misleading the House by making a statement in the House on 15 April, 1987. The Speaker also informed the House that after going through the comments received from the Minister and a further notice of question of privilege received from the member to whom a copy of the Minister's comments was given, he proposed to refer the matter to the Deputy Chairman, Rajya Sabha, for such action as she may consider necessary and proper in view of the fact that the Minister was a member of the other House and a question of privilege can, therefore, be dealt with only by that House in accordance with the procedure laid down in the Report of the Joint Sittings of the Committees of Privileges of Lok Sabha and Rajya Sabha. On 25 March, 1988, the Chairman, Rajya Sabha, disallowed the question of privilege and forwarded a copy of the ruling to the Speaker, Lok Sabha[342].

Where a contempt or a breach of privilege has been committed by a member of Parliament against a State Legislature or by a member of a State Legislature against Parliament or the Legislature of another State, a convention is being developed to the effect that when a question of breach of privilege is raised in any Legislature in which a member of another Legislature is involved, the Presiding Officer refers the case to the Presiding Officer of the Legislature to which that member belongs and the latter deals with the matter in the same way as if it were a breach of privilege of that House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, the Presiding Officer is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege. This procedure is being followed by those Legislatures which have adopted a resolution to this effect.

On 4 October, 1982, a question of privilege was sought to be raised in the House regarding reported proposed summoning of a member before a Legislative Assembly in connection with a question of alleged breach of privilege and contempt of that House by the member for alleging in a press statement that the candidate belonging to his party for election to Rajya Sabha had been defeated because 'some Opposition MLAs had been purchased.'

341. *L.S. Deb.*, 21-6-1967.

342. *L.S. Deb.*, 17-8-1987; *R.S. Deb.*, 24-8-1987 and 25-3-1988; and *P.D.* Vol. XXXIII, 1, pp. 1-5.

Similarly, on 22 August, 1984, the Speaker informed the House that a question of privilege was sought to be raised regarding reference of a question of privilege against a member of the House (who was also the Union Law Minister) by a Legislative Assembly to their Committee of Privileges for allegedly turning down the resolution passed by the Assembly, proposing abolition of the Legislative Council of that State.

The Speaker, while informing the House that he had not received any communication in that regard either from the Legislative Assembly or the member concerned, observed that it was a well established convention that if a *prima facie* case of breach of privilege or contempt of the House was made out against a member who belonged to another Legislature, the matter was reported to the Presiding Officer of that Legislature for taking such action as he considered necessary.

The Speaker hoped that all concerned would take the relevant facts into account while dealing with this sensitive and important issue[343].

Reference of Questions of Privilege to Committee of Privileges by Speaker

The Speaker is empowered to refer, *suo motu,* any question of privilege or contempt to the Committee of Privileges for examination, investigation and report[344]. In doing so, the Speaker need not bring the matter before the House for consideration and decision as to whether the matter be so referred to the Committee.

> As stated earlier, inasmuch as the House alone is the master of its privileges, normally all questions of privilege should be considered by the House. Speaker's power basically is to see whether, on the face of it, a matter is such as deserves to be allowed to be raised as a matter of privilege, giving it priority over other business. Once the Speaker has given his consent for the raising of a matter as a privilege issue, it is entirely for the House to decide whether the matter actually involves a breach of privilege or contempt of the House and whether the House should itself take a decision in that regard or refer it to the Committee of Privileges. Although, in some cases, the Speaker has permitted the matter to be raised in the House by a member and then declared that he was referring the matter to the Committee in exercise of his discretionary power[345], successive Speakers have interpreted this discretionary power to mean that the Speaker may on his own refer only such a matter to the Committee on which there is substantial agreement in the House, that the Speaker's power is not concurrent with or a substitute for the power of the House itself and that the only purpose of the rule is to save the time of the House and cut short the formal procedure in cases where discussion reveals that there is general agreement, on referring the matter to the Committee.

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343. *Ibid.*, 22-8-1984; *P.D.* Vol. XXIX, 2, pp. 6-7.
344. Rule 227.
345. *Deshpande Case* (1LS-1952); *Dasaratha Deb Case* (1LS-1952); *Sinha Case* (1LS-1952); *and Sundarayya Case* (1LS-1952).

In a number of cases, however, the Speaker referred the matter direct to the Committee without first bringing the same before the House[346].

When a question of privileges is referred to the Committee of Privileges by the Speaker in exercise of his discretionary powers, the Committee usually present their report to the Speaker[347]. The Speaker may, thereafter, either close the matter or direct that the report of the Committee be laid on the Table[348]. Further action in the matter is then taken in accordance with the decision of the House.

Power of Speaker to give Directions

The Speaker may issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the Committee of Privileges or in the House[349].

Attendance of a Member as Witness Before the Other House or a House of State Legislature or Committee thereof

Neither House of Parliament has any authority whatever, on any occasion, to summon, much less to compel, the attendance of a member of the other House. If the attendance of a member of one House to give evidence before the other House or a Committee thereof is desired, it is necessary not only to obtain the leave of the House to which such member belongs but also the consent of that member. In other words, a member of one House is not bound to attend the other House or its Committees to give evidence, and even if he is willing to give evidence, he cannot do so without the leave of the House of which he is a member[350]. This position would hold good, irrespective of whether the House is or is not in session[351].

This principle would be applicable between a House of Parliament and a House of State Legislature or between Houses of different State Legislatures and their members *inter se* in the same way as it is applicable between the two Houses of Parliament and their members[352].

In the Deshpande Case, Speaker Mavalankar observed that he preferred to refer the matter to the Committee of Privileges in exercise of his authority under rule 314 (present Rule 227) so that the House might not have to go through the "long procedure that is prescribed in the Rules of Procedure"—*H.P. Deb.* (II), 27-5-1952, p. 621.

346. 1R to 7R, 10R (CPR-2LS), 1R (CPR-8LS), 2R (CPR-9LS).

347. In the *Deshpande Case* (1LS-1952), *Dasaratha Deb Case* (1LS-1952), *Sinha Case* (1LS-1952), and *Sundarayya Case* (1LS-1952), however, the Committees presented their reports to the House.

348. In some cases, the Committee themselves recommended to the Speaker that the report be laid on the Table—*see* 6R, 7R and 10R (CPR-2LS).

349. Rule 228. For procedure regarding consideration of the report of the Committee of Privileges by the House, *see* Chapter XXX–Parliamentary Committees, under the heading 'Committee of Privileges'.

350. *See* 6R (CPR-2LS).

351. *Ibid.*

352. *Ibid.*

> In accordance with this principle, Lok Sabha would not permit any of its members to give evidence before the other House of Parliament or a Committee thereof or before a House of State Legislature or a Committee thereof without a request desiring his attendance and without the consent of the member whose attendance is required. It is essential that such requests from the other House of Parliament or a Committee thereof or from a House of State Legislature or a Committee thereof should express clearly the cause and purpose for which the attendance of the member is desired[353].

It is also the duty of a member that he should not give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, without the leave of the House being first obtained. Any neglect or breach of this duty by a member would be regarded by the House as a contempt of the House[354].

> When a request is received, seeking leave of the House to a member to give evidence before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof, the matter is referred by the Speaker to the Committee of Privileges[355]. On a report from the Committee, a motion is moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action is then taken in accordance with the decision of the House[356].

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353. The practice and procedure were laid down by the Committee of Privileges of Second Lok Sabha in their Sixth Report, adopted by the House on 17 December, 1958.
354. *Liladhar Kotoki's Case, L.S. Deb.*, 19-12-1958, c. 6394.
355. *See* 3R (CPR-2LS).
356. *L.S. Deb.*, 25-4-1958, cc. 11497-98.