



Law of Parliamentary Privileges
(With Special reference to Maharashtra Legislature)

Maharashtra Legislature Secretariat

Dr. Anant Kalse,
Principal Secretary,
Maharashtra Legislature Secretariat

Vidhan Bhavan
Mumbai / Nagpur

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PREFACE

Maharashtra Legislature is one of the leading and pioneering Legislatures in India and occupies the pride of place and position in our country, which is celebrating its Platinum Jubilee Year.

The glorious history of 75 years of Maharashtra Legislature is replete with many outstanding personalities who in subsequent years have etched their names in our memory. Known for their meaningful contribution in making the democratic process of India a wonderful saga of socio-economic justice, they have established a high standard of parliamentary behaviour and conduct. Their debating skills, intellectual inputs and maintaining the dignity of the proceedings guide us like a beacon even today.

An attempt is being made by this publication to provide a glimpse of the Parliamentary Privileges and I hope that it would be useful to the Hon. Members of Legislature. The topics in this publication have been grouped under convenient subject heads to facilitate quick and easy reference.

While every care has been taken to ensure accuracy and objectivity of the publication, readers are requested to rely on the original publications for authenticity and authoritative information.

I must express my sincere thanks to Hon. the Chairman of Maharashtra Legislative Council, Shri Shivajirao Deshmukh and Hon. the Speaker of Maharashtra Legislative Assembly, Shri Dilip Walse-Patil for encouraging and giving me an opportunity to publish this book.

I have been greatly assisted by Shri N.G.Kale, Deputy Secretary (Law) and Shri Umesh Shinde, Section Officer to accomplish the complicated work of checking references from original and to make the book free from faults and errors as far as possible, especially Shri N.G.Kale, Deputy Secretary (Law), has been working throughout with me and is always ready to render his valuable assistance to me who deserves thanks for arranging publication of this book.

I earnestly hope that this brief compilation will be read with interest and will prove quite useful to understand intricacies of the Law of Parliamentary Privileges.

Any suggestions from the readers are wel-come.

**Vidhan Bhavan,
Mumbai.**

Dr. ANANT KALSE,
Principal Secretary,
Maharashtra Legislature Secretariat.

About the Author

Dr. Anant Namdeorao Kalse, B.Sc., LL.M., Ph.D. (LAW), Mumbai University, is holding the post of Principal Secretary in the Maharashtra Legislature Secretariat and also assuming office of Secretary; Commonwealth Parliamentary Association (CPA), Maharashtra Branch. He attended various conferences and seminars of Presiding Officers and Secretaries of Legislative Bodies in India and also visited London, Paris, Australia, New Zealand, Singapore, France, Italy, Belgium, Holland, Switzerland and Geneva, United Nations, Nigeria, Kenya and China with Parliamentary Delegations.

He delivered Lectures on Parliamentary Practice and Procedure, Constitutional Law, Administrative Law, Law of Torts, Consumer Protection, Human Rights, Interpretation of statutes, International Law and Feministic Jurisprudence. He is a visiting faculty at Mumbai University Post Graduate Law Department, SNDT University Post Graduate Law Department, Government Law College, Mumbai, K.C. Law College, Mumbai, Yashwantrao Chavan Academy of Development Administration Institute, Pune, Indian Institute of Public Administration, Mantralaya, Mumbai.

He has been Returning Officer for the Biennial Elections to the Council of States (Rajya Sabha) and Maharashtra Legislative Council since 1992 and also Presidential Election.

He has already published various books on Parliamentary Practice and Procedure with Special reference to Maharashtra Legislature, Law Making Process – An Introduction, Legislative Procedure and Parliamentary Privileges – A Brief Overview, An Outline of Comparative Analysis of the Leading Constitutions of the world with special reference to Indian Constitution, Nagpur Session- Myth and Reality – An overview, Dr. Babasaheb Ambedkar Speech before the Constituent Assembly of India on 4th November 1948 – Compilation, Salient Features of Constitution of India and Financial Business – An Overview, Parliamentary Proceeding – A Brief Overview and Salient features of Constitution of India & contribution of State Legislature in the development of State & its achievements. संसदीय कामकाज पद्धती व भारतीय लोकशाहीचे महत्व, संसदीय लोकशाहीची वैशिष्ट्ये व विधीमंडळाचे कामकाज, समिती पद्धती, संसदीय कामकाजाचा आत्मा.

INDEX

Sr. No	Subject	Page No.
1	History and Origin	1-17
2	Privileges Law in Other Countries and Constitutional Provisions	18-34
3	Indian Historical Background and Constitutional Provisions	35-40
4	Privilege of Freedom from Arrest	41-44
5	Contempt	45-54
6	Privileges and Judiciary (Keshav Singh and Raja Ram Pal Cases)	55-70
7	Codification of Privileges	71-76
8	Analysis and Conclusion	77-79
9	Important Privileges Cases dealt with by Maharashtra Legislative Assembly.	80-100
10	Latest Cases relating to Breach of Privilege and Contempt of Maharashtra Legislative Assembly.	101-106
11	Important Privileges Cases In Maharashtra Legislative Council	107-118
12	Land Mark Cases in Parliament and Other State Legislatures	119-178
13	Bibliography	179-180

PARLIAMENTARY PRIVILEGES

CHAPTER - 1

HISTORY & ORIGIN

What is Parliamentary Privilege :—

A privilege is essentially a private advantage in law enjoyed by a person or a class of persons or an association which is not enjoyed by others. Looked at from this aspect, privilege consists of that bundle of advantages which members of both Houses enjoy or have at one time enjoyed to a greater extent than their fellow citizens that is freedom to access to Westminster, freedom from arrest or process, freedom from liability in the courts for what they say or do in Parliament.

From another point of view, Parliamentary Privilege is the special dignity and authority enjoyed by each House in its corporate capacity such as its right to control its own proceedings and to punish both members and strangers for contempt. Any Parliament, it is to function properly, must have some privileges which will ensure freedom from outside interference.

What constitutes Privilege :—

Sir Erskine May has answered the question ‘What constitutes privilege?’ in the following manner [See: Erskine May, Parliamentary Practice, 16th edn. (London: Butterworths, 1957) in ‘Chapter III: General View of the Privilege of Parliament ‘ at p. 42] : Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land is, to a certain extent, an exemption from the ordinary law.

The particular privileges of the Commons have been defined as :- “The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords.”

The privileges of Parliament are rights which are absolutely necessary for the due execution of its powers. 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 for the protection of its Members and the vindication of its own authority and dignity. In Hatsell’s Collection of Cases of Privileges of Parliament (1776), Parliamentary privileges have been defined as those rights which are ‘absolutely necessary for the due execution of its powers’.

Need and objectives of Parliamentary privileges :—

The objective of the Parliamentary privilege is to safeguard the freedom, the authority and the dignity of the institution of Parliament and its members. Thus privileges are enjoyed by the individual members because the House cannot perform its functions without unimpeded use of the services of its members and by each House for the protection of its members and the vindication of its own authority and dignity. Thus it’s the essence of Parliamentary system of government that the peoples’ representative should be free to express themselves without fear of legal consequences. The court has no say in the matter and should really have none. The immunity has been granted to protect the integrity of the legislative process by ensuring the independence of individual legislators.

When Privileges are supposed to be exercised :—

They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions. These functions include the right of members to speak and vote on the floor of the House as well as the proceedings of various legislative committees. In this respect, privileges can be exercised to protect persons engaged as administrative employees as well. The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions.

Most Important Parliamentary Privilege :—

The most important of Parliamentary privileges is that of Freedom of Speech while performing Parliamentary duties. Article 19 also gives a citizen the right of free speech but Arts. 105 and 194 lay special emphasis on the right of free speech of members of the Legislatures. Under Art. 19, the right of free speech is subject to reasonable restrictions, for instance, the law of libel. An ordinary person who speaks something libelous is liable to be proceeded against but a Member of Parliament speaking in the House or in one of its Committees is immune from any attack on the grounds that his speech was libelous or defamatory.

Members have to give expression to public grievances and raise various matters of public importance. In doing this, members should not suffer any inhibition and they should be able to speak out their mind and express their view freely. Inside the House or Committees of the Parliament, a member is absolutely free to say whatever he likes subject only to the internal discipline of the House or the Committees concerned; no outside authority has any right to interfere. Freedom of speech is absolutely necessary for a member to function freely without any fear or favour in the committees and in the Houses of Parliament. Unless whatever a member says enjoys immunity from legal action, he cannot be expected to speak freely and frankly. The Constitution provides that no action can be taken against a Member of Parliament in any court or before any authority other than the Parliament in respect of anything said or a vote given by him in the Houses of Parliament or any Committee thereof. It is also a breach of privilege to molest a member or to take any action against him on account of anything said by him in the Parliament or a Committee thereof. Likewise, it would be a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliament or in a Committee thereof.

A member cannot also be questioned in any court or by any agency outside the Parliament for any disclosure he may make in the Parliament. Any investigation outside the Parliament in respect of anything said or done by members in the discharge of their Parliamentary duties would amount to a serious interference in the members' rights. Even though a speech delivered by a member in the House may amount to contempt of Court, no action can be taken against him in any Court. Court being an outside authority does not have the power to investigate the matter. Article 122/212 specifically forbids any inquiry by Courts into the proceedings of the Parliament/Legislature.

ORIGIN OF PRIVILEGES :—

Privileges of members of the High Court of Parliament, like that of members of other royal courts, was originally part of the King's peace enjoyed by all the King's subjects, but in special measure by his servants.

As originally the weaker body, the Commons had a fiercer and more prolonged struggle for the assertion of their own privileges, not only against the Crown and the courts, but also against the Lords. What originated in the special protection of the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognized “privileges”, which could be used by the Commons against threats to their independence from any direction.

The evolution of legislative privileges can be traced back to medieval England when there was an ongoing tussle for power between the Monarch and the Parliament. In most cases, privileges were exercised to protect the members of Parliament from undue pressure or influence by the Monarch among others.

The origin of Parliamentary privileges is inextricably intertwined with the specific history of the institution of Parliament in England. The executive branch of Government was separated from the Parliament and the House of Commons were struggling to establish place for itself in the Parliament which was necessary to protect them from the interference and power of the King and the House of Lord. Thus the privileges were established in late 16th century. What originated from the special protection of the King was being claimed by the Commons on the basis of theory of inheritance and divine right of the King. Thus, when the stable condition was reached in 19th century with the limits of privileges being prescribed and accepted by the Parliament.

May describes the historical development of privileges as follows :—

- By the latter of 15th century, the House of Commons seems to enjoy the undefined right to freedom of speech as a matter of tradition rather than by virtue of privileges sought and obtained. Earlier the Speaker did not make such claim. What they did request, was permission to correct any advertent misrepresentation of the House to the King. Even the Speaker asked if the House of Commons or Speaker displeases the King or infringe the prerogative it should be regarded as unintentional. By the first Parliament of Elizabeth in 1563, the freedom of speech was in debate and it was justified according to the tradition of ancient time. In 1629, Sir John Eliot with other two members was imprisoned and found guilty by King’s Bench of seditious word spoken in debate and violence against the Speaker. The Commons bench declared the court of King should not have accepted the jurisdiction of Eliot case and others. And the judgment was illegal and against the Parliament privileges. The Commons reversed the judgment and the privileges received the statutory recognition after the revolution of 1688 by article nine of bill of rights.

- Although the privilege of freedom of speech protect what is in debate in either Houses, this privilege doesn’t to the same degree apply to the privilege of publication of debate or proceeding outside the Parliament.

- Publication, whether by order of House or not, a fair and accurate account of a debate in either House is protected by the same principle as that which protects the fair report in court of justice, that the advantage of publicity to the community at large overweighs any private injury resulting from the publication unless malice is proved.

Freedom from arrest is recollection of liberties attached to the attendance at the traditional popular assemblies or in that principle the king’s servant doing their duty in court should not be impeded by legislation in lower tribunal. The principle was established at a relatively early date. The first known assertion of freedom of arrest seems to date from 1340, when the King released the member from prison during the Parliament, following that in which he had

been prevented by his detention from taking seat. In the Thorpe case the Speaker of the House of Commons was imprisoned in 1452. So the Commons easily acquiesced in the decision that they immediately elected the new Speaker. Development came into existence in 1604. Sir Thomas Shrilley who had been elected in Commons but had been imprisoned in the fleet in execution before the meeting of Parliament was discharged. The warden of fleet was committed for contempt, having initially refused to release the member. These events were followed by the Privileges of Parliament Act, 1603 which recognizes the privilege of freedom of arrest.

PRIVILEGE OF FREEDOM FROM ARREST OR MOLESTATION

ORIGIN AND SCOPE

It has been stated above that parliamentary privilege originated in the King's protection of his servants but is now claimed as an independent right. The privilege of freedom from arrest or molestation of Members of Parliament, which is of great antiquity, was of proved indispensability first to the service of the Crown, and subsequently to the functioning of each House:

‘In connection with most early assemblies that were in any way identified with the King, is to be found some idea of a royally sanctioned safe conduct; the King's peace was to abide in his assembly and was to extend to the Members in coming to it and returning from it. Naturally, these royal sanctions applied to Parliament. But as time went on, molestation of Members was more likely to be through some process of law than through direct bodily injury or restraint. Unless Parliament could keep its membership intact, free from outside interference, whether or not the interference was with the motive of embarrassing its action, it could not be confident of any accomplishment’ (White, Eng Const p. 439). The principal reason for the privilege has also been well expressed in a passage by Hatsell:

‘As it is an essential part of the constitution of every court of Judicature absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruption from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties and not considered as liable to some legal processes, to which other citizens, not entrusted with this most valuable franchise are by law obliged to pay obedience’ (1 Hatsell, pp. 1-2).

It will be convenient to indicate briefly the scope of the privilege of freedom from arrest and the extent and principal limits of its application which are dealt with in this chapter.

The privilege has been defined both positively and negatively; the positive aspect of the privilege is expressed in the claim of the Commons to freedom from arrest in all civil actions or suits during the time of Parliament and during the period when a Member was journeying to or returning from Parliament. In their petition of 1404 the Commons claimed that, according to the custom of the realm, they were privileged from arrest for debt, trespass or contract of any kind (3 Rot Parl, 541). Here may be seen both the limitation of their privilege, since they did not claim that it extended to criminal charges, and its dependence on the King's assistance for realization (Pick thorn Henry VII, p. 110).

FREEDOM FROM ARREST IN CIVIL PROCESS

It will be convenient to begin with the sphere in which enjoyment of freedom from arrest is unquestioned, namely in civil suits setting out the extent to which this privilege has been limited or defined by statutes and resolutions of either House; then similarly to define the sphere in which freedom from arrest does not exist, namely, in criminal process; and to conclude with an account of the extent to which the privilege has been extended by analogy from Members to other persons, such as witnesses, in virtue of their relations with Parliament.

Privilege protects Members of Parliament with the same sanction as well from illegal molestation as from the legal process of arrest. Either is equally a breach of privilege.

Chedder's Case, 1404. On petition of the Commons for the punishment of the assailant of Richard Chedder, the servant of a Member attending Parliament, the Commons claimed the special protection of the King for themselves and their servants in coming, remaining and returning.' and it was enacted that in this and in similar cases for the future the assailant should pay double damages besides fine and ransom to the King (5 H 4 (1404) c 6; 3 RP. 542; 1 Hat sell. 15-17). The same penalty was imposed by a general statute (11 H 6 (1432) c 11) on assaults on Members of either House coming to Parliament. It is a striking coincidence that the penalty is identical with that of the laws of Ethelbert: 'If the king call his 'leod' to him and anyone there do them evil, a twofold 'bot' and fifty shillings to the king' (Stubbs, *Sel Charters*, 9th ed p. 66).

PENAL JURISDICTION

Without a power to commit, the privileges of Parliament would not exist in their present form, and it would hardly have been possible adequately to defend the dignity of Parliament against disrespect and affronts (an insult or indignity, assault) which could not be brought, or could be brought only by implication, under the head of any of the specific privileges.

The origin of the power seems to lie in the medieval concept of Parliament as primarily a court of justice, the 'High Court of Parliament'. The Lords derived its independent power to punish from their original membership of the *Curia Regis* (The King's Court). Immemorial constitutional antiquity was not similarly available to the Commons, and indeed its possession of penal jurisdiction was challenged on this ground as late as the nineteenth century, and has been defended by arguments which confused legislative with judicial jurisdiction. The difficulties the Commons experienced in proving its case to be a court of record an issue never determined at law – were connected with these problems. Yet whatever the legal or constitutional niceties, in practice the House on many occasions in the sixteenth and seventeenth centuries exercised its power to impose fines and imprison offenders. These offenders might include Members of the House itself or non-Members, the latter comprising sheriffs, magistrates and even judges of the superior courts.

“LEGISLATIVE PROCEDURE AND PARLIAMENTARY PRIVILEGES”

Breach of Privilege and 'Contempt'.

When any of these rights and immunities, both of the Members, individually, and of the Assembly in its collective capacity, which are known by the general name of Privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and it's punishable under the Law of Parliamentary Privileges. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its Members. Such actions, though often called 'Breaches of privilege' are more properly distinguished as contempts'.

‘The privileges of a Legislative Assembly would be entirely ineffectual to enable it to discharge its functions, if it had no power to punish offenders, to impose disciplinary regulations upon its members, or to enforce obedience to its commands.’ (Cushing, Legislative Assemblies, paras 532-3.)

Except in one respect, the surviving privileges of the House of Lords and the House of Commons are justifiable on the same grounds of necessity as the privileges enjoyed by Legislative Assemblies of the independent members of the Commonwealth and certain British colonies, under the common law as a legal incident of their legislative authority. This exception is the power to punish for contempt. Since the decision of the Privy Council in *Kielley v Carson* it has been held that this power is inherent in each House of Parliament not as a body with legislative functions, but as a descendant of the High Court of Parliament and by virtue of the *lex et consuetudo parliamenti*.

Such powers are essential to the authority of every Legislature. The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges.

Collective and individual privileges of each House and of Members of each House

Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, which, being rather directed to the maintenance of its own collective authority than to the security of the individual members, may be said to belong primarily to each House as a collective body. This is a useful distinction, but fundamentally it is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members. The Commons, in their reasons offered at a conference with the Lords in the controversy arising from the case of *Shirley v. Fagg*, in asserting that privilege of Parliament belongs to every Member of the House of Commons, declared ‘that the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption’. The earliest occasion on which this reason was given was in the Commons Petition to Henry IV in 1404.

Privileges enjoyed by custom and by statute

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because ‘they have place and voice in Parliament’: but a practice has obtained with the Commons which would appear to submit their privileges to the royal favour.

Speaker’s Petition.

At the commencement of every Parliament it has been the custom for the Speaker,

‘In the name, and on behalf of the Commons, to lay claim by humble Petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require and that the most favourable construction should be placed upon all their proceedings.’

The Lord Chancellor replies to the Speaker’s petition that, ‘Her Majesty most readily confirms all the rights and privileges which have ever been granted to or conferred upon the Commons, by Her Majesty or any of her royal predecessors’.

The practice of claiming these privileges developed gradually. In the reign of Henry IV, the only privilege claimed by the Speaker was for himself, that he might be allowed to inform the King of the mind of the Commons, and that if he made any error in doing so it might be corrected by reference to the House (3 Rot Parl, 424, see also *ibid.*, 425).

In 1536 there is a definite demand of access to the Crown, in 1541 comes the demand for freedom of speech (by Speaker Moyle, see *Elsynge*, 175-6), and in 1554 the three claims of freedom from arrest, freedom of speech, and of access, were first made together (CJ (1547-1628), 37). By the end of the sixteenth century the practice seems to have become regular (see 2 *Hatsell*, 225 et seq.).

The authority of the Crown in regard to the privileges of the Commons is further acknowledged by the report of the Speaker to the House, that their privileges have been confirmed in as full and ample a manner as they have been heretofore granted or allowed by Her Majesty or any of her royal predecessors.

This custom probably originated in the ancient practice of confirming in Parliament laws that were already in force, by petitions from the Commons, to which the assent of the King was given, with the advice and consent of the Lords.

However the custom may have originated, the Commons from the beginning of the fifteenth century at latest claimed their privileges as prescriptive and according to the 'custom of the realm,' and as based, like those of the Lords, on the law and custom of Parliament. In the words of the petition to the Queen, the privileges prayed for are at the same time claimed as 'ancient and undoubted'. In James I's first Parliament the Commons claimed that the request to enjoy their privileges was 'an act only of manners'.

Privileges of the Commons originally under the protection of the Lords

Until they had fully established their position in Parliament, the Commons relied upon the Lords for the enforcement of their privileges. In *Thorpe's* case, the Lords, acting on the advice of the Judges, resolved that *Thorpe*, the Speaker of the House of Commons, should remain in prison notwithstanding any privilege of Parliament, and the Commons accepted the position and elected a new Speaker. It seems that the Commons did not claim a share even in the privilege jurisdiction of Parliament. It was not till *Ferrers's* case in 1543 that the Commons relied on their own authority to liberate one of their members. But by the time of *Coke* at the end of the century, the principle had been established that a matter concerning either House of Parliament ought to be decided in the House to which it relates and not elsewhere.

Privileges of each House part of the common law of Parliament

The two Houses are thus of equal authority in the administration of a common body of privileges. Each House, as a constituent part of Parliament, exercises its own privileges independently of the other. They are enjoyed, however, not by any separate right peculiar to each, but solely by virtue of the law and custom of Parliament. There are rights and powers peculiar to each but all privileges, properly so called, appertain equally to both Houses. These are declared and expounded by each House; and breaches of privilege are adjudged and censured by each; but still it is the law of Parliament that is thus administered.

Neither House may create new privileges

Although, as stated above, either House may expound the law of Parliament, and vindicate its own privileges, it is agreed that by itself neither House can create a new privilege. In 1704, the Lords communicated a resolution to the Commons at a conference, ‘that neither House of Parliament hath any power, by any vote, or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament’; which was assented to by the Commons.

Recent reviews of privilege procedure

On 5th July 1966, the House of Commons appointed a Select Committee on Parliamentary Privilege ‘to review the law of Parliamentary Privilege as it affects this House and the procedures by which cases of privilege are raised and dealt with in this House and to report whether any changes in the law of privilege or practice of the House are desirable.’ The Committee was re-appointed at the beginning of the following Session and made its Report on 1st December, 1967. A debate took place upon a motion to take note of the Report on 4th July, 1969.

The Report contained recommendations relating to the scope of privilege and the practice of the House with regard to alleged contempts. The House made no immediate decisions on the Committee’s recommendations but on 27th January 1977, referred them to the Committee of Privileges. The Committee’s Report was debated on 6th February, 1978 when the House adopted the Committee’s recommendations.

Early cases leading to the establishment of the Privilege

Haxey’s Case.—In the 20th Richard II (1396-97), a case occurred in which this ancient privilege was first violated, and afterwards signally confirmed. Haxey’s, who had been a King’s clerk since 1382, having displeased the King by offering a bill for reducing the excessive charge of the royal household, was condemned in Parliament as a traitor. But on the accession of Henry IV, Hexey exhibited a petition to the King in Parliament to reverse that judgment, as being ‘against the law and custom which had been before in Parliament’; and the judgment was reversed and annulled accordingly by the King, with the advice and assent of all the lords spiritual and temporal. This was unquestionably an acknowledgment of the privilege by the highest judicial authority the King and the House of Lords; and in the same year the Commons took up the case of Haxey, and in a petition to the King affirmed ‘that he had been condemned’ against the law and course of Parliament, and in annihilation of the customs of the Commons’; and prayed that the judgment might be reversed, ‘as well for the furtherance of justice as for the saving of the liberties of the Commons’. To this the King also assented, with the advice and assent of the lords spiritual and temporal; and thus the whole Legislature agreed that the judgment against Haxey, in derogation of the privileges of Parliament, ‘should be annulled and held to be of no force or effect’.

Thomas Young’s Case, 1455.—Young had in 1451 proposed in the House of Commons that the Duke of York should be declared heir to the crown, and had been sent to the Tower by Henry VI. In 1455 he petitioned the Commons to secure compensation for himself in respect of his imprisonment. The King in reply ordered the Lords of the Council to provide a remedy.

Young's petition, although it invoked 'the old liberate and freedom of the Commons of this lande, had, enjoyed, and prescribed from the time that no made is ... to speak and say in the House of their assemble, as to they is thought convenient or reasonable without any manner challenge, charge or punishment was treated by the Commons as a private petition; and they appear to have made no complaint to the King about the violation of their collective privilege.

Strode's Case.—In the 4th Henry VIII (1512), Strode, a member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tanners in Cornwall, and was fined and imprisoned in consequence. Upon which an Act was passed, which, after stating that Strode had agreed with others of the Commons in putting forth bills, 'the which here, in this High Court of Parliament, should and ought to be communed and treated of,' declared the proceedings of the Stannary Court to be void, and further enacted that all suits and other proceedings against Richard Strode, and against every other member of the present Parliament or of any Parliament thereafter, 'for any bill, speaking, or declaring of any matter concerning the Parliament, to be communed and treated of, be utterly void and of none effect'. As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to the Privilege of Parliament, and was not at that time first enacted; and that the statute was intended to have a general operation in future, and to protect all members, of either House, from any question on account of their Speeches or votes in Parliament.

In 1621 the Commons, in their protestation, affirmed 'that every Member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business'. In this protestation the Commons advanced their claims beyond the point established by Strode's case (1512). The Act of the 4th Henry VIII extended no further than to protect Members from being questioned, in other courts, for their proceedings in Parliament; but its principle should equally have saved them from the displeasure of the Crown. 'Molestation' comprised victimization or discriminatory action by the King or the executive, as in the cases of Mr. Strickland in 1571, of Mr. Cope, Mr. Wentworth and others in 1586, and of Sir Edwin Sandys in 1621. Dismissal from office was a means by which the King showed his displeasure 'without openly violating the Commons' claims of privilege, though in modern times any such action by the Crown (in respect of non-political office) might be regarded as an invasion of privilege. The last use of the exercise of the prerogative in this way was in the case of General Conway, who, in 1764, was dismissed from the King's service, not only as a groom of the bedchamber, but also as Colonel of a regiment, for opposing the ministry of George Grenville on the question of general warrants.

Case of Sir John Eliot and other.—The last occasion on which the privilege of freedom of speech was directly impeached was in the celebrated case of Sir John Eliot, Denzil Hollis and Benjamin Valentine, against whom a judgment was obtained in the King's Bench, in the 5th Charles I, for their conduct in Parliament. On 8th July, 1641 the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament. The judgment had been given against the privilege of Parliament, upon the false assumption that the Act of the 4th Henry VIII had been simply a private statute for the relief of Strode, and had no general operation. To condemn this construction of the plain words of the statute, the Commons resolved, 12 and 13 November 1667, 'That the Act of Parliament in the 4th Henry VIII, commonly intituled "An Act concerning Richard Strode", is a general law', extending to all members of both Houses of Parliament; 'and is a declaratory law of the ancient and

necessary rights and privileges of Parliament’, and ‘That the judgment given against Sir John Eliot, Denzil Hollis, and Benjamin Valentine, in the King’s Bench, ‘Was an illegal judgment, and against the freedom and privilege of Parliament’. The Lords, at a conference, agreed to the resolutions of the Commons; and, Upon a writ of error, the judgment of the Court of King’s Bench was reversed by the House of Lords, on 15th April, 1668. One cause of error stated was that words spoken in Parliament could only be judged in Parliament and not in the King’s bench; another was that two offences were dealt with by the judgement of the King’s bench, the assault on the Speaker and the utterance of seditious words in Parliament; and it was alleged that even if the assault was proper to be dealt with by the Court of King’s Bench, the words spoken in Parliament could not be dealt without of Parliament’.

Statutory recognition of the privilege

This recognition by law of the privilege of freedom of speech received final statutory confirmation after the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared ‘That the freedom Of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament’.

The 9th Article of the Bill of Rights reinforced the statute of 4th Henry VIII by giving its sanction to the Commons’ claim to exclusive jurisdiction over words spoken in their own House. Its terms apply equally to the jurisdiction of the Lords in their House. Furthermore, this article comprised within such exclusive jurisdiction ‘proceedings in Parliament’-a term which connotes more than speeches and debates. The interpretation of ‘proceedings in Parliament’ has raised difficulties, and been the subject of decisions both by the Courts and in Parliament. Recognition of the right of each House itself to adjudicate upon the conduct of its Members in their parliamentary capacity may also be found in this Article.

Duty of Members to maintain the privilege

The Speaker having claimed and statutory recognition having been granted to the privilege of freedom of speech, it becomes the duty of each Member to refrain from any course of action prejudicial to the privilege which he enjoys.

On 15th July, 1947 the House of Commons by resolution declared that ‘it is inconsistent with the dignity of the House, with the duty Of Members to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Members’ 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’.

In the same resolution the House agreed to the report from the Committee of Privileges on the case of Mr. Brown and the Civil Service Clerical Association (HC 118 (1946-47)). This case arose from certain actions by the executive committee of a Trade Union which had a formal contractual relationship with a Member of the House, under which he received a salary. The complaint made to the Committee of Privileges submitted that actions by the Trade Union were calculated improperly to influence the Member in the exercise of his parliamentary duties. Although in this particular case the Committee found that no breach of privilege had occurred, in their general conclusions the Committee stated that ‘the relationship between a Member

and an outside body with which he is in contractual relationship and from which he receives financial payments is, however, one of great difficulty and delicacy, in which there must often be a danger that the Rules of privilege may be infringed (HC 118, p. xii (1946-47)). See also *Robinson's Case* (HC 85 (1943-44)); *National Union of Mine workers* (HC 634 (1974-75)); *National Union of Public Employees* (HC 512 (1976-77)).

Speeches in Parliament not actionable

The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the Rules of Order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; he is protected by his privilege from any action for libel as well as from any other question or molestation.

Dillon v Balfour.—In this action brought in the Irish courts in 1887 against a Member of the House of Commons for words spoken in the House, the court being satisfied that those words constituted the cause of action, ordered that the writ and statement should be taken off the records of the court, the court having no jurisdiction in the matter.

Restraint on speech in Parliament.

‘Speech and action in Parliament may thus be said to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained licence of speech within the walls of the House’.

The cases in which the Members have been called to account and punished by the House for offensive words spoken before the House are too numerous to mention. Some have been admonished, others imprisoned, and in the Commons some have been expelled. The unquestionable right of the Lords to commit a peer for words spoken in the House was recognized by the Court of King’s Bench in Lord Shaftsbury’s case. In the House of Commons the disciplinary powers of privilege are reinforced by the summary powers conferred on the chair by Standing Orders Nos. 23, 24 and 25.

Procedure consequential on the privilege of freedom of debate.

The determination of the Commons to secure freedom of debate is, connected historically with measures designed for the avoidance of publicity, once steadily enforced on grounds of privilege and now maintained in reserve for use in emergency—the exclusion of strangers and the prohibition of the publication of debates.

Right to exclude strangers.

The House of Commons has always claimed and enjoyed the right to exclude strangers and to debate with closed doors.

The first reason was the inconvenience caused in former times by strangers pressing into the body of the House or attempting from the galleries to influence debate. The other, and principal, reason was the possible intimidation which the Crown might exercise if reports were made of the speech and action of Members in days when freedom of debate did not in practice afford complete protection. Later, in the eighteenth century, the motive was probably reluctance to be held accountable to public opinion.

Right to control publication of debates and proceedings.

Closely connected with the power to exclude strangers, so as to obtain, when necessary, such privacy as may secure freedom of debate, is the right of either House to prohibit the publication of debates or proceedings.

The publication of the debates of either House has in the past been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either House desires to withhold its proceedings from the public, it is within the strictest limits of its jurisdiction to do so, and to punish any violation of its orders. On 16th July, 1971, however, the House of Commons resolved that, 'notwithstanding the Resolution of the House on 3rd March, 1762 and other such Resolutions, this House will not entertain any complaint of contempt of the House or breach of privilege in respect of the publication of the debates or proceedings of the House or of its Committees, except when any such debates or proceedings shall have been conducted with closed doors or in private, or when such publication shall have been expressly prohibited by the House'.

The House of Commons also resolved that it would not entertain any complaint in respect of (i) the publication in advance of the relevant Division Lists or Notice Papers of a statement of how any Member voted in a division in the House or the contents of any notice of a parliamentary Question or Notice of Motion handed in, or (ii) the publication of the expressed intention of a Member to vote in a particular manner, or to refrain from voting, or to hand in any notice of a Parliamentary Question or Notice of Motion. These resolutions followed recommendations of the Select Committee on Parliamentary Privileges and were intended to bring the rules of the House into conformity with long-standing practice. A further Resolution was passed on 31 October 1980 removing the restrictions on the reporting of evidence taken at public sittings of Select Committees. The repeated orders made by the House forbidding the publication of the debates and proceedings of the House, or of any committee thereof, and of comments thereon, or on the conduct of Members in the House, by newspapers, newsletters, or otherwise, and directing the punishment of offenders against such rules, had long since fallen into disuse. Indeed, since 1909, the debates have been reported and issued by an official reporting staff under the authority of Mr. Speaker, and sold to the public by Her Majesty's Stationery Office.

Publisher of report of parliamentary debate is protected if the whole debate is published.

There is a distinction between the absolute privilege of Members speaking in the House, or in any committee of the House, and the qualified privilege of a publisher reporting words spoken; in the latter case publication of parliamentary proceedings is protected, not specifically by privilege of Parliament, but on the analogy of the publication of proceedings in courts of justice.

Wason v Walter. The judgment in *Wason v Walter* in 1868 was made on the principle that the publication of the proceedings both of courts of justice and of Parliament are protected by privilege on the same ground: 'that the occasional inconvenience to individuals arising from it must yield to the general good'. A fair and faithful report of the whole debate would therefore not be actionable.

The judgment further indicated why the publication of a single speech from a debate would not be privileged: 'It is to be observed that the analogy between the case of reports of proceedings of courts of justice and those of proceedings in Parliament being complete, all the limitations placed on the one to prevent injustice to individuals will necessarily attach on the other; a garbled or partial report, or of detached parts of proceedings, published with intent to injure individuals, will equally be disentitled to protection' (see judgment of Cockburn CJ, *Wason v Walter LR* (1868-69) 4 QB 94).

Right to exclusive cognizance of proceedings in Parliament.

Article 9 of the Bill of Rights, confirming the long-standing claims of each House of Parliament to exclude all outside interference within its own walls-claims which had only been seriously challenged in the case of the House of Commons-lays down that 'freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament'.

Thus, although Article 9 was no doubt intended to be comprehensive, it is well to be reminded that it is only declaratory of the law of Parliament, and that, if future research establishes the validity of claims as to freedom of speech or the jurisdiction of Parliament which are not covered by this Article, they are not to be regarded on that account as excluded. It may prove to be the case that the law is wider than Article 9.

There are three principal matters involved in the statement of the law contained in this Article :—

- 1. The right of each House to be the sole judge of the lawfulness of its own proceedings;**
- 2. The right implied to punish its own Members for their conduct in Parliament. Further, there is the question,**
- 3. What is the precise meaning of the term 'proceedings in Parliament?'**

1. The right of each House to be the sole judge of the lawfulness of its own proceedings.

The collective privilege of each House to decide what it will discuss and in what order was hardly ever disputed in the case of the House of Lords. But it was frequently a subject of dispute between the Crown and the Commons that the latter intruded into matters of high policy beyond their competence, and the House had continually to insist on its right to consider and obtain redress of 'grievances' before granting supply.

Another collective right of the House is to settle its own code of procedure. This is such an obvious right-it has never been directly disputed-that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether, like a bill, it is the joint concern of both Houses. This holds good even where the procedure of a House or the right of its members or officers to take part in its proceedings is dependent on statute.

For such purposes the House can 'practically change or practically supersede the law'. This privilege is not confined to the chamber in which the Houses sits. For instance, it has been held to extend to the 'sale, within the precincts of the House, of intoxicating liquor without a licence through its employees in the Refreshment Department of the House (*R v Graham Campbell, ex parte Herbert* [1935] 1 KB 594).

Bradlaugh's Case.—One of the results of the confused dispute between Bradlaugh and the House of Commons, which was prolonged throughout the Parliament of 1880-85 was the unqualified recognition by the courts of their incompetence to inquire into the internal proceedings of House of Parliament. Bradlaugh, at the beginning of the new Parliament in May 1880, claimed to make affirmation under the Evidence Amendment Acts 1869 and 1870, instead of taking the oath. He was eventually permitted to make the affirmation 'subject to any liability by statute,' and took his seat. Upon an action for penalties it was decided, finally by the House of Lords, that Bradlaugh had not qualified himself to sit by making the affirmation. On re-election, he attempted to take the oath, but was prevented by order of the House which eventually directed the Serjeant to exclude him from the House until he undertook to create no further disturbance. Bradlaugh then brought an action against the Serjeant in order to obtain a 'declaration that the order of the House was beyond the power and jurisdiction of the House and void, and secondly an order restraining the Serjeant at Arms from preventing Bradlaugh by force from entering the House'.

In his judgement Mr. Justice Stephen defined the relation between the jurisdiction of the courts and that of the House of Commons over the internal proceedings of the House as follows :—

“ Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out ? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings”

“... It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly”

He assimilated the jurisdiction of the House over its own internal concerns to that of a court “whose jurisdiction is not subject to appeal”

The limits of the jurisdiction of the House in the particular case were defined as follows :-

“... for the purpose of determining on a right to be exercised within the House itself, and in particular the right of sitting and voting, the House and the House alone could interpret the statute but ... as regarded rights to be exercised out of and independently of the House, such as the right of suing for a penalty for having sat and voted, the statute must be interpreted by this Court independently of the House”

On the other hand while recognizing that the rights of persons outside the House, i.e Bradlaugh's constituents, were affected by the decision of the House, the learned judge denied the power of the courts to protect them so far as their rights were exercisable inside the House.

2. The right implied to punish its own Members for their conduct in Parliament.

It seems that the Speaker, in his petition, also sought for the Commons the right to punish any Member who, by his conduct, might offend the House.

Describing the Speaker's petition at the opening of Parliament, Sir Thomas Smith, in *De Republica Anglorum* (circa 1565) said that the Speaker asked, among the other privileges 'that if any should chance of that lower House to offend or not to do or say as should become him, or if any should offend any of them being called to that his highness court: That they themselves might (according to the ancient custom) have the punishment of them. ' (Op. cit., p. 52.) "

This privilege is now partly embodied in SOs Nos 23,24 and 25, which prescribe a summary procedure for enforcing discipline but is not dependent upon them for its existence.

Evidence before the courts as to proceedings in Parliament

The practice of the Commons regarding evidence sought for outside the walls of Parliament touching proceedings which have occurred therein also conforms to Article 9 of the Bill of Rights. This fact is well recognized by the courts, which have held that Members cannot be compelled to give evidence regarding proceedings in the House of Commons without the permission of the House. The meaning of the term 'proceedings in Parliament' has not been expressly defined by the courts, although they have decided that various specific matters connected with Parliament do or do not fall within the ambit of its 'proceedings'.

Criminal acts in Parliament.

There is more doubt as to whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed. In the judgment of the House of Lords in Eliot's case (referred to above), it was deliberately left an open question whether the assault on the Speaker might have been properly heard and determined in the King's Bench. The possibility that it might legally have been so determined was admitted by one of the managers for the Commons in the conference with the Lords which preceded the writ of error.

In *Bradlaugh v Gossett*, Mr. Justice Stephen said that he 'knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice' (1884) 12 QBD p. 284). Since he went on immediately to refer to Eliot's case and accepted the proposition 'that nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts', it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech.

LIST OF PARLIAMENTARY PRIVILEGES EXERCISED BY THE BRITISH HOUSE OF COMMONS :—

Though the Privileges are not codified we are expected to look to precedents involving the British House of Commons. The most elaborate list of Parliamentary Privileges exercised by the British House of Commons has been compiled by Pritiosh Roy in his work Parliamentary Privilege in India which has been quoted in Raja Ram Pal's case ((2007) 3 SCC PP 371-73, para 431. at Paragraphs 94-97) and has been reproduced below :

(1) Privilege of freedom of speech, comprising the right of exclusive control by the House over its own proceedings. It is a composite privilege which includes :—

- (i) The power to initiate and consider matters of legislation or discussion in such order as it pleases ;
- (ii) The privilege of freedom in debate proper- absolute immunity of members for statements made in debate, not actionable at law;
- (iii) The power to discipline its own members;
- (iv) The power to regulate its own procedure- the right of the House to be the sole judge of the lawfulness of its own proceedings;
- (v) The right to exclude the jurisdiction of the Courts;
- (vi) The right to exclude strangers;
- (vii) The right to ensure privacy of debate;
- (viii) The right to control or prohibit publication of its debates and proceedings;

(2) Privilege of freedom from arrest or molestation, the claim of the Commons to freedom of members from arrest in civil action or suits during the time of the Parliament and during the period when a member journeys to or returns from the Parliament. This privilege includes :—

- (i) Exemption of a member from attending Court as a witness- service of a civil or criminal process within the precincts of the House is a breach of privilege.
- (ii) A member cannot be admitted as bail;
- (iii) Exemption of a member from jury service
- (iv) No such privilege claimed in respect of criminal offences or statutory detention;
- (v) Right of the House to be informed of arrest of members on criminal charges;
- (vi) Extension of the privilege to witnesses summoned to attend before the House or its committees, and to officers in immediate attendance upon the service of the House.

(3) Privilege of freedom of access to the sovereign through the Speaker.

(4) Privilege of the House of receiving a favourable construction of the proceedings of the House from the sovereign.

(5) Power of the House to inflict punishment for contempt on members or strangers- a power akin to the powers possessed by the superior courts of justice to punish for contempt. It includes :—

- (i) The power to commit a person to prison, to the custody of its own officers or to one of the State prisons, [the keystone of Parliamentary privilege] the commitment being for any period not beyond the date of the prorogation of the House;
- (ii) The incompetence of the courts of justice to admit a person committed by the House to bail;
- (iii) When the person is committed by the House upon a general or unspeaking warrant which does not state the particular facts constituting the contempt the incompetence of the courts of justice to inquire into the nature of contempt;
- (iv) The power of the House to arrest an offender through its own officers or through the aid and power of the civil government;
- (v) The power of the officers of the House to break open outer doors to effect the execution of the warrant of arrest;
- (vi) The power of the House to administer reprimand or admonition to an offender;
- (vii) The power of the House to secure the attendance, whether in custody or not, of persons whose conduct is impugned on a matter of privilege;
- (viii) The power of the House to direct the Attorney General to prosecute an offender where the breach of privilege is also an offence at law and the extent of the power of the House to inflict punishment is not considered adequate to the offence;
- (ix) The power of the House to punish a member by (a) suspension from the service of the House, or (b) expulsion, rendering his seat vacant.

(6) Privilege of the House to provide for its own due constitution or composition. It includes :—

- (i) The power of the House to order the issue of new writs to fill vacancies that arise in the Commons in the course of a Parliament;
- (ii) The power of the House in respect of the trial of controverted elections of members of the Commons;
- (iii) The power of the House to determine the qualifications of its members to sit and vote in the House in cases of doubt- it includes the power of expulsion of a member. A major portion of this ancient privilege of the House of Commons has been eroded by the statute.

(7) The power of the House to compel the attendance of witnesses and the production of papers.

However, we are only obliged to follow British precedents to the extent that they are compatible with our constitutional scheme. This is because the Legislatures in India do not have a wide power of self-composition in a manner akin to the British House of Commons.

CHAPTER – 2
PRIVILEGES LAW IN OTHER COUNTRIES
&
CONSTITUTIONAL PROVISIONS.

CONSTITUTIONAL PROVISIONS IN OTHER COUNTRIES REGARDING PRIVILEGES :—

(A) England (United Kingdom)

(I) *Freedom of speech.*—In England, it is settled since the Bill of Rights, 1689, that members of Parliament enjoy absolute freedom of speech for debates and proceedings in the House :

“The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.” (Arts. 9)

Hence, no action or proceeding lies for words spoken or written within the walls of Parliament, e.g.

- (a) For defamation. An action for defamation would not lie even for defamatory matter contained in a petition printed for circulation only to members of Parliament.
- (b) For contravention of the Official Secrets Act.
- (c) For uttering words which are criminal in nature and would have been punishable if uttered outside the House .”

Each House of Parliament will treat it as a breach of its privileges if legal proceedings are commenced or other action is taken against any person on account of anything which he may have said, or evidence which he may have given, in the course of any proceedings in the House itself or before one of its Committees.” “Though the Parliamentary Privilege Act, 1770, provides that any privilege of Parliament cannot be pleaded in bar to any suit or action brought against any member of either House of Parliament, it has been held by the Judicial Committee” that, that provision applies only to actions brought against the members as private individuals, e.g., for their debts, and does not extend to their conduct in Parliament as ‘Members’. A court cannot, therefore, issue a writ against a Member of Parliament in respect of a ‘speech or proceeding by him in Parliament ‘ .

The word ‘proceedings’ in the Bill of Rights has been interpreted by the House of Commons is including—

“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.”

The primary meaning, as a technical Parliamentary term, of “proceedings” is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debated by which it reaches a decision.

An individual member takes part in a proceeding usually by speech, but also by various recognized kinds of formal actions, such as voting, giving notes of a motion etc., or presenting a petition or a report from a committee, most of such action being time saving substitutes for speaking. Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Strangers also can take part in the proceedings of the House, e.g., by giving evidence before it or before one of its Committees or by securing the presentation of their petition.

While taking part in the proceedings of a House, Members, Officers and strangers are protected by the same sanction as that by which freedom of speech is protected, namely, that they cannot be called to account for their action by any authority other than House itself.”

Hence, the immunity covers only proceedings in Parliament and would not extend to letters written by a Member of Parliament to a Minister containing allegations against third parties. As regards the latter, only the qualified privilege under the ordinary law may be available. In other words, the member will have to answer in court for libellous contents in such letter if they are malicious, but may claim qualified privilege on showing that he forwarded his constituent’s allegations in good faith and in the public interest.” Again, the immunity applies to words spoken within the House. Hence, if a Member publishes his defamatory speech outside Parliament, he cannot claim Parliamentary privilege against the law of defamation. He may, however, claim qualified privilege under the law of defamation if it is shown that the matter was circulated in the public interest and was confined to his constituents:

The House of Commons resolved in the Strauss’s case (House Committee 305 (1956-57) (contrary to the recommendations of the Committee of Privileges) that a letter from a Member to a Minister was not a proceeding in the Parliament. Although this could be regarded as anomalous, since a member’s question to a minister on the same matter would be a proceeding in Parliament, the Joint Committee did not recommend a change in the law partly because that there was little evidence that the decision has caused problems. Letters to and from members, Ministers and constituents will be protected by qualified privilege in respect of an action for defamation, provided there is a common interest between the parties and absence of malice.

Again, though a Member of Parliament may, with impunity, make libellous attacks on private persons within the House, and though he is not liable in a court of law even for such attack on another member, the House itself possesses the power to control undue licence of speech on the part of its members, under its right to regulate its proceedings and internal affairs, and to punish violations of such rules of the House by suspension, commitment or expulsion and thus to protect one member from libellous attacks of another member.

Again, a member cannot—

(a) Use unparliamentarily language. A member using such language is asked to explain or apologise, and if he refuses to do so, he may be punished by the House as it thinks fit. Where any disorderly or unparliamentarily words are used, whether by a Minister who is addressing the House or by a Member who is present during a debate, the Speaker will intervene and call upon the offending member to withdraw the words. If the Member does not explain the sense in which he used the words so as to remove the objections of their being disorderly or retract the offensive expressions, or make a sufficient apology for using them, the Speaker will repeat his call for the words to be withdrawn and inform the Member that if does not immediately respond to it, it will be the duty of the Chair to take action;

- (b) say anything disrespectful to either House or the Chair;
- (c) say anything personally opprobrious to other members;
- (d) refer to any other member by name;
- (e) use the King's name in an irreverent manner;
- (f) refer to any debate of the same session or any debate in the other House or use the King's name, for the purpose of influencing the House ;

The Speaker is entitled to stop speeches on the ground of improper language or irrelevance.

Unless the discussion is based upon a substantive motion, drawn in proper terms, reflections must not be cast in debate upon the conduct of the Sovereign, the heir to the throne, or other members of the Royal family, the Lord Chancellor, the Governor General of an independent territory, the Speaker, the Chairman of Ways and Means, Members of either House of Parliament, or Judges of the Superior Courts of the United Kingdom including persons holding the position of Judge, such as a Judge of a Court of Bankruptcy or a County Court, or a recorder. Opprobriam reflection must not be cast in debate on Sovereigns and rulers; over or governments of independent Commonwealth territories or countries in amity with Her Majesty or their representatives in the country.

In order to guard against all appearance of personality in debate, no member should refer to another by name. Each member must be distinguished by the office he holds, by the place he represents or by other designation, as "the Noble Lord the Secretary of State for Foreign Affairs, the Honourable', or right Honourable gentleman the Member of York, or the Honourable and learned member who has just sat down' or when speaking of a member of the same party, my (right) Honourable friend, the Member of...

Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a member is canvassing an opinion and conduct of his opponents in debate. It is not out of order, however, to cast aspersions on ex-members of the House, even if they are Privy Councilors.

Reference in debate to either House of Parliament must be courteous, and abusive language and imputation of falsehood, uttered by members of the House of Commons against members of the House of Lords have usually been met by the immediate intervention by the Chair to compel the withdrawal of the offensive words, or in default, by the punishment of suspension. However, criticism of a member of House of Lords for his acts in another capacity has been permitted.

Not only has no action lies in a court of law for anything said in the House, Arts. 9 of the Bill of Rights further provides that what is said or done in the House cannot be examined outside Parliament for supporting a cause of action, even though the cause of action itself arises out of something done outside the House . Thus, in an action for libel against a Member of Parliament for a statement made outside the House, the proceedings in the House recording the defendant's statements in the House cannot be used by the plaintiff to show malice against him.

It may be regarded as established that a member is not amenable to the ordinary courts for anything said in the debate, however, criminal in its nature. The language of Arts. 9 of Bills of Rights are designed to make this clear. Except by some forced construction words spoken in debate cannot be taken out of the category of proceedings in Parliament. As a general rule, a criminal act done in the House is not outside the court of criminal justice. But this rule is also not without an exception. Both the rule and exception will be found to depend upon whether the particular act can or cannot be regarded proceeding in Parliament.

Section 13 of Defamation Act, 1996, provide that in defamation action, where the conduct of the person in or in relation to proceedings in Parliament is his issue, that the person may waive the protection whereby proceedings in Parliament may not be questioned in any court. The immunity from legal liability for them is said or done in the course of or for the purpose incidental to proceedings in Parliament is not affected. Sec. 13 has been widely criticized: it not only undermines the basis of privilege namely that is the privilege of the House as a whole and not of individual members, it also creates uncertainty as to the position where more than one person is involved in the same action, and is anomalous as it is not possible to waive privilege in other civil action or in criminal cases. The Joint Committee recommended the repeal of Sec. 13 and its replacement by a statutory power for either House to waive Art. 9 privilege in respect of any court action provided there is no question of member or other person who made the statement, being exposed in consequence to a risk of legal liability. This would enable either House to permit Parliamentary proceedings to be examined in court when it is considered to be in the interest of justice to do so.”

(B) The Right to publish Debates and Proceedings and the Right to restrain publication by others

1. Each House has an absolute privilege to publish its own debates and proceedings. Until the historical case of *Stockdale v. Hansard*, it was understood that at Common law the right of the House to publish its proceedings otherwise than among its own members was restricted by the ordinary law of defamation. But the Parliamentary Papers Act, 1840, passed to override the decision in the above case, laid down that no proceeding for defamation lies for any publication made under the authority of either House of Parliament. The Parliamentary Papers Act does not provide any assistance for those who publish unauthorized accounts of Parliamentary papers or proceedings.

2. It follows from the above that though members of Parliament have an absolute freedom of speech within the walls of Parliament, they have no unqualified privilege of publishing their speeches privately.

“If a member publishes his speech, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.”

Here they rank equally with ordinary citizens and if the published speeches contain defamatory matter; or matter tending to overthrow the State or the like, they would be liable under the ordinary law.

The law of defamation, however, offers a “qualified privileges” to reports of Parliamentary proceedings (even though published without the authority of the House) on the ground that such reports are “essential to the working of the Parliamentary system and to the welfare of nation”, which would out-balance occasional inconveniences to individuals

The ability of democratically elected Members of Parliament to discuss what they will (freedom of debate) and to say what they will (freedom of speech) is ensured. This means that the members are not to be subject to any penalty, civil or criminal, for what they say or discuss in the Parliament.’

Similarly, an article founded on proceedings in Parliament would be privileged, if it is an honest and fair comment on the facts. Fair and accurate extracts from authorised publications, would also be similarly privileged. This privilege is offered to the publication of Parliamentary proceedings on the same principle as is applied to the case of reports of judicial proceedings and is, accordingly, subject to the same limitations as apply to reports of judicial proceedings. It follows, therefore, that a garbled or partial report or a report of detached parts of proceedings published with intent to injure individuals will, as in the case of reports of judicial proceedings, be disentitled to protection.

On the same principle, a bona fide publication of a defamatory speech by a member for the information of his constituents is privileged, but the publication by a member in a newspaper of a single defamatory speech in Parliament, for the purpose of injuring an individual, would not be entitled to any privilege. -

“If a member publishes his own speech, reflecting upon the character of another person, and omits to publish the rest of the debate, the publication would not be fair, and so would not be privileged, but a fair and faithful report of the whole debate would not be actionable”

“There is obviously a material difference between the publication of a speech made in Parliament for the express purpose of attacking the conduct of an individual, and afterward published with a like purpose or effect, and the faithful publication of Parliamentary reports in their entirety, with view to afford information to the public, and with a total absence of hostile intention or malicious motive towards any one.”

3. The House can clear the reporters’ gallery at any time and declare a session to be secret.

4. Publication may also be restrained by direct legislation, e.g., in time of emergency.

(B) UNITED STATE OF AMERICA (U.S.A.)

U.S.A.,—Art. 1, Sec. 6(1) of the Constitution says :

“The Senators and Representatives for any speech or debate in either House, they shall not be questioned in any other place.”

The freedom of speech guaranteed by this provision has been liberally construed on the ground that its object is to secure the freedom of the peoples’ representatives for the public good as distinguished from the protection of individual members. Thus it has been held that the immunity extends to—

(a) Anything said or done by a member as a part of the business of the House, or any Committee thereof including the giving of a vote, the making of a written report, or initiating legislation and, in general, to all things done in a session of the House.

(b) The immunity is not lost even though its exercise was contrary to the Rules of the House,” or guided by an improper Motive.”

But the immunity offered by the Clause would not extend—

(a) To aid a Member to violate an otherwise valid criminal law, in preparing for or implementing legislative acts.

(b) To immunise a Member from liability for any act which does not form an ‘integral part’ of the deliberative or legislative business of either House or, in other words, which is not essential to the deliberations of the House.” If, therefore, a Member arranges for a private publication of any document which forms part of the debate of either House or any Committee thereof he would be punishable under any law which makes it an offence, and also liable to be questioned before a body investigating into that offence.

The above provision in U.S.A. Constitution confers as members of Congress two types of limited immunity from suit via the “speech and debate” clause and the “privilege from arrest”. The speech and debate clause provide that members of Congress shall not be questioned in any other place for any speech or debate in either House. The purpose of this immunity is to foster uninhibited legislative debate and to protect legislators from the distraction of defending suits based on their performance of their duties. Members of the Congress are absolutely immune from civil or criminal suits or even grand jury investigation promised upon their “legislative acts”. This immunity also extends to legislative aids, but only with respect to the “legislative acts” of their aids.” The word legislative “acts” includes everything that is integral to “deliberations and communicative processes by which the member participate” in the official business of the Congress. This does not mean just the literal speeches and debates in Congress; it also includes political campaigning or even public announcements related to a member’s policy views.

The “speech and debate” clause does not prevent prosecution for crimes that are related to legislative acts so long as the legislative acts itself is not prosecuted or used in evidence. For example, a corrupt member of Congress may not be prosecuted for “voting in a particular manner” because he was bribed to do so, but he may be prosecuted for the non legislative act of “taking bribe”.

(C) Australia. - Sec. 49 of the Commonwealth Constitution Act says :—

“The Powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each Houses shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.”

In the result, the privileges of each House of the Australian Parliament shall be those of the House of Commons, as they existed in 1900, until the Commonwealth Parliament itself ‘declares’ its privileges. A question arose as to how this declaration is to be made by Parliament, an effect of such declaration being to render the privileges of the British House of Commons altogether inapplicable in the Commonwealth Parliament. It seems that such declaration must be made in a direct law relating to privileges, under Sec. 49, and not any incidental or partial treatment of privileges in an ordinary statute, in exercise of the power conferred by Sec. 51(xxxvi).

Immunity from legal action has been conferred upon the official reports of the proceedings of the House of the Commonwealth Parliament by statute, the Parliamentary Papers Acts, 1908-74. Similarly, the Parliamentary Proceedings Broadcasting Acts, 1946-73 give immunity to the broadcasting of proceedings of the Commonwealth Parliament by the Australian Broadcasting Commission.

What is parliamentary privilege ?

The term parliamentary privilege refers to special legal rights and immunities which apply to each House of the Parliament, its committees and Members. These provisions are part of the law of the Commonwealth.

Why is it necessary ?

The Houses of the Commonwealth Parliament, in common with other Parliaments, are given a special legal status because it is recognised that the tasks they have to perform require additional powers and protections. Special rights and immunities are necessary because of the functions of the House, for example, the need to be able to debate matters of importance freely, to discuss grievances and to conduct investigations effectively without interference.

Main features of the law and practice

Section 49 of the Commonwealth Constitution provides that, until declared by the Parliament, the powers, privileges and immunities of the Senate and the House of Representatives and the Members and committees of each House shall be those of the British House of Commons at the time of Federation (1901). It was not until 1987, and following a thorough review of the whole subject by a joint select committee, that the Commonwealth Parliament passed comprehensive legislation in this area.

The main features of the arrangements in the Commonwealth Parliament are as follows:

Each House, its committees and Members enjoy certain rights and immunities (exemptions from the ordinary law), such as the ability to speak freely in Parliament without fear of prosecution (known as the privilege of freedom of speech).

Each House has the power to deal with offences-contempts-which interfere with its functioning.

Each House has the power to reprimand, imprison or impose fines for offences.

Complaints are dealt with internally (within Parliament)-they may be considered by the Committee of Privileges and Members' Interests which will report to the House which may then act on the matter in light of the committee's report.

There is a limited ability for decisions of the House to imprison people to be reviewed in court.

The Parliamentary Privileges Act 1987 creates a special category of criminal offence in order to strengthen the protection available to witnesses who give evidence to parliamentary committees.

The privilege of freedom of speech

The privilege of freedom of speech is often described as the most important of all privileges. Its origin date from the British Bill of Rights of 1689. Article 9 of the Bill of Rights provides:

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

As this was one of the privileges of the House of Commons in 1901, it was inherited by the House and the Senate under the terms of the Commonwealth Constitution. Section 16 of the Parliamentary Privileges Act preserves the application of the traditional expression of this privilege, but spells out in some detail just what may be covered by the term ‘proceedings in Parliament’.

The practical effect of this is that those taking part in proceedings in Parliament enjoy absolute privilege. It is well known that Members may not be sued if they make defamatory statements when taking part in debates in the House, but the privilege is wider than that and, for instance, protects Members from being prosecuted if in a debate they make a statement that would otherwise be a criminal offence, for example, a Member who felt it necessary to reveal a matter which was covered by a secrecy provision in a law such as personal tax information.

The privilege of freedom of speech has been described as a ‘privilege of necessity’. It enables Members to raise in the House matters they would not otherwise be able to bring forward (at least not without fear of the legal consequences). The privilege is thus a very great one, and it is recognised that it carries with it a corresponding obligation that it should always be used responsibly. Pressure from other Members, the public and the media would be brought to bear on Members who made accusations unfairly in the Parliament. There is also a procedure for individuals who have been offended by remarks made about them in the House to seek to have a response published.

The privilege of freedom of speech is not limited to Members of Parliament; it also applies to others taking part in ‘proceedings in Parliament’. The most obvious example of others who may enjoy absolute privilege are witnesses who give evidence to committees. It is important to note that the privilege only applies to evidence given to properly constituted parliamentary committees, and does not, for instance, apply to party committees.

There is a difference between absolute and qualified privilege. Qualified privilege exists where a person is not liable for an action for defamation if certain conditions are fulfilled, for example, if a statement is not made with malice. Newspapers which report debates in Parliament rely on qualified privilege. Absolute privilege, on the other hand, exists where no action may be taken at all, even if, for example, a statement is made with malice.

As well as proceedings in Parliament being absolutely privileged, the House, and properly constituted committees, may confer absolute privilege on various papers by authorising their publication. Parliamentary committees often use this power to authorise the publication of submissions and transcripts of evidence given to inquiries. The Parliamentary Papers Act also extends absolute privilege to the Hansard record of proceedings. The Parliamentary Proceedings Broadcasting Act does the same in relation to the official broadcast, but absolute privilege does not apply to the broadcast of excerpts of proceedings.

Other privileges

Members may not be required to attend courts or tribunals as witnesses or be arrested or detained in civil matters on sitting days and for five days before and after sitting days. Such immunities also apply when a Member is a member of a committee that is meeting. People required to attend as witnesses before committees may not be required to appear as witnesses before a court or tribunal or be arrested or detained for a civil matter on days they are required to give evidence to the committee. Members and some parliamentary staff are also exempt from jury service. These immunities are justified on the ground that the first duty of Members, and others involved, is to Parliament and that this overrides other obligations. **The immunity from civil arrest and detention does not exempt Members from the action of the law. Members still must fulfill their legal obligations at a time when the Parliament is not meeting, and no immunity applies at all in criminal matters.**

The ability to deal with offences (contempts)

As well as dealing with people or organisations breaching particular rights or immunities, the House may also take action over matters which, while they do not breach any particular legal power or immunity, obstruct or impede the House in the performance of its functions or Members or officers in the discharge of their duties. This is known as the ability to punish for contempt and is similar to the courts' power to punish for contempt of court.

This power gives the House a flexibility to protect itself and its Members against new or unusual threats. Matters can be dealt with under this authority even if there is no precedent for them. A safeguard against misuse of this considerable power is given by section 4 of the Parliamentary Privileges Act which states that conduct does not constitute an offence unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or a committee of its authority or functions, or with the free performance by a Member of his or her duties as a Member. Speakers have also referred to the importance of restraint in the use of the House's powers to deal with contempts. In addition, the Act prevents action being taken in cases where the only offence was that words or actions were defamatory or critical of the House or a committee or a Member. This removed a category under which many complaints had been raised over the years, for example, newspaper reports criticising the behaviour of Members.

One of the most important effects of the power to punish contempts is that the House may protect its committees and their witnesses. Committees usually have substantial powers to help them to obtain evidence and information, but they do not themselves have power to take action against any person or organisation who is obstructing or hindering them. If it is misled or obstructed, or if its witnesses are punished or intimidated, a committee may bring the matter to the attention of the House which ultimately may punish for contempt.

The raising of complaints

Complaints of breach of privilege or contempt may only be raised formally by Members—a person who believes that there has been an offence must ask a Member to raise it in the House. The normal course is for a Member to seek the call 'on a matter of privilege' and to immediately outline the complaint briefly. The Speaker then considers the matter privately. If satisfied that it has been raised at the first available opportunity and that there is some substance in it (the technical term being that a prima facie case exists) the Speaker may give precedence to a motion on the matter. Usually such a motion would be that the issue be referred to the Committee of Privileges and Members' Interests, although other motions could be

proposed, or a Member might advise the House that he or she did not wish to pursue the matter further. Whether or not a matter is sent to the Committee of Privileges and Members' Interests for investigation is thus for the House itself to decide.

Committee of Privileges and Members' Interests

The House has had a Committee of Privileges since 1944. The title was changed to the Committee of Privileges and Members' Interests in February 2008 (when two committees were combined). Currently the committee consists of 11 Members and, like other committees, government Members form a majority, although it is traditional that matters of privilege are not considered on a party basis. The committee has the power to call for witnesses to attend and for documents to be produced, that is, it can compel the production of material and the attendance of witnesses. Witnesses, including Members, may be asked to make an oath or affirmation before giving evidence.

Traditionally, the committee has met in private. Major changes in procedure were made during an inquiry in 1986–87 relating to the unauthorised disclosure of material relating to a joint select committee. During that inquiry, for the first time, evidence was taken in public and witnesses were permitted to be assisted by legal counsel or advisers. In December 2000 the House agreed to a motion authorising the publication of all evidence or documents taken in camera or submitted on a confidential basis and which have been in the custody of the Committee of Privileges for at least 30 years. These records are now made available through the National Archives of Australia.

The committee itself cannot impose penalties. Its role is to investigate and advise. In its report to the House the committee usually makes a finding as to whether or not a breach of privilege or contempt has been committed, and it usually recommends to the House what action, if any, should be taken.

As well as investigating specific complaints of breach of privilege the committee is also able to consider any general privilege issues referred to it by the House, for example, it conducted an inquiry into whether Members' office records attracted privileged status. It also considers applications for a 'right of reply' from people who have been criticised in the House.

Consideration by the House

Normally when a report from the committee is presented, and especially if there is the possibility of further action, the practice is for the House to consider the report at a future time so that Members may study the report and the issues before making decisions on it. The House is not bound to follow the committee's recommendations, and any motion moved is able to be amended.

Penalty options

It has long been recognised that the House has the power to imprison people, but there has been considerable uncertainty as to whether it had the power to impose fines because of doubt as to whether the House of Commons itself had this power in 1901. These doubts were removed by the Parliamentary Privileges Act. Under the Act the House may impose a penalty of imprisonment not exceeding six months on a person, or a fine not exceeding \$5,000, or not exceeding \$25,000 in the case of a corporation. Neither the House of Representatives nor the Senate has ever imposed a fine under this provision.

Under section 9 of the Act, if the House imposes a penalty of imprisonment, the resolution imposing the penalty and the warrant must set out particulars of the offence. The effect of this is that a court could be asked to determine whether the ground for the imprisonment was sufficient in law to amount to contempt.

On only one occasion has the House imposed penalties of imprisonment. This was in 1955 when Mr R. E. Fitzpatrick and Mr F. C. Browne were found guilty of a serious breach of privilege by publishing articles intended to influence and intimidate a Member in his conduct in the House. They were each imprisoned for three months.

(D) Canada.-Sec. 18 of the British North America Act, 1867, empowered the Canadian Parliament to make law defining its privileges and provided that until such legislation, the privileges shall be the same as of the British House of Commons .

Hence, freedom of speech obtains in the Houses of the Canadian Parliament to the same extent as in the U.K., subject to legislation, if any.

The true scope of the privilege is that a Member of the Legislature is not amenable to the ordinary courts “for anything he may say or do within the scope of his duties in the course of Parliamentary business”, in Parliament or any Committee thereof.

PARLIAMENTARY PRIVILEGE

The House of Commons and its Members enjoy certain constitutional rights and immunities which are collectively referred to as parliamentary privilege (or simply “privilege”). Parliamentary privileges were first claimed centuries ago when the English House of Commons was struggling to establish a distinct role for itself within Parliament. These privileges were necessary to protect the House of Commons and its Members, not from the people, but from the power and interference of the King and the House of Lords.

The privileges enjoyed by the House and its Members continue to be vital to the proper functioning of Parliament. From time to time the House of Commons in Canada has had to challenge the Crown, the Executive (Cabinet) or the Upper House (the Senate), by asserting its independence based on parliamentary privilege.

INDIVIDUAL AND COLLECTIVE RIGHTS RELATED TO PARLIAMENTARY PRIVILEGE

Rights that are protected by privilege are those that are necessary in order to allow Members of the House of Commons to perform their parliamentary functions. These rights are enjoyed both by individual Members of Parliament because the House cannot perform its functions without its Members and by the House, as a whole, for the protection of its Members as well as its own authority and dignity.

The rights and immunities related to Members individually may be grouped under the following headings:

- Freedom of speech
- Freedom from arrest in civil actions ;
- Exemption from jury duty and
- Exemption from being subpoenaed to attend Court.
- The two most important collective privileges or powers of the House of Commons are its exclusive right to regulate its own internal affairs.

PROCEDURE IN MATTERS OF PRIVILEGE

Any claim that a privilege has been infringed upon or a contempt committed must be brought to the attention of the House at the earliest opportunity. Once the Speaker recognizes a Member on a matter of privilege, the Member must briefly outline the complaint, following which the Speaker may choose to hear from other Members prior to deciding if there is a *prima facie* case of privilege (i.e., whether the matter appears to warrant priority or consideration).

If the Speaker finds there is a *prima facie* breach of privilege, the Member raising the question of privilege is asked to move a motion, usually requesting that the matter be examined by the Standing Committee on Procedure and House Affairs. If there is a favourable vote in the House on the motion (which can be debated), the matter is examined by the Standing Committee, which may choose to call expert witnesses. The Committee's report of findings and recommendations is presented to the House, and a motion to concur in, or agree to the report, may then be moved.

LIMITATIONS OF PRIVILEGE

Parliament does not possess the authority to determine the limits of its own privileges; these are part of the Constitution of Canada, and therefore the courts have the jurisdiction to determine the existence and scope of any claimed privilege. In doing so, their guiding principle has traditionally been the protection of parliamentary autonomy from the Courts and the Executive. The primary question asked by the courts is whether the claimed privilege is necessary for the House of Commons and its Members to carry out their parliamentary functions of deliberating, legislating and holding the Government to account, without interference from those outside of Parliament.

Once a category of privilege is determined to exist and its scope is ascertained, the exercise of parliamentary privilege, including any decision or action taken within the privileged category, cannot be reviewed by the courts.

(E) Eire (Ireland).-Arts. 15(10), (12) and (13) of the Constitution of 1937 provide

(1) Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties.

(2) All official reports and publications of the Oireachtas of either House thereof and utterances made in either House wherever published shall be privileged.

(3) The members of each House of the Oireachtas shall, except in case of treason as defined in this Constitution, felony or breach of the peace, be privileged from arrest in going to and returning from, and while within the precincts of, either House, and shall not, in respect of any utterance in either House be amenable to any court or any authority other than the House itself."

(F) Fourth French Republic.—Art. 21 of the Constitution of 1946 provided :

“Art. 21. No member of the Parliament may be prosecuted, sought by the police, arrested, detained or tried because of opinions expressed or votes cast by him in the exercise of his functions.”

(G) Fifth French Republic. Art. 26 of the Constitution of 1958 reproduce the foregoing Article of the 1946 Constitution.

No Member of Parliament can be prosecuted, sought out, arrested, retained or tried on account of opinions expressed or votes cast by him in performance of his functions. No member of Parliament may be arrested or prosecuted on criminal or mis-demeanour charges during sessions of Parliament without authorisation of the House of which he is a member where a court has made a final verdict or whose arrest has been authorized in a previous session.

(H) West Germany - Art. 26 of the West German Constitution of 1946 says:

“No member of Parliament may be prosecuted, sought, arrested, detained or tried as a result of the opinions or votes expressed by him in the exercise of his functions.”

(I) Japan.- Art. 51 of the Japanese Constitution. 1946. says :

“Members of both Houses shall not be held liable outside the House for speeches, debates, or votes cast inside the House “.

Specific Parliamentary Privileges In Various Countries

Information of some specific Parliamentary Privileges in various countries, like Belarus, Burkina Faso, Chile, Colombia, Cyprus, Denmark, Egypt, Estonia, Finland, Gabon, Germany, Guinea, Hungary, Italy, Kuwait, Croatia, Austria, Poland, Russian Federation and Sweden.

In a certain number of countries Ministers enjoy a specific protection (for example in Belgium, Guinea) which is linked to their office. In Romania the system of legal privilege for the political opinions of members of parliament also extends to the President of the Republic.

In certain countries (for example, in Switzerland) protection is broader and extends to all persons who take part in parliamentary debates (such as Ministers, even if they are not members of parliament), or to every person who participates in parliamentary activities (such as witnesses, experts, officials and petitioners).

In Canada, and also in the Netherlands, there is protection for all who participate in the meetings. In the United Kingdom, *freedom of speech* applies to all who take part in parliamentary activities, thus both to members of parliament and officials, witnesses, lawyers and petitioners.

In New Zealand, privilege applies equally to all participants in parliamentary proceedings, including witnesses and petitioners.

In France, privilege in principle only covers members of parliament. Jurisprudence accepts, on the basis of the law of 29th July, 1881 concerning the freedom of the press, that witnesses who testify before a parliamentary committee of inquiry also enjoy immunity: “it is considered (Court of Appeal Paris, 16th January, 1984) that the statements of witnesses heard before a committee of inquiry enjoy the immunity provided for every report and document published by order of the Assemble National and the Senate, except in the case of statements which are malicious, defamatory or injurious to those external to the Parliamentary inquiry”.

Ireland has recently adopted a legal modification with regard to the *freedom of speech* of witnesses called to appear before a Parliamentary Committee (Committees of the Houses of Oireachtas; Compellability, Privileges and Immunities of Witnesses Act 1997). These witnesses enjoy an absolute immunity and cannot as a result be prosecuted for statements they have made during meetings of the Committee. The coming into force of this provision required the adoption of a resolution by one of the two chambers of the Irish Parliament.

In Namibia, Sri Lanka, Zambia, and, to an extent in Bangladesh, the protection extends to Parliamentary officials.

The immunities of Members of Parliament

In most countries, it appears that a Member of Parliament cannot be held responsible for words or votes which are recorded in the official publication of Parliament (summary record and annals of sittings drafted by the Parliamentary departments).

In Australia.—Privilege does not apply to activities which are not directly linked to Parliamentary activities.

In Germany.—In the Bundestag parliamentary privilege for members does not apply during party meetings.

The direct broadcast of debates taking place in the Bundestag is protected. Other participation in television or radio programmes, such as participation in talk-shows, is not covered by Parliamentary Privilege.

Participation in televised or radio debates is protected under privilege in countries like Belarus, Burkina Faso, Germany, Egypt, Gabon, Greece, Guinea, Hungary, Kenya, Mongolia, Romania, Russian Federation, Uruguay, but not protected in Australia, Bangladesh, Belgium, Chile, Estonia, Philippines, France, Ireland, Croatia, Republic of Korea, FYR of Macedonia, Malaysia, Namibia, Nepal, Netherlands, New Zealand, Norway, Austria, Poland, Slovenia, Spain, Sri Lanka, Thailand, Czech Republic, United Kingdom, Zambia, South Africa, Switzerland, Finland, Japan.

In Namibia.—*Freedom of speech* does not apply to televised or radio debates unless they took place at the request of Parliament.

In Poland.—privilege does not apply to debates unless they are indissociable from Parliamentary proceedings.

In Spain.—unless debates took place in the context of an Official Parliamentary meeting.

Interviews given are protected in countries like Belarus, Burkina Faso, Gabon, Greece, Guinea, Hungary, Italy, Mongolia, Romania, Russian Federation, Uruguay.

In Italy interviews are protected to the extent that there is a link with Parliamentary Activities but in Australia, Bangladesh, Belgium, Chile, Germany, Egypt, Estonia, Philippines, Finland, France, Ireland, Kenya, Croatia, Republic of Korea, FYR of Macedonia, Malaysia, Namibia, Nepal, Netherlands, New Zealand, Norway, Austria, Poland, Slovenia, Spain, Sri Lanka, Thailand, United Kingdom, Zambia, South Africa, Switzerland interviews are not protected under privileges.

Political meetings are protected under Privileges in Belarus, Burkina Faso, Egypt, Greece, Guinea, Hungary, Mongolia, Romania, Russian Federation, Uruguay, but not protected in Australia, Bangladesh, Belgium, Chile, Germany, Estonia, Philippines, Finland, France,

Gabon, Ireland, Kenya, Croatia, Republic of Korea, Macedonia, Malaysia, Namibia, Nepal, Netherlands, New Zealand, Norway, Austria, Poland, Slovenia, Spain, Sri Lanka, Thailand, United Kingdom, Zambia, South Africa, Switzerland.

Other actions or circumstances in which *freedom of speech* is applicable

In New Zealand, a qualified privilege is accorded to communications, for example, between a Member of Parliament and the inhabitants of his electoral district. The depositing of a petition is also covered by privilege.

In France, actions performed in the context of a mission organised by the Parliamentary Authorities are also covered by privilege.

The immunities of Members of Parliament

Written or oral reproduction of words of Members of Parliament

In the cases mentioned above it is the writings or words of members of Parliament which are covered or not covered by parliamentary privilege. But the situation is different when other persons repeat (reproduce), orally or in writing, or comment on the writings or words of members of Parliament. This practice is authorised in most countries, on condition that the reproduction is accurate and in good faith. This is, for example, the case in Australia, Bangladesh, Belarus, Burkina Faso, Canada, Chile, Colombia, Denmark, Estonia, the Philippines, Finland, Gabon, Greece, Guinea, Hungary, India, Italy, Kuwait, Croatia, FYR of Macedonia, Mongolia, Mozambique, Namibia, Norway, Austria, Portugal, Slovenia, Spain, Sri Lanka, Uruguay, United Kingdom, Zambia, South Africa and Sweden.

The federal constitution of Austria expressly provides that “no one shall be held accountable for publishing true accounts of proceedings in the public sessions of the National Council and its Committees” (Article 33 of the Austrian Federal Constitution). Also in Germany, the legislation explicitly provides that one cannot be prosecuted for having accurately reported what is said in the plenary session of the Bundestag and in committees. In a certain number of countries so-called “qualified” privilege applies in a similar case. Under this privilege, courts and tribunals have jurisdiction (there is not therefore absolute immunity). This privilege can, however, be invoked as a Defence in proceedings for slander/libel and defamation. (Qualified privilege exists in Australia, New Zealand and Ireland.) In Mali the reproduction of and accurate commentary on speeches of members of Parliament is only possible with their agreement. The publication is the responsibility of the Member of Parliament. Some countries, notably Kenya, the Republic of Korea, Malaysia, Netherlands, Poland, Thailand, do not recognise a privilege of this type.

Restrictions in the application of freedom of speech

In most countries *freedom of speech* is subject to certain restrictions and certain declarations or behaviour are deemed inadmissible and are not covered by privilege. These restrictions are based on the rules of Parliaments and aim to ensure the good order of meetings. It is the President/Speaker of the Assembly or Chairman of the Parliamentary Committee.

Constitutional and Parliamentary Information

In some countries, insults to the Head of State (President, King) are not covered by *freedom of speech*. This is, for example, the case in Australia, Belarus, Cyprus, Egypt, Malaysia, Mali, Nepal and New Zealand. In Canada insults addressed to the Royal Family are also forbidden. In Cyprus, it is forbidden under a regulation of Parliament, to show a lack of respect to the Head of State or to other authorities during sittings.

In some countries restrictions are also imposed on the criticisms which members of Parliament are authorised to make of judges and concerning cases pending before a court ('sub judice' cases) (Australia, Belarus, Canada, Egypt, Malaysia, Nepal, New Zealand ...). In Malaysia, members of Parliament are not permitted to criticise judges. In Australia (House of Representatives and Senate) custom (in this case a convention which the assembly has imposed upon itself) requires that debates are avoided which could result in a position being taken with regard to pending court cases, unless the Assembly considers it appropriate to waive this rule in the public interest. This Rule of Custom does not appear in Parliament's regulations but it is applied and interpreted by the Speaker according to circumstances. In the United Kingdom the regulations of the House of Commons provide that members of Parliament cannot criticise a judge except through a motion. The Member of Parliament who does not respect this rule enjoys, however, the protection of privilege. Similar provisions exist in South Africa and in Ireland with regard to accusations made against the Head of State, members, judges and certain other elected representatives. Accusations against them cannot be made during debate but they can be made in a motion.

All actions more serious than words, such as blows or injuries, are not covered by *freedom of speech* either. In Denmark, however, it is expressly stipulated that in addition to verbal statements all symbolic actions are covered by privilege.

Some countries also mention slander/libel and defamation as inadmissible acts (Belarus, Estonia, Finland, Hungary, Republic of Korea, Mongolia). In Germany *freedom of speech* does not apply to slanderous insults. However, a Member of Parliament cannot be prosecuted in such a case until their Parliamentary immunity has been lifted.

Moreover, in Switzerland legal proceedings against a person protected by *freedom of speech* are only possible after the Federal Chambers have authorised them by a simple majority of the members of each Council.

In Norway, *freedom of speech* does not prevent a Member of Parliament being brought before the Constitutional Court. This Court is composed of Members of Parliament and of judges from the Supreme Court. The Constitutional Court can convict Members of Parliament for what are criminal offences. To date this procedure has never been applied.

In South Africa there is a special legislative provision with regard to witnesses. If they have made, before the Assembly or committees, statements which, according to the Chair, are complete and truthful, they are provided on request with a certificate. This document obliges courts and tribunals to suspend all civil or criminal proceedings taken against them on the basis of their evidence before the assembly or committee, except in instances of perjury in Poland, Portugal, Romania, Slovenia, Spain, Sri Lanka, Czech Republic, Uruguay, Sweden, Switzerland. It is on the other hand possible in Canada, as well as in Guinea, the Member of Parliament being able to take the decision himself. In Greece the decision belongs both to the assembly and to the Member of Parliament himself. The Member of Parliament can renounce his privilege in an individual capacity but his decision does not bind the Assembly which must reach a decision by secret ballot. In Hungary, the Member of Parliament can waive his privilege with regard to minor offences. The United Kingdom has recently adopted a legislative modification (Defamation Act 1996) which allows Members of Parliament to waive their

privilege in a trial for slander/Libel and defamation. Previously no individual privilege had been recognised.

A member of Parliament can also in certain cases renounce his privilege without having to follow a formal procedure. Thus, in countries where *freedom of speech* is limited, in location, to the building which houses the parliament, the Member of Parliament can repeat his words outside the precincts.

In the Philippines the Supreme Court has ruled that a Member of Parliament could not claim Privilege in the case of accusations formulated in an open letter published in all newspapers. The letter in question had been written during the Parliamentary vacation (Jimenez Vs Cabangbang). In another case resulting from accusations made against the President, a Member of Parliament had by contrast successfully invoked *freedom of speech* (Osmena Vs Pendatun, 1960)

In Poland a Member of Parliament has divulged secret documents of the security service (*Office of State Protection*) during a press conference. The Polish Supreme Court ruled that Parliamentary Privilege applied in this case.

PARLIAMENTARY IMMUNITY

The concept of parliamentary immunity

In Canada, immunity is limited to the exemption from the obligation to appear before a court as a witness during the session (even in civil cases). We find a similar rule in South Africa where a Member of Parliament cannot be constrained to appear to give evidence or as a defendant in civil cases in any place other than where parliament is sitting.

In Norway and in Ireland, immunity only protects against arrest on the way to Parliament and within the Parliamentary Estate (but also against arrest for acts done by the interested party before he became a member of Parliament).

In Colombia, Parliamentary Immunity does not exist as such but only the Supreme Court (Corte Suprema de Justicia) is competent to conduct an inquiry concerning deputies and senators and to judge them.

In countries where the system of parliamentary immunity is still in force, the principle is in almost all cases found in the constitution or in a "constitutional law" (Portugal) and at a subsidiary level in the laws and regulations of the Assemblies. Sometimes the principle is only included in statute law (for example, in New Zealand and Switzerland) or is founded both on precedent and on law (as the United Kingdom).

In general the concept of parliamentary immunity seems fairly unchanging and in most of the countries it has hardly evolved in recent times.

In countries where, by contrast, fundamental changes have occurred in recent years, it is generally stated that the range of immunity has been restricted. In France, for example, the constitutional law of 4th August, 1995 has modified in an important way the system of immunity. Henceforth only arrest or the implementation of custodial measures or measures restricting liberty are subject to the authorisation of the Bureau of the Assembly to which the Member of Parliament belongs.

CHAPTER – 3

INDIAN HISTORICAL BACKGROUND

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CONSTITUTIONAL PROVISIONS**Historical background of Parliamentary privileges in India:**

Origin of Parliamentary privileges was not unknown in ancient India. In Vedic time, there were two assemblies named Sabha and Samiti which were keeping the checks on all the action of the King. In 1600 the East India Company came to India for trade. They intertwined themselves in the affair by East India Company Act, 1784. The Charter Act of 1833 emphasised on legislative centralization. An expansion of the Legislative Council Act of India was provided by 1853 Charter Act. The claim of privileges can be seen in demand of the legislative councilor under the Charter Act of 1853. Consequently, the power of Legislative Council was defined by Indian Council Act, 1861. This act extended the privileges available to the members and to the members of the newly formed legislative council of state, the Indian Council Act, 1892, the privileges were reiterated and extended which include the debate, any motion passed by Parliament etc the Government of India Act, 1915, the entire position of Parliament privileges which were obtained were consolidated. In the Government of India Act, 1919 they gave qualification to freedom of speech to members. Government of India Act, 1935 contained the provisions related to privileges of members of Indian Legislature. The Indian Independence Act 1947 accorded sovereign legislative power on Indian domain.

The privileges of the Indian Legislatures have been gradually developed along with the progress made in the constitutional development of the country. The constitutional development is marked by the successive Acts governing Indian Legislatures, such as, the Indian Councils Acts of 1853, 1861, 1892 and 1909, and the Government of India Acts of 1919 and 1935. These various Acts constitute successive mile-stones in the development of legislative bodies in India. With the advent of independence, the country finally adopted its Constitution in 1950 which was framed by the Constituent Assembly set up for the purpose.

As regards privileges, Sub-Section (7) of Section 72(D) of the Government of India Act, 1919 provided certain immunities for the Members of the Council in respect of speech and vote in the House, Act. 23 of 1925 provided for freedom from arrest under civil process for certain specified periods. The position was not quite settled with regard to interference of the courts with the proceedings of the House.

However, Courts have refused to interfere with the internal proceedings of the House, even prior to Government of India Act, 1935. On the 3rd September 1928, at the time of motion in the Madras Legislative Council for the election of the 7 representatives to confer with the Indian Statutory Commission, an application was made in the Madras High Court for a Writ of Certiorari preventing the President of the Legislative Council from admitting the motion or putting it to vote of the House. The pendency of the proceedings in the High Court was brought to the notice of the President, but the President pointed out that an application in the High Court need not interfere with the course of business in the Legislative Council and that the Council had a right to regulate its proceedings.

Sections 28 and 71 of the Government of India Act, 1935 provided that there shall be freedom of speech in a Legislature, that no member of a Legislature shall be held in proceedings in any court in respect of anything said or any vote given by him in the Legislature or in a Committee thereof and no person shall be so liable in respect of publications by or under the authority of either Chamber of the Legislature, of any report, paper or votes or proceedings. In other respects, the privileges of the members were to be such as may from time to time be defined by an act of federal or provincial Legislature, as the case may be, and until so defined, were such as were immediately before the establishment of the Federation or the commencement of part-III of the Act. Sub-Section (3) of these sections said that nothing in this Act shall be construed as conferring or empowering the federal or the provincial Legislature to confer on either or both of its chambers sitting together or any committee or officer thereof, the status of a court or any punitive or disciplinary powers other than the power to remove or exclude the persons infringing the rules or standing orders or otherwise behaving in a disorderly manner. Sub-section (4) (of these Sections) further stated that a provision may be made by an act of an appropriate Legislature for the punishment on conviction before a court, of persons who refused to give evidence or produce documents before a committee of a chamber when duly required by the Chairman of the Committee so to do. Sections 41 and 87 of the Government of India Act, 1935 went further and made an improvement over the position obtaining under the Government of India Act, 1919 in that, it specifically provided that the validity of any proceedings in a federal or a provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure, and further no officer or other member of the Legislature in whom the powers are vested by or under this Act for regulating the procedure and the conduct of business or for maintaining the order in the Legislature shall be subject to the jurisdiction of any court in respect of exercise by him of those powers.

This position was further improved upon as a result of the Indian Independence Act, 1947 and the amendments made in the Act by various adaptation orders. Sub-sections (3) and (4) of Section 28 of the Act of 1935 were deleted. But sub-sections (3) and (4) of Section 71 which related to the provincial Legislatures were retained. In the result, it was open to the Central Legislature to confer upon itself the power and privilege to commit for contempt, and the way was made open to define its privileges by reference to the privileges of the British House of Commons, which it subsequently did under the Constitution of 1950. The provincial Legislatures however did not possess such powers as they remained subject to the restraints imposed by Sub sections 3 and 4 of Section 71 of the Act.

It will thus be seen that the position with regard to the privileges as it existed immediately before the enactment of the Constitution of India in respect of their internal proceedings and also in respect of publication by or under their authority, of a report, paper, votes or proceedings, was that the Legislatures enjoyed immunity from the law courts and further, members were guaranteed freedom of speech and vote and also freedom from arrest during certain specified periods.

Side by side, the Conference of the Presiding Officers of Indian Legislatures was pressing time and again for the privileges enjoyed by the House of Commons. These came in, in bits over a period of time as explained above until, under the Constitution of India in 1950, the position was equated with that of the House of Commons in all respects in respect of both the Parliament of India and the State Legislatures.

CONSTITUTIONAL PROVISIONS:-

Article 105 & 194 of the Constitution of India speaks about the provisions of privileges as under:

CONSTITUTION OF INDIA

Article 105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof. –

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

(3) 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.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament .

Article 194. Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof.-

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, 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.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

The powers and privileges conferred on the State Legislatures are akin to those conferred on the Union Parliament by Article 105. Both Articles 105 and 194 explicitly refer to the freedom of speech in the House and the freedom to publish proceedings without exposure to liability. However, other legislative privileges have not been enumerated. Article 105(3) and 194(3) are openly worded and prescribe that the powers, privileges and immunities available to the Legislature are those which were available at the time of the enactment of the Constitution (Forty-Fourth) Amendment Act, 1978. Subhash C. Kashyap has elaborated on the Indian position with these words. [In *Parliamentary Procedure - The Law, Privileges, Practice and Precedents*, Vol. 2 (New Delhi, Universal Law Publishing Co. Pvt. Ltd., 2000) at p. 1555]. As regards other privileges, Art.105(3) as originally enacted provided that in other respects, the powers, privileges and immunities of Parliament, its committees and members, until defined by Parliament by law, shall be the same as those of the House of Commons of the United Kingdom as on the coming into the force of the Constitution on 26 Jan. 1950. This clause was however, amended in 1978, to provide that in respect of privileges other than those specified in the Constitution, the powers, privileges and immunities of each House of Parliament, its members and Committees 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, its members and Committees immediately before coming into the force of section 15 of the Constitution (44th Amendment), Act 1978 (w.e.f. 20 June 1978). This amendment has in fact made only verbal changes by omitting all references to the British House of Commons but the substance remains the same. In other words, each House, its Committees and members in actual practice, shall continue to enjoy the powers, privileges and immunities (other than those specified in the Constitution) that were available to the British House of Commons as on 26 Jan. 1950.

Sources of Parliamentary privileges in India:

When any question arises as to the existence or limits of any privilege of a House of Parliament or its members, one has to look to several sources:

I. *The Constitution.*—There are several provisions in the Constitution which expressly provide such privileges, with the extent thereof, e.g. -

(i) Freedom of speech in Parliament (Arts.105(1)). The freedom of speech guaranteed under this Article is independent of the freedom of speech guaranteed under Arts.19 and unrestricted.

(ii) Immunity in respect of anything said or any vote given in the House or any Committee thereof [Arts.105(2)]. In *P.V. Narasimha Rao V/s State (031/SPE)*, majority view observed: -Broadly interpreted, as we think it should be, Arts.105(2) protect a Member of Parliament against proceedings in court that relate to, or concern, or have a connection or nexus with anything said or a vote given by him in the Parliament. The majority decision insisted that to enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote.

(iii) Immunity in respect of any publication of reports, papers, votes or proceedings of the House, which is published by or under authority of either House. [Arts. 105(2)].

(iv) Bar of jurisdiction of court to inquire into proceedings of the House on ground of irregularity. [Arts. 122(1)].

(v) Bar of jurisdiction of courts over officer or Member of Parliament exercising constitutional powers for regulating procedure, business or order in Parliament. [Arts. 122(2)].

(vi) Immunity in respect of publication of proceedings of a House in a newspaper, or by wireless telegraphy as part of any service provided by a broadcasting station. [Arts. 361A]

II. Statutes.—In a sense, the foundation of these is also the Constitution, viz., Arts. 105(3), which shall be dealt with fully hereafter. This provision empowers Parliament to ‘define’ privileges by law’. Since it does not refer to any exhaustive codification, it would follow that any statute made by Parliament after 26-1-1950 which defines any privilege, even though in part, such law will prevail in respect of matters not dealt with by the Constitution in the provisions mentioned above. Pre-Constitution statutes, as will be explained hereafter, shall not have this effect.

Though no comprehensive law has yet been made, there are some statutes which deal with the privileges of Parliament or the members e.g., Parliamentary Proceedings (Protection of Publication) Act, 1977.

Such legislation, however, must not be inconsistent with any provision of the Constitution, because of Arts. 245(1).

III. Privileges of the British House of Commons as existing on 26-1-1950.—By reason of Art. 105(3), excepting the matters relating to which the Constitution has specifically provided for, privileges in other matters, shall be the same as those of the British House of Commons, as on 26-1-1950, so long as the Indian Parliament itself does not make any law ‘defining’ any of the privileges.

The privileges of the House of Commons according to Ridge, consists of: (1) Freedom from Arrest (claimed in 1554); (2) Freedom of Speech (claimed in 1541); (3) The right to access to the Crown (claimed in 1536); (4) The right of having the most favourable construction placed upon its proceedings; (5) The right to provide for the due composition of its own body (this privilege is not available since we have a written Constitution); (6) The right to regulate its own proceedings; (7) The right to exclude strangers; (8) The right to prohibit publication of its debates; and (9) The right to enforce observation of its privileges by fine, imprisonment or expulsion. Of the above, item 3 have no application in India. Items 1 to 4 are demanded by the Speaker of House of Commons at the commencement of each Parliament and granted as a matter of course. So far as our Constitution is concerned Arts. 105 guarantees freedom of speech. In regard to arrest is concerned, it has been limited to civil cases and has not been applied to arrest on criminal charges or to detention under Preventive Detention Act. If arrest is made under Sec. 151 of Criminal Procedure Code, no privilege could be exercised In *K. Anandan Nambiyar v. Chief Secretary, Government of Madras* it was observed that members of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention.

Incidental to the privilege of the freedom of speech and debate is the privilege of excluding strangers from the House and prohibiting publication of the debates and proceedings. The power to exclude strangers was originally a measure of self-protection. On some occasion the House has resolved that the remainder of the day’s sitting should be a “secret session”. As regards to the right of the House to control publication of debates, it is said: “Closely connected with the power to exclude strangers so as to obtain, when necessary, such privacy as may secure freedom of debate, is the right of either House to prohibit the publication of debates or proceedings.”

The publication of debates of either House has in the past been repeatedly declared to be a breach of privilege and especially false and perverted reports of them; and no debate can exist that if either House desires to with-hold its proceedings from the public, it is within the strictest limits of jurisdiction to do so and to punish any violation of the order.

The power of expulsion of members can be claimed by the Indian Legislatures i.e., Parliament and State Legislatures as one of the privileges inherited from House of Commons. Expulsion of a member is regarded rather as a declaration of unfitness rather than punishment. It causes a vacancy. But the Commons cannot prevent his re-election, although they can refuse to let him take his seat on re-election. The House of Commons is considered to have the right to provide for its own Constitution as established by Law. The House of Commons retains the privilege of the right to determine whether a member is qualified and the right to expel the member when it consider unfit to continue as a member.

IV. *Rules of the House.*—Though Arts. 118(1) does not refer to ‘privileges’ but confers rule-making power upon each House of Parliament to make rules to regulate ‘its procedure and conduct of business’; it is possible for a House to make ancillary or subsidiary provisions relating to the privileges, while regulating its ‘procedure’. But such Rules will be valid only if they are not inconsistent with the Constitution, i.e., not only the express Provisions of the Constitution, but also the privileges as they existed in the British House of Commons on 26-1-1950, because they have the sanction of the Constitution under Arts. 105(3). Since the privileges of the British House of Commons are codified and have to be collected from various sources, there is scope for the Houses of the Indian Parliament for elaborating them by means of Rules, provided they are not inconsistent with the British privileges.

V. *Precedents.*—Since each House of Parliament has exclusive power to regulate its own proceeding, and the Presiding Officer (Speaker or Chairman) wields that power on behalf of the House, the interpretation given by the Presiding Officer to the Constitution or the rules of the House prevails, unless superceded by substantive motions or resolutions or rules made by the House or statute. These ‘rulings from the Chair’ have, within the House an authority analogous to decisions of Judges and are followed in subsequent proceedings or by subsequent Presiding Officers as ‘precedents’. In course of time, established precedents may be embodied in the Rules made by the House.

But the precedents or the Rules are circumscribed by Arts.105 of the Constitution. One of the principles of the British Law of privileges is that no House of Parliament can, by its own declaration, create a new privilege. It follows, therefore, that no House of the Legislature, in India, can create a new privilege by means of precedents or rules. The House cannot extend its privileges or create new ones. The determination of whether any particular claim constitutes an application of an existing privilege or an extension and creation of privilege must be assumed by the courts:

VI. *Judicial interpretation.*—Since the courts have to interpret the Constitution, including Arts. 105 and 194 as well as the laws relating to the powers and privileges of the Legislatures in cases properly brought up before them by persons outside the Houses of Parliament who may have been affected by the exercise of those privileges, decisions of the highest court of the land, i.e., the Supreme Court, constitute a part of the law of privileges.

CHAPTER – 4

PRIVILEGE OF FREEDOM FROM ARREST**CRIMINAL LAW AND STATUTORY DETENTION**

The privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation.

The following paragraphs provide ample proof of that statement, both by reference to instances of the rearrest of Lords or Members, and by indicating the settled practice of both Houses in requiring to be informed of such arrests.

HOUSE TO BE INFORMED OF ARRESTS

In all cases in which Members of either House are arrested on criminal charges, the House must be informed of the cause for which they are detained from their service in Parliament.

It has been usual to communicate the cause of commitment of a Member after his arrest; such communications are also made whenever Members are in custody in order to be tried by naval or military courts-martial, or have been committed to prison for any criminal offence by a court or magistrate. Although normally making an oral statement, the Speaker has notified the House of the arrest or imprisonment of a Member by laying a copy of a letter on the Table. In the case of commitments for military offences, the communication is made by royal message.

HOUSE TO BE INFORMED OF SENTENCES FOR CRIMINAL OFFENCES

The committal of a Lord or Member for high treason or any criminal offence is brought before the House by a letter addressed to the Lord Chancellor or the Speaker by the committing judge or magistrate. On these occasions, the first communication is made when the Lord or Member is committed to prison, bail not being allowed; and, subsequently, if the Member be not released from custody, or acquitted, the judge informs the Speaker of the offence for which the Member was condemned, and the sentence that has been passed upon him. Where a Member is convicted but released on bail pending an appeal, the duty of the magistrate to communicate with the Speaker does not arise. No duty of informing the Speaker arises in the case of a person who while in prison under sentence is elected as a Member of Parliament, but when a notification has been made to the Speaker in such circumstances he has communicated it to the House. On 9 May, 1972, the Speaker informed the House that he had been notified by the Secretary of State for Northern Ireland that sentences passed on three Members had been remitted in an exercise of the Royal prerogative of mercy.

STATUTORY DETENTION

The detention of a Member under Regulation 18B of the Defence (General), Regulations 1939, made under the Emergency Powers (Defence) Acts 1939 and 1940, led to the Committee of Privileges being directed to consider whether such detention constituted a breach of the privileges of the House; the Committee reported that there was no breach of privilege involved. In the case of a Member deported from Northern Rhodesia for non-compliance with an order declaring him to be a prohibited immigrant, the Speaker held there was no prima facie case of breach of privilege.

The detention of Members in Ireland in 1918 and 1922 under Defence of the Realm Regulations and the Civil Authorities (Special Powers) Act, the Speaker having been informed by respectively the Chief Secretary to the Lord Lieutenant and the Secretary to the Northern Ireland Cabinet, was communicated by him to the House.

CONTEMPT OF COURT

A claim to the privilege of freedom from arrest made by a Member imprisoned for contempt of court may prove more difficult to determine than in the instances dealt with earlier in this chapter.

There are a few older cases, in the sixteenth and early seventeenth centuries, of peers and Members of the House of Commons being successfully discharged from attachments for contempt by pleading their privilege. In one such case, the Lords ordered a peer to be discharged from the attachment but declared that if at any future time cause should be shown that by the prerogative, common law or custom, statute or precedents, the persons of Lords of parliament were attachable, the order in that case should not affect their decision in judging according to the cause shown. The Commons also in the seventeenth century secured the release of Members committed for contempt by writs of *habeas corpus*.

Subsequently, however, Members of the House of Commons have been fined and imprisoned for contempt of court, and on examination of the circumstances of the cases, committees have not recommended that the House invoke the privilege of freedom from arrest. The Committee of Privileges in 1831 reported that the claim of privilege, made by a Member committed for contempt for having removed his daughter from the jurisdiction of the Court of Chancery, though she was a ward of court, ought not to be admitted. Similarly, the Committee of Privileges reported against a claim made in 1837 by a Member who had been committed for contempt in writing a scandalous letter which also attempted to influence a decision of the Court of Chancery. In 1874, the Committee of Privileges informed the House that the Lord Chief Justice had fulfilled his duty in informing the Speaker of a Member's committal for contempt of the court of Queen's Bench and subsequent discharge, at a time when Parliament was not sitting, and reported that the matter did not demand the further attention of the House. A similar report was made in 1882, when a Member had been committed for publishing certain articles calculated to prejudice the course of justice. A select committee in 1902 considered the committal of a Member for refusal to enter into recognisances to be of good behaviour, and concluded that there was no difference between that case and those cited above, that the contempt was of a criminal and not civil character, and no distinction could be drawn between cases of criminal contempt and other indictable offences.

It may therefore be generally deduced that in cases of quasi-criminal contempts Members of either House may be committed without an invasion of privilege. The extent of protection in other cases is likely to depend on the circumstances. As Scarman J held in *Stourton v Stourton*, 'each case will depend on its facts, the distinction being between process to compel performance of a civil obligation and process to punish conduct which has about it some degree of criminality, some defiance of the general law. In that connection, it may be noted that the courts will not grant an attachment against a peer or Member of the House of Commons for non-payment of money according to an award.

BANKRUPTCY

The position of a Member who is adjudged bankrupt is dealt with at and in section 427 of the Insolvency Act 1986, which applies that Act and other similar legislation to persons having privilege of Parliament or of peerage as these statutes affects persons not having such privilege.

DETENTION UNDER THE MENTAL HEALTH ACT

The Committee for Privileges of the Lords has considered the effect of the powers of detention under the Mental Health Act 1983 on the privilege of freedom from arrest referred to in Standing Order No. 79 that *‘no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House unless upon a criminal charge or refusing to give security for the peace.* The Committee accepted the advice of Lord Diplock and other Law Lords that the provisions of the statute would prevail against any existing privilege of Parliament or of peerage. In the light of that advice, the Committee considered that, for the avoidance of doubt, the Government should, on a future occasion when cognate legislation was being introduced, consider the inclusion of a clause to provide expressly that Members of the House of Lords are liable to be detained under the mental health legislation and that in such circumstances they are disqualified from sitting or voting in the Lords or for receiving a writ of summons.

Section 141 of the Mental Health Act 1983 lays down a procedure following the detention of Members of the House of Commons suffering from mental illness. The inclusion of this provision carries the implication that detention under the Act overrides Members’ freedom from arrest.

PRIVILEGES RELATED TO FREEDOM FROM ARREST

Members summoned as witnesses

The service of the subpoena (A subpoena is a command to appear at certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers and other things. Subpoenas in federal criminal cases are governed by Fed.R.Crim.P.17, and in civil cases by Fed.R.Civil P.45. See also Alias subpoena.) To attend as a witness has in the past been treated as a breach of privilege by the House and the parties responsible for service have on occasions been committed to the Serjeant for contempt. It is doubtful, however, whether under current practice the actual service would as a general rule be regarded as a breach of privilege, unless effected within the precincts, the House then sitting, on the general principle of the service of civil process. But the privilege of exemption of a Member from attending as a witness has been asserted by the House upon the same principle as other personal privileges, viz, the paramount right of Parliament to the attendance and service of its Members; and on the matter being raised by the Member concerned the Speaker communicates with the court drawing attention to this privilege and asking that the Member should be excused because of the sitting of the House.

A Member may, however, choose to attend court in response to a subpoena without any formality, even on a day on which the Houses sits or is to sit.

Exemption from jury service

Though there is an ancient parliamentary privilege of exemption from jury service, in modern times section 9 of the Juries Act 1974 provides that the appropriate officer shall excuse a person from attending jury service if that person can show that he is entitled to excusal. The Act specifies, in Part III of Schedule I, amongst persons excusable as of right, peers and peeresses entitled to receive writs of summons to attend the House of Lords and officers of the House of Commons.

DURATION OF THE PRIVILEGE OF FREEDOM FROM ARREST

House of Lords

The person of a peer 'is for ever sacred and inviolable' by the privilege of peerage. This immunity rests upon ancient custom.

The Lords, under Standing Order No. 79, claim privilege when Parliament is sitting or 'within the usual times of privilege of Parliament'.

By the privilege of peerage, peers are privileged from arrest in civil causes not only while Parliament is sitting but at all times; this privilege is enjoyed by all peers, whether Lords of Parliament or not, and by peeresses.

Although the House has held that a Lord who had not qualified himself to sit by taking the oath was not entitled to privilege, when the matter came before a judge in chambers in 1849, the position could not be supported by authorities and the Lord in question (who, being in prison, had not taken the oath following the death of his father) was ordered to be discharged upon the ground of his privilege of peerage.

House of Commons

It has been the general and very long-standing opinion, allowed by the courts and clearly stated by institutional authorities, *that the privilege of freedom from arrest attaches to a member of the House of Commons for 40 days after every prorogation or dissolution and 40 days before the next appointed meeting. There may be an historical connection between such a right and the fact that in ancient custom writs of summons for a Parliament were issued at least 40 days before its appointed meeting.*

Cases may be cited of Members who had the benefit of privilege by obtaining release from prison upon their election, by a retrospective application of the claim. A Member of the Commons is entitled to this privilege even if he has not yet taken the oath.

PRIVILEGE EXTENDING BEYOND MEMBERS

A privilege similar to that which protects Members from arrest and molestation in order that they may freely attend to their parliamentary duties extends to certain others, and for the same reason. Those who may claim such privileges include officers of either House, persons summoned to appear as witnesses before either House or a committee thereof, and others in personal attendance on the service of Parliament.

CHAPTER 5

CONTEMPT

Generally speaking, 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 may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.

DISOBEDIENCE TO RULES OR ORDERS OF EITHER HOUSE OR OF A COMMITTEE

General and particular rules

Rules, disobedience to which may be accounted a contempt, are general or particular.

A particular rule which, if disobeyed, may give rise to proceedings for contempt is the refusal or neglect of a witness or other person to attend either House or a committee when summoned to do so. Other examples have included neglecting to make a return,

Orders of committees

Disobedience to the order of a committee made within its authority is a contempt of the House by which the committee was appointed. Individuals have been held to be in contempt who did not comply with orders for their attendance made by committees with the necessary powers to send for persons; as have those who have disobeyed or frustrated committee orders for the production of papers.

To prevent, delay, obstruct or interfere with the execution of the orders of either House or its committees is also a contempt.

PETITIONS AND OTHER DOCUMENTS

Any abuse of the right of petition may be treated as a contempt by either House. Such practices were varied in character in the past. The most recent case is however now more than a century in the past.

Conspiracy to deceive either House or any committee also constitutes a contempt.

To abstract any record or other document from the custody of the Clerk or to falsify or improperly alter any records of, or documents presented to, either House or committees of either House will constitute a contempt. Standing Order No. 127 of the House of Commons specifically provides that no document received by the clerk of a select committee shall be withdrawn or altered without the knowledge and approval of the committee.

MISCONDUCT OF MEMBERS OR OFFICERS

Members deliberately misleading the House

The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt.

Corruption or impropriety

The acceptance by a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee, is a contempt. Any person who is found to have offered such a corrupt consideration is also in contempt. A transaction of this character is both a gross affront to the dignity of the House concerned and an attempt to pervert the parliamentary process implicit in Members' free discharge of their duties to the House and (in the case of the Commons) to the electorate. Most recently, the adoption by the Commons of a Code of Conduct for Members represents an important new development in the House's concern for the highest standards of conduct on the part of its Members.

Professional services connected with proceedings

The concern of the House of Commons extends beyond direct pecuniary corruption of Members. The House has emphasized that 'it is personal responsibility of each Member to have regard to his public position and the good name of Parliament in any work he undertakes', and the Code of Conduct stipulates that Members of the Commons 'should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties'.

The House has forbidden the acceptance of fees by its Members for professional services connected with proceedings in Parliament. Thus, a Member is not permitted to practice as counsel before the House or any committee; and it is not consistent with parliamentary usage for Members to advise as counsel, upon any private bill, or other proceeding in Parliament.

It has also been declared contrary to the law and usage of Parliament for any Member to be engaged, either by himself or any partner, in the management of private bills before either House of Parliament for pecuniary reward.

The prohibition does not extend to Members pleading at the bar of the Lords and before the Committee for Privileges in judicial cases.

The acceptance by a Member of either House, however, of a fee, compensation, gift or reward for drafting, advising upon or revising any bill, petition or other document submitted or intended to be submitted to either House or their committees is a contempt.

Advocacy by Members of matters in which they have been concerned professionally

On 22 June, 1858, the House of Commons resolved, 'That it is contrary to the usage and derogatory to the dignity of this House that any of its Members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward.'

More generally, the Commons recently prohibited all paid advocacy by Members in Parliament, as distinguished from paid advice given by them to outside persons or organizations, and amended a resolution of 1947 so as to ban remunerated advocacy or related activities.

In the Lords, the guiding principle is that Lords should never accept any financial

inducement as an incentive or reward for exercising parliamentary influence.

Other misconduct by Members

Other instances of misconduct on the part of Members have included refusing to serve on a committee where attendance is, by order of the House, compulsory.

Misconduct by officers

The Serjeant at Arms has been regarded as in contempt of the House of Commons for wilfully neglecting to take into his custody persons committed to him, and for permitting persons committed to have liberty without any order of the House. An officer of the Lords has been considered in contempt for failing duly to execute an order for the attachment of certain persons, and doorkeepers have offended by admitting strangers into the Lords contrary to the order of the House. The shorthand writer gave evidence in court in relation to proceedings in the House without first obtaining leave, and the commons agreed to a resolution stipulating that leave must be given in such circumstances.

CONSTRUCTIVE CONTEMPTS

Reflections on either House

Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been punished by both the Lords and the Commons upon the principle that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.

Publication of false or perverted reports of debates

The Lords have a Standing Order (No 13) which declares that the printing or publishing of anything related to the proceedings of the House is subject to the privilege of the House and in the past action was taken against those whose publication of debates was in some way offensive to the House on particular grounds.

Before the House of Commons agreed in 1971 to rescind their ban on the publication of either debates and proceedings, or those of any committee, misrepresentation of whatever kind was regarded as an aggravation of this offence of publication. Since 1971 no complaint based on a report of debate has been made.

Premature publication or disclosure of committee proceedings

As early as the mid-seventeenth century it was declared to be against the custom of Parliament for any act done at a committee to be divulged before being reported to the House. Subsequently, though the House of Commons found it increasingly difficult to enforce effectively its rules against the disclosure abroad of proceedings in the Chamber, the privacy of committee proceedings and the prior right of the House itself to a committee's conclusions was upheld, and punishment was inflicted on a newspaper proprietor who published the contents of a draft report laid before a select committee but not considered by it or presented to the House. In 1837, the House of Commons resolved that 'according to the undoubted privileges of this House, and for the due protection of the public interest, the evidence taken by any select committee of this House and the documents presented to such committee and which have not been reported to the House ought not to be published by any Member of such Committee, or

by any other person.

In the Lords, committees regularly authorize publication by witnesses of evidence which they have submitted, in advance of the evidence being reported to the House or published by the committee.

Other indignities offered to either House

Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority may constitute contempts.

OBSTRUCTING MEMBERS OF EITHER HOUSE IN THE DISCHARGE OF THEIR DUTY

The House will proceed against those who obstruct Members in the discharge of their responsibilities to the House or in their participation in its proceedings. Not all responsibilities currently assumed by Members fall within this definition. Correspondence with constituents or official bodies, for example, and the provision of information sought by Members on matters of public concern will very often, depending on the circumstances of the case, fall outside the scope of 'proceedings in Parliament' against which a claim of breach of privilege will be measured.

Arrest

An attempt to infringe the privilege of freedom from arrest in civil causes enjoyed by Members of both Houses is itself a contempt and has been punished. When a Member of the House of Commons was arrested in error, the House regretted the indignity offered to him, but considering the arrest to have been a mistake, did not think it necessary to proceed further.

Molestation, reflections and intimidation

It is a contempt to molest a Member of either House while attending the House, or coming to or going from it and in the eighteenth century both Houses roundly condemned 'assaulting, insulting or menacing Lords or Members' going to or coming from the House or trying by force to influence them in their conduct in Parliament. Members and others have been punished for such molestation occurring within the precincts of the House, whether by assault or insulting or abusive language, or outside the precincts. The Commons took no action on an incident where a stranger endeavoured to dissuade a Member from entering a room where a Standing Committee was meeting.

To molest Members on account of their conduct in Parliament is also a contempt. Correspondence with members of an insulting character in reference to their conduct in Parliament or reflecting on their conduct as Members, threatening a Member with the possibility of a trial at some future time for a question asked in the House, calling for his arrest as an arch traitor, offering to contradict a Member from the gallery, or proposing to visit a pecuniary loss on him on account of conduct in Parliament have all been considered contempts.

Written imputations, as affecting a Member of Parliament, may amount to contempt, without, perhaps, being libels at common law, but *to constitute a contempt a libel upon a*

Member must concern the character or conduct of the Member in that capacity.

Reflection which have been punished as contempts have borne on the conduct of the Lord Chancellor in the discharge of his judicial duties in the House of Lords or that of the Chairman of the committees. In the same way, ***reflections on the character of the Speaker or accusations of partiality in the discharge of his duties and similar charges against the Chairman of Ways and Means or Chairman of a standing committee or a select committee have attracted the penal powers of the Commons.***

Imputations that a Member nominated to a select committee would not be able to act impartially in that service, and similar reflections on Members serving on private bill committees have been considered contempts. More general reflections on Members accusing them of corruption in the discharge of their duties, challenging their motives or veracity, or describing their conduct as ‘inhuman’ and degrading have also been found objectionable and proceeded against.

To attempt to intimidate a Member in his parliamentary conduct by threats is also a contempt, cognate to those mentioned above. Actions of this character which have been proceeded against include impugning the conduct of Members and threatening them with further exposure if they took part in debates, threatening to communicate with Members’ constituents to the effect that, if they did not reply to a questionnaire, they should be considered as not objecting to certain sports; publishing posters containing a threat regarding the voting of Members in a forthcoming debate; informing Members that to vote for a particular bill would be regarded as treasonable by a future administration; summoning a Member to a disciplinary hearing of his trade union in consequence of a vote given in the House; and threatening to end investment by a public corporation in a Member’s constituency, if the Member persisted in making speeches along lines of those in a preceding debate.

Improper influence

Attempts by improper means to influence Members in their parliamentary conduct may be considered contempts. One of the methods by which such influence may be brought to bear in bribery; and it is as culpable for an individual to offer a corrupt consideration to a Member of either House with a view to influencing his conduct in that capacity as it is for the consideration to be accepted.

A committee of the Commons concluded that ‘pressure’ involved a positive and conscious effort to shift an existing opinion in one direction or another; and premeditation was not an essential precondition.

Conduct not amounting to a direct attempt improperly to influence Members in the discharge of their duties but having a tendency to impair their independence in the future performance of their duty may be treated as a contempt.

Influence by private solicitation in certain circumstances has also been found objectionable. The Lords have resolved that the private solicitation of Members on matters of claims to honours or other judicial proceedings was a breach of privilege. Upon the same principle, it would be a contempt, when Members are acting in a judicial or quasi-judicial capacity, eg when serving on committees on private bills, to attempt, by letters, anonymous or other, to influence them in the discharge of their duties.

Misrepresenting Members

A select committee has commended on an allegation that a third party sent a letter purporting to be from a Member; and a member has made a personal statement to the House, apologizing for having tabled amendments to a bill in the name of another Member but without his knowledge or consent.

OBSTRUCTING OFFICERS OF EITHER HOUSE

Obstruction or molestation

It is a contempt to obstruct or molest those employed by or entrusted with the execution of the orders of either house while in the execution of their duty. Contempts of this character have included assault, insulting and abusive behaviour or threatening language, resistance to those acting in execution of the orders of either House, aiding the escape of an individual from the order for his custody or committal, refusal of civil officers to assist in executing the orders of either House and the discharge out of custody by a magistrate of a prisoner arrested by order of either House.

Both Houses will treat as contempts, not only acts directly tending to obstruct their officers in the execution of their duty, but also any conduct which may tend to deter them from doing their duty in the future.

Legal proceedings against officers, etc

Although in the past both Houses have treated as contempts the taking of proceedings (both civil and criminal) in a court of law against any person for his conduct in obedience to the orders of the House, according to subsequent practice the Commons has given leave to the officer to appear.

The Law Officers of the Crown, on the order of the House or following a direction given by a Minister have undertaken the officer's defence. Alternatively, if seemed expedient, the Speaker would place the defence of the officer in the hands of the Government.

OBSTRUCTING WITNESSES AND OTHERS

Arrest

On 8th March, 1688, the Commons resolved, 'That it is the undoubted right of this House that all witnesses summoned to attend this House, or any committee appointed by it, have the privilege of this House in coming, staying and returning.' Parties who arrest or procure the arrest on civil process of witnesses or other persons summoned to attend either House or any committee of either House while going to, attending, or returning from, such House or committee may be punished for contempt.

Molestation of or interference with witnesses

Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt.

It is also a contempt to molest any persons attending either House as witnesses, during their attendance in such House or committee. Assaults upon witnesses in the precincts of the House and the use of threatening or abusive language within the precincts have been proceeded against.

On the same principle, molestation of or threats against those who have previously given evidence before either House or a committee will be treated by the House concerned as contempt. Such actions have included assault or threat of assault on witnesses, insulting or abusive behaviour, misuse (by a gaoler) or censure by an employer.

Tampering with witnesses

A resolution setting out that *to tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour, directly or indirectly, to deter or hinder any person from appearing or giving evidence is a contempt has been* agreed to by the Commons at the beginning of every session since 1900, and there have been in the past numerous instances of punishment for offences of this kind.

Corruption or intimidation, though a usual, is not an essential ingredient in this offence. It is equally contempt to attempt by persuasion or solicitations of any kind to induce a witness not to attend, or to withhold evidence or to give false evidence.

Legal proceedings against witnesses

Both Houses will treat 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 before one of its committees as contempt.

PROTECTION OF PETITIONERS AND OTHERS WITH BUSINESS BEFORE PARLIAMENT OR WITH MEMBERS

Others having business before either House or its committees, as petitioners, counsel, agents and solicitors, are considered as under the protection of the High Court of Parliament, and obstruction of, or interference with such persons in the exercise of their rights or the discharge of their duties, or conduct calculated to deter them or other persons from preferring or prosecuting petitions or bills or from discharging their duties may be treated as a contempt.

Constituents and others in communication with Members

Similar protection is not afforded to informants, including constituents of Members of the House of Commons who voluntarily and in their personal capacity provide information to Members, the question whether such information is subsequently used in proceedings in Parliament being immaterial. But while it appears unlikely that any question of an actual or constructive breach of parliamentary privilege could arise in these cases, the special position of a person providing information to a Member for the exercise of his parliamentary duties has been regarded by the courts as enjoying qualified privilege at law.

WARRANTS OF COMMITTAL AND THE COURTS

Although the Habeas Corpus Act is binding on all persons who have prisoners in their custody, and since 1704 it has been the practice for the Serjeant at Arms and others, by order of the House of Commons, to make returns to writs of *habeas corpus*, the general rule – subject to the exception mentioned below – is that the causes of committal by warrant of the House cannot be inquired into by the courts of law. Moreover, those who are committed for contempt may not be admitted to bail. The view was well stated in *Brass Crosby's case* in 1771:—

When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution; and no court can discharge or bail a person that is in execution by the judgment of any other court. The House of Commons, therefore, having authority to commit, and that commitment being execution ...[this court]... can do nothing in such case this court is not a court of appeal.

The position has been expressed by resolutions of the House of Commons, and has been confirmed by numerous decisions of courts of law when application was made for the discharge or release on bail of persons committed by either House. Lord Ellenborough observed in *Burdett v Abbot* in 1810 that ‘if a commitment appeared to be for contempt of the House of Commons generally, I would neither in the case of that court or of any other of the superior courts, inquire further.

The exception to the general rule, which was mentioned above, arises in the case of warrants stating the particular facts on which the warrant for committal was drawn. Divergent views have been held in the courts on their duty of inquiry. In the earlier cases the judges disclaimed any power to inquire, but subsequently judicial opinion changed. Lord Ellenborough observed in *Burdett v Abbot* in 1810 (which was an action for assault and not on a writ of *habeas corpus*) that he could conceive a cause of committal coming collaterally before the court in the form, for example, of a justification pleaded to an action of trespass, in such a way that the court might be obliged to consider it and pronounce it defective. It would be more doubtful, however, whether a matter coming directly before the court, such as on a return to a *habeas corpus*, would lead the court to relieve the subject from the commitment of the House in any case whatever. He went on to say:

If a commitment does not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust and contrary to every principle of positive law or natural justice; I say that, in the case of such commitment we must look at it and act upon it as justice may require from whatever court it may profess to have proceeded.

Lord Denman in 1840 concurred: if the particular facts are stated in the warrant and do not bear out the committal, the court (in his view) should inquire into the warrant: if the warrant states a contempt in general terms, the court is bound by it.

Committal without warrant

In earlier times, it was not the custom to prepare a formal warrant of the House of Commons for the execution of its orders (as is still the practice in the Lords). The Serjeant arrested persons with the Mace as his only authority. At the present day, he takes into custody those who misconduct themselves in the House, without any written instructions.

Period of committal and discharge

The Lords has power to commit offenders to prison for a specified term, even beyond the duration of the session. If, on the other hand, no time is mentioned in the order of committal, it has been said that prisoners committed by the Lords could not be discharged on *habeas corpus*, even after a prorogation, but in *Lord Shaftesbury’s* case a doubt was expressed by one of the judges whether the imprisonment, which was for an uncertain time, would be concluded by the session; and another said that if the session had been determined the prisoner ought to have been discharged.

The Commons abandoned its former practice of imprisoning for a time certain, and is now considered as without power to imprison beyond the session. The subsequent practice of the Commons was not to commit offenders for any specified time, but generally or during pleasure; and to keep them in custody until they presented petitions expressing proper contrition for their offences and praying for their release, or until, upon motion made in the House, it was resolved that they should be discharged. A similar course was pursued by the Lords.

Persons committed by the Commons, if not sooner discharged by the House, are immediately released from their confinement on a prorogation. If they were held longer in custody, they would be discharged by the courts upon a writ of *habeas corpus*.

PUNISHMENT OF MEMBERS

In the case of contempts committed against the House of Commons by Members, or where the House considers that a Member's conduct ought to attract some sanction, two other penalties are available in addition to those already mentioned, ***suspension from the service of the House, and expulsion, sometimes in addition to committal.***

A resolution by the Lords as a legislative body could not exclude a Member of that House permanently.

Reprimand or admonition

In the Commons, a Member may receive a reprimand or admonition standing in his place, unless he is in the custody of the Serjeant, in which event he is reprimanded at the bar. When a Member is ordered to be reprimanded or to be admonished he may be called in to receive the reprimand or admonition forthwith, or he may be ordered to attend the House in his place the following or some later day. ***Most recently, Members have been reprimanded (and suspended) by virtue of a resolution of the House to that effect, and have not then received the House's censure, standing in their place or otherwise.***

Suspension

Although suspension from the service of the House of Commons is now prescribed under Standing Order No 44 for Members who have disregarded the authority of the Chair or abused the rules of the House, such a disciplinary power existed under ancient usage long before the making of the Standing Order in 1880.

There are a number of cases of such suspension for varying periods in the seventeenth century, though none between 1692 and 1877, at which latter date the Speaker ruled that 'any Member persistently and wilfully obstructing public business without just and reasonable cause is guilty of a contempt of this House, and is liable to punishment, whether by censure, suspension from the service of the House or commitment, according to the judgment of the House. In 1880, the procedure for suspending a Member for particular offences was laid down by Standing Order.

Since then, though most suspensions have been carried out in pursuance of that provision, a number have not. ***In certain of the cases the penalties included the withholding of the Member's salary for the period of the suspension.***

Expulsion

The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution, though it is, for convenience, treated here as one of the methods of punishment at the disposal of the House. ***Members have been expelled for a wide variety of causes.***

Members have also been expelled who have fled from justice, without any conviction or judgment recorded against them. Where Members have been legally convicted of offences which may incline the House to consider their expulsion, the record of their conviction has been laid before the House. In other cases the proceedings have been founded upon reports of commissions or committees of the House or other sufficient evidence. The Member, if absent, is ordered to attend in his place before an order is made for his expulsion, so as to give him an

opportunity to vindicate himself; but where it is apparent that no question of vindication can arise, an order for attendance has not been made. Where an order has been made that a Member should attend in his place, service is made upon him of the order of the House for his attendance, or evidence furnished proving that service is impossible. If he is in prison, the governor of the prison has been ordered to bring him to the House in custody, if he desires to be brought.

Expulsion, though it vacates the seat of a Member and a new writ is immediately issued, does not create any disability to serve again in the House of Commons, if re-elected. The House's attempts in the mid-eighteenth century to be rid of John Wilkes, who was three times expelled and once had his return amended in favour of his defeated opponent, only ended, some year later, in the expunging from the Journal as 'subversive of the rights of the whole body of electors of this kingdom' of the earlier resolution that, following his expulsion, he was incapable of being re-elected in that Parliament. In 1882, when Bradlaugh was expelled and immediately re-elected, no question of the validity of his return arose.

CHAPTER 6

PRIVILEGES & JUDICIARY

Acharya Dr. Durga Das Basu in his “Commentary on the Constitution of India”, Vol. 5, 8th Edition (Pages 6294 to 6297) has observed as under :-

Privileges of the Legislature and the Courts

I. Since the privileges of Parliament under Art 105(3) and of a State Legislature under Art. 194(3) are the same as those of the English House of Commons, it follows that

(a) Each House is the sole judge of the question whether any of its privileges has been infringed, and the courts have no jurisdiction to interfere with the decision of the House on this point. But if a Judge in discharge of his duties passes an order or makes observations which in the opinion of the House amounts to contempt and the House proceeds to take action against the Judge in that behalf, such action on the part of the House cannot be protected or justified by any specific provision made in the latter part of Art. 194(3) ‘the conduct of a Judge in relation to the discharge of his duties cannot legitimately be discussed inside the House. Whatever may be the extent of the powers and privileges conferred on the House by the latter part of Art. 194(3), the power to take action against a Judge for contempt alleged to have been committed by him by his act in the discharge of his duties cannot be included in them.

It was held therein that the impact of Arts. 226, 32 and 211 has to be ascertained in order to determine the scope of Art. 194. Art. 226 empower the High Court to issue a writ of *habeas corpus* against “any authority- which includes Legislature as well. Art. 211 unambiguously indicates that the conduct of judge in the discharge of his duties can never become the subject matter of any action taken by the House in exercise of its powers, privileges and immunities under Art. 194(3). It was held that no immunity from scrutiny by courts of general warrants issued by a House in India can be claimed. It was further observed that the fact that the first part of Art. 194(3) refers to future laws defining privileges as being subject to fundamental rights is a significant factor in construing the latter part of Art. 194(3). Such a State legislation would be “law” within the meaning of Art. 13 and the courts would be competent to examine its validity vis-a-vis the fundamental rights. Art. 212 does not bar the jurisdiction in regard to illegality or unconstitutionality and the bar is limited only in cases of irregularity of procedure.

(b) Each House has the power to punish for breach of its privileges, or for contempt. Though the sentence or punishment that is imposed by the Legislature is not subject to judicial review, the same could be challenged if either the sentence or the manner or the proceedings before the Legislature is violative of Art.21 of the Constitution. The action of the House in condoning the punishment of an editor, but subsequently re-imposing it because the editor challenged the punishment in court was held to be violative of Arts.14 and 21 of the Constitution. Where punishment was imposed without affording an opportunity of hearing on the ground that rules does not provide for the same, such an action was held to be arbitrary and violative of Arts. 14 and 21.

(c) Courts of law have no jurisdiction to interfere with a process issued by the Houses or by its Presiding Officer on the ground ?

(i) That the process issued by the House is one which a court could not have issued e.g., a general warrant.

(ii) That the matter for which the House is proceeding or contempt is too stale for taking action. This is a question for the House itself to decide.

(iii) That the Rules of Procedure of the House relating to proceedings for breach of privilege have not been complied with, e.g., that the Speaker has issued a summons upon an alleged contemner without a resolution of the House or without even placing the question of privilege before the House or its Committee of Privileges, as required by the Rules.' There is nothing to prevent the Speaker from taking notice of a contempt, summoning the offender and then setting the machinery of the House in motion for taking appropriate action against the offender.' At most, it would amount to an irregularity of procedure' within the purview a Cl. (1) of Arts. 122 or 212 of the Constitution.

On the other hand—

(a) No House of the Legislature has the power to create for itself any new privilege not known to the law and the courts possess the power to determine whether the House in fact possesses a particular privilege. This is the position so long as the Privileges of our Legislature are founded upon those of the British House of Commons . If and when our Legislatures legislate with respect to Privileges, it would not be incompetent to enact a statutory Privilege on the ground that such a Privilege is unknown to the House of Commons provided it is not inconsistent with any provision of our Constitution.

(b) The courts can interfere where the act complained of goes to root of the jurisdiction' of the House or, its officer, under the Constitution," as distinguished from a mere procedural irregularity.

(c) By reason of the special provisions of our Constitution, the Supreme Court (under Art. 32) or a High Court (Art. 226) have the jurisdiction to inquire whether the fundamental right of a citizen under Art. 21 has been infringed and where he has been arrested and detained under a warrant of a Speaker for contempt of a House of the Legislature for something said or done outside the walls of the House, -whether it is a general warrant or speaking warrant. It is, accordingly, competent for High Court to entertain a petition for *habeas corpus* under Art. 226, challenging the legality of a sentence imposed by the Legislature for contempt and to release the prisoner on bail, pending disposal of that petition." By the exercise of such jurisdiction no contempt of the House is committed by the Judge.

It was held that there can be no doubt that the sovereignty which can be claimed by Parliament in England cannot be claimed by any Legislature in India in the literal absolute sense. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign.

A plain reading of Arts. 122(1) (corresponding to Arts. 212) shows that it prohibits the validity of any proceedings in Parliament from being called in question in a court merely on the ground of irregularity of procedure. The procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the Legislature . But "procedural irregularity" stands in stark contrast to "substantive illegality- which cannot be included in the former. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity cannot be protected from judicial scrutiny. It was held that no organ is sovereign and each organ is amenable to constitutional checks and controls in which scheme of things, the Supreme Court is entrusted with the duty to be 'watchdog or and guarantor of the Constitution'. A citizen is entitled to call

in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a court of law. It was observed that the manner of exercise of power or a privilege by Parliament is immune from judicial scrutiny only to the extent where the allegations are regarding “irregularity of procedure”. But in cases of gross illegality or violation of constitutional provision, judicial review is not inhibited in any manner.

In Raja Ram Pal v/s Hon. Speaker, Lok Sabha (2007) 3 SCC 184, the Hon. Supreme Court observed as under :—

The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, however lofty, can claim to be the sole Judge of the power given under the Constitution, mere co-ordinate constitutional status, or even the status of an exalted constitutional functionaries does not disentitle the Supreme Court from exercising its jurisdiction of judicial review of action which partakes the character of judicial or quasi-judicial decision. It was held that judicial review of the manner of exercise of power or privilege by the Legislature does not mean the said jurisdiction is being usurped by the judicature. There is always an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions, the presumption being a rebuttable one. The judicature is not prevented from scrutinising the validity of the action of the Legislature trespassing on the fundamental rights conferred on the citizen. If a citizen, whether a member or non-member of the Legislature, complains that his fundamental rights under Arts. 20 or 21 had been contravened, it is the duty of the court to examine the merits of the said contention, especially when the impugned action entails civil consequences. There can be no basis to the claim of bar of exclusive cognizance or absolute immunity to the Parliamentary proceedings in Arts. 105(3) or 194(3) of the Constitution. *The manner of enforcement of privilege by the Legislature can result in judicial scrutiny*, subject to the restrictions contained in other constitutional provisions, for example, Arts. 122 or 212. It was held that Arts. 122(1) or 212(1) displaces the broad doctrine of exclusive cognizance of the Legislature in England of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction, inasmuch as the same has no application to the system of governance provided by the Constitution of India. *The rules which the Legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution and the mere availability of Rules of Procedure and Conduct of Business as made by the Legislature in exercise of enabling powers under the Constitution is never a guarantee that they have been duly followed. The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny.* An ouster clause attaching finality to a determination does ordinarily oust the power of the court from reviewing the decision, but not on ground of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, malafides, non-compliance of principles of natural justice and perversity. It was held therein that it is the duty of the court to inquire into the legitimacy of the exercise of power and non-existence of standards of judicial review is no reason to conclude that judicial scrutiny is ousted.

Is the Legislature or its officers subject to the jurisdiction of the Courts ?

On this point Acharya Dr. Durga Das Basu in his Commentary on the Constitution of India, Vol. 5, (Pages 5159 – 5160) observed as follows :-

“The other observations of the Supreme Court, however, make it clear that the court did not accept the wider claim that the courts had no jurisdiction on the question of privileges or that the Legislature or its officers could never be brought under the jurisdiction of the courts. ***It has been amply emphasised by the court that “the sovereignty which can be claimed by Parliament in England, cannot be claimed by any Legislature in India in the literal sense”, because we have a written federal Constitution which limits the powers of our Legislature and any Legislature action which transgresses these limitations is liable to be struck down by the courts.*** In the result, the decision about the construction of Art. 194(3) must ultimately rest exclusively with the judicature of this country. Hence, whenever a complaint is made to the superior courts that the action of a Legislature in exercise of its privileges or any other power has infringed the fundamental rights of a Petitioner and the court considers it necessary to entertain that complaint, the Legislature must submit its return to the writ of *habeas corpus* or other process of the court to determine the complaint.

In *Raja Ram Pal Vs Hon’ble Speaker, Lok Sabha*, it was held that the plenitude of powers possessed by Parliament under the written Constitution is subject to legislative competence and restriction of fundamental rights and that in case of member’s personal liberty was threatened by imprisonment or committal in execution of Parliamentary privilege, Art.21 would be attracted. If that be so, the contention that the general proposition that fundamental rights cannot be invoked in matters concerning Parliamentary privileges also cannot be accepted. Their Lordships relied on the decision in *Sub-Committee on Judicial Accountability Vs. Union of India* wherein it was held. But where, as in this country and unlike in England, there is a written Constitution which Constitutes the fundamental rights and in that sense a “higher law” and acts as a limitation upon the Legislature and other organs of the State as granted under the Constitution, the usual incidents of Parliamentary sovereignty do not obtain and the concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and ***the Judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State.*** It is to be noted that the ***British Parliament with the Crown is Supreme and its powers are unlimited and the courts have no power of judicial review of Legislature .***

In view of the definition of a ‘State’ under Art. 12 and the wide language of Art 226(1), the power conferred upon the High Court by Art. 226(1) can, in a proper case, be exercised even against the Legislature.”

Keshav Singh Case (AIR 1965 S.C. 745)**30th September, 1964**

**P.B. GAJENDRAGADKAR, C.J.I., A.K.SARKAR, K. SUBBA RAO, K.N. WANCHOO,
M. HIDAYATULLAH, J.C. SHAH AND
N. RAJAGOPALA AYYANGAR, JJ.**

Special Reference No. 1 of 1964, D/- 30-9-1964.

Under Article 143 of the Constitution of India

Important Issues

1. Article 194 (3) and Article 226
2. Contempt of U.P. Legislative Assembly- Committal of Mr. Keshav Singh for contempt of Legislative Assembly on general warrant issued by Speaker, U.P., Assembly.
3. Petition to High Court by Advocate of Keshav Singh to issue Writ of Habeas Corpus under Article 226.
4. Mr. Keshav Singh was released on bail by High Court
5. U.P. Assembly considered this, as affront to its dignity and passed resolution holding judges of High Court, Advocate and Mr. Keshav Singh responsible for having committed its contempt.
6. Reference of case to Supreme Court by President under Article 143 of the Constitution.

Brief Facts:

1. Mr. Keshav Singh printed and published a pamphlet including expunged portion of U.P. Assembly proceedings, subsequently Speaker administered a reprimand to Keshav Singh for having committed a contempt and breach of privilege of the Assembly.
2. Later on, on the same day the Speaker directed that he be committed to prison for committing another contempt of the Assembly by his conduct therein.
3. A warrant was issued over the signature of the Speaker directing that Keshav Singh be detained in the jail for a period of seven days and in execution of the warrant he was detained in the jail.
4. Thereafter, a petition under Section 491, CRPC and Article 226 was presented to the High Court by one Mr. Solomon, Advocate of Keshav Singh alleging that his detention in jail was illegal.
5. The High Court has passed an order that Keshav Singh should be released on bail.
6. On receiving the information of the release, the Assembly by resolution took the view that the two judges of the High Court, Keshav Singh and his Advocate had committed contempt of the Assembly and ordered that Keshav Singh should immediately be taken into custody and the two judges and the Advocate be brought in custody before the Assembly.
7. On hearing about this order the two judges and the Advocate made separate petitions to the High Court under Article 226 contending that it should be set aside and should be stayed.

8. On these Petitions the full bench of the High Court ordered by Notice restraining the Speaker of the Assembly issuing the warrant in pursuance of the directions of the Assembly and from securing execution if already issued.

9. When the incidents reached this stage the President of India, decided to exercise his power to make a reference to Supreme Court under Article 143 (1).

The Keshav Singh Case represents the high watermark of Legislature, Judiciary conflict in a privilege matter in India. The relationship between the two institutions was brought to a very critical point. However, the Supreme Court's opinion in Keshav Singh case seeks to achieve two objectives.

1. First and foremost, it seeks to maintain judicial integrity and independence or if a House were to claim right to question the conduct of a judge, then judicial independence would be seriously compromised.

2. The Constitutional provisions safeguarding judicial independence largely diluted and the rule of law neutralised. The Constitution has sought to preserve the integrity of the judiciary and by no stretch of imagination could this be compromised in any way. The Supreme Court has sought to promote this value through the Keshav Singh pronouncement. In the second place the Court seeks to concede to the House quite a large power to commit for its contempt and breach of its privilege. Even though the judiciary can scrutinize the Legislative committal for its contempt, in actual practice, this would not amount to much as the Court's interfere with the Legislative Order only in very extreme situation.

3. The fundamental rights guaranteed by Article 19 (1)(a) & (1) (g) do not control Legislative privileges. Article 21 also is not of much importance for the proceedings before the Committee of Privileges of the House or held under the Rules of Procedure made by the House under its rule making powers and this would be considered as procedure establish by law.

4. The charge of malafides against the House is extremely difficult to substantiate and later the Allahabad High Court disposing of Keshav Singh case refused to infer malafides in the Assembly merely from the fact that the person charged belonged to a political party different from the majority party in the House.

5. Also the High Court held, dismissing Keshav Singh's petition on merit whether there had been contempt of the House or not in a particular situation is a matter for House to decide and the Court would not go into the question of propriety and legality of the commitment. Nor would the Court go into the question, whether the facts found by the Legislature constitute its contempt or not and Court cannot sit in appeal over the decision of the House committing a person for its contempt.

6. The Allahabad High Court considering the Petition of merit after the Supreme Court's opinion threw it out and refused to interfere with the judgement of the House (Keshav Singh Vs. Speaker Legislative Assembly, AIR 1965 ALL 349).

7. The High Court rejected the argument that the facts found by the Assembly against the Petitioner did not amount to contempt of the Assembly. The Court refused to go into the question of correctness, propriety or legality of the Commitments.

“The Court observed; this Court cannot in a petition under Article 226 of the Constitution sit in appeal over the decision of Legislative Assembly committing the Petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not. This High Court ruled that neither there was violation of Article 21 nor or a natural justice because the Legislature had formulated the rule of procedure to investigate complaints of breach of privilege.”

8. The Supreme Court in U.P. Assembly case observed that,

“Besides the Legislative Supremacy of our Legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the Legislatures acted beyond the Legislative field assigned to them, or acting within their respective fields they trespass on the fundamental rights of the citizen in a manner not justified by the relevant article dealing with the fundamental rights, their Legislative action are liable to be struck down by Courts in India. Therefore, it is necessary to remember that though our Legislatures have plenary powers they function within the limits prescribed by the material and relevant provisions of the Constitution.

In this connection, it is necessary to remember that the status, dignity and importance of these two respective institution, the Legislature and the Judicature, are derived primary from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic state, must function not in antimony nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres for such harmonious working of the three constituents of the democratic state alone will help the peaceful development, growth and stabilization of the democratic way of life in this country.”

9. The Supreme Court reconciled the conflict between fundamental right of speech and expression under Article 19 (1)(a) on one hand and the powers and privileges of the Legislative Assembly under Article 194 (3) on the other by holding thus

“The principle of harmonious construction must be adopted and so construed the provisions of Article 19 (1) (a) which are general, must yield to Article 194 (1) and the later part of its clause 3 which are special.”

10. The Supreme Court further held that

“The language used by Article 226 in conferring power on the High Court is very wide. Article 12 defines the ‘state’ as including the Legislature of such State, and so prima facie the power conferred on the High Court under Article 226 (1) can, in a proper case be exercised even against the Legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House of Legislature to raise preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House.”

However, Justice A.K. Sarkar observed that :-

“When a House of Legislature commits a person for contempt by a general warrant that person would have no right to approach the Courts nor can the Courts sit in judgement over such order of committal (Para 196)”

11. Under Article 194 (3), Legislature under privilege jurisdiction has no power to take action against the judge of High Court for contempt.

12. The Supreme Court ruled that,

“When there is a conflict between a privilege conferred on a House by the second part of Article 194 (3) and a fundamental right, that conflict has to be resolved by harmonising the two provisions. It would be wrong to say that the fundamental right must have precedence over the privilege simply because it is a fundamental right or for any other reason. In the present case the conflict is between the privilege of the House to commit a person for contempt without that committal being liable to be examined by a Court of law and the personal liberty of a citizen guaranteed by Article 21 and the right to move the courts in enforcement of that right under Article 32 or Article 226. If the right to move the courts in enforcement of the fundamental right is given precedence, the privilege which provides that if a House commits a person by general warrant that committal would not be reviewed by courts of law, will lose all its effect and it would be as if that privilege had not been granted to a House by the second part of Article 194 (3). This cannot be.”

13. The Supreme Court ruled that,

“A Court should never forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. What is true of the judicature is equally true of the Legislatures.”

Brief Facts:—As reported by H. M. Seervai in his famous treatise on Constitutional Law of India; A Critical Commentary – Second Edition (1976).

We have seen that, the privileges of the House of Commons have at times brought it into collision with courts of law. A similar collision took place between the U.P. Vidhan Sabha and the Judges of the Allahabad High Court, which gave rise to the President’s reference no. 1 of 1964.

The facts which gave rise to the reference were as under :—

1. Mr. Keshav Singh having meant guilty of contempt of the Assembly was produced before the House in the custody of Marshall on 14th March, 1964 and he was reprimanded under the orders of the House.

2. He was also held guilty of a second contempt, namely, his disrespectful behaviour towards the House within the Chamber of the House, and his letter written to the Hon. Speaker in discourteous, intemperate and unparliamentary language and sentenced to seven days’ imprisonment by the House, and was send to the District Jail Lucknow.

3. On 19th March 1964, Keshav Singh represented by Mr. Solomon, Advocate, presented a petition to the Allahabad High Court before its Lucknow bench under section 491 of the Cr.Pc, against the Speaker of the House, the Hon. House, the Chief Minister of Uttar Pradesh, and the Superintendent of the District Jail at Lucknow wherein it was prayed that he be set at liberty, on the ground, *inter alia*, that his detention by the House after the reprimand was illegal and without any authority and that pending the disposal of his petition, he be released on bail.

4. The petition was presented at 2.00 P.M. before the Hon. Mr. Justice Beg and the Hon. Mr. Justice Sehgal.

5. At 3.00 P.M. on March 21, the court made an order releasing Keshav Singh on bail, notices of breach of privilege having been received by the Assembly, decided by the resolution that the Hon. Mr. Justice Beg, Justice Sehgal, Mr. Solomon and Mr. Keshavsingh had committed contempt of the House and ordered that Keshavsingh be taken into custody forthwith and that the Hon. Judges and Mr. Solomon be taken into custody and brought before the House.

6. The above resolution was clarified by the assemblies' resolution of March 25, 1964 to the effect that the House has intended to call the aforesaid persons in order to give them an opportunity for explanation.

7. Pursuant to the decision of the House, on 21st March, 1964 warrants were issued against the two Judges and the said Advocates. On March 23 the two judges presented a petition for restraining the implementation of the resolution of March 21, 1964 and a bench of 28 Judges of the Allahabad High Court passed stay orders till the disposal of the said petition, and ordered that no order or warrant should be issued for taking them into custody.

8. A similar order was passed on the petition of the Advocate Solomon by a bench of 23 judges of the High Court. On March 25, 1964, the Speaker of the Assembly referred the resolution passed by the House to the Privileges Committee and in view of its decision, withdrew the warrant issued against the Judges and the Advocates.

9. The Privileges Committee considered the question at its meeting on March 26, 1964 and decided that the two Judges and the Advocate should be called for submitting the explanation before the Committee and notices were sent to them accordingly.

10. On the petition of the two judges, a bench of 23 judges of the Allahabad High Court issued an interim order on 27th March, 1964, prohibiting the Speaker of the Assembly and the Privileges Committee from proceeding with the implementation of the impugned resolution and stayed the operation of the notices issued by the privilege committee.

11. Following this alarming situation, the President of India referred this issue under Article 143 to Supreme Court on March 26, 1964 and subsequently the Assembly withdrew the notices of 26th March, 1964 stating that in view of the Presidential reference the two judges, Mr. Solomon and Mr. Keshav Singh did not appear before the Privileges Committee as required.

12. The Presidential reference aroused considerable public interest and the proceedings before the Supreme Court were extensively reported in the Press.

13. U.P. Assembly declined to submit its privileges jurisdiction to the Court and maintained that as the House of Commons in the United Kingdom, it is sole and exclusive judge of its own powers, privileges and immunities and its judgements are not examinable by any other court or body.

Findings of the Committee of Privileges

As an epilogue to the reference, it may be mentioned that the Committee on Privileges of the Vidhan Sabha of Uttar Pradesh disregarded the order of the Allahabad High Court as "an unauthorized interference" in the proceedings of the House and the Committee did not take cognizance of it. After the opinion of the Supreme Court was delivered, the Committee of Privileges went into the question and held that the majority opinion was wrong in law, and concluded:

“Having held that Shri Keshav Singh, Shri B. Solomon, and JJ. Sehgal, Beg and other aforesaid Judges of the Allahabad High Court were guilty of contempt of the House by the above mentioned acts, the Committee feels confident that Shri Keshav Singh and Shri B. Solomon and the Judges would not have done what they have done, had they realized the importance and implications of the matter at the time but in view of the importance of the harmonious functioning of the two important organs of the State, i.e. the Legislature and the Judiciary and the recent judicial pronouncements, the Committee feels that the end of justice would be met and the dignity of the House vindicated if the House expresses its displeasure. The Committee accordingly recommends that the displeasure of the House be expressed.”

The Supreme Court has held that once it was proved that Parliament was transacting its business, anything said during the course of that business was immune from proceedings in any court, and no question arose whether what was said was relevant to the business.

Raja Ram Pal Vs. The Hon. Speaker Lok Sabha

Writ Petition No. 1 of 2006

(2007) 3 SCC 184

Y. K. Sabharwal, Chief Justice of India

In Raja Ram Pal Case, the supreme Court had to again deal with the question of powers, privileges and immunities of the Legislatures and in particular the power to expel a Member of Parliament (MP). The case related to a telecast by a TV channel of a programme on 12th December 2005 based on sting operations conducted by it depicting 10 MPs of the Lok Sabha and one of the Rajya Sabha accepting money, directly or through middlemen, as consideration for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre, The Presiding Officers of both the Houses made enquiries through separate committees. The report of the inquiry concluded that the evidence against the 10 MPs was incriminating. The report was laid on the table of the House, a motion was adopted by Lok Sabha resolving to expel the 10 MPs and notification was issued by the Lok Sabha notifying the expulsion of the 10 MPs. Similer process was also followed in the Rajya Sabha. It was contended on behalf of the MPs that the expulsion was malafide and the result of a predetermination of the issue and for this purpose relied on the declaration made by the Speaker on the floor of the House that ‘nobody would be spared’. The MPs also argued that the circumstances do not warrant the exercise of the power of expulsion.

In the above context the Supreme Court framed three questions which arose for decision in the case :—

1. Does the Supreme Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privileges and immunities of the legislatures and it Members ?
2. If the first question is answered in the affirmative, can it be found that the powers and privileges of the legislatures in India, in particular with reference to Article 105, include the power of expulsion of its Members ?
3. In the event of such power of expulsion being found, does the Supreme Court have the jurisdiction to interfere with the exercise of the said power or privilege conferred on Parliament and its Members or committees and, if so, is this jurisdiction circumscribed by certain limits? In other words, if the power of expulsion exists, is it subject to judicial revie and if so, the scope of such judicial review ?

In answering these questions the Constitution Bench went into the history of the parliamentary privileges in England as well as the application of the principles decided by the Supreme Court in U.P. Assembly case. The Court explained the difference between disqualification and expulsion by saying that while disqualification strikes at the very root of the candidate’s qualification and renders him or her unable to occupy a Member’s seat, expulsion deals with a person who is otherwise qualified, but in the opinion of the House is unworthy of membership. The Court rejected the submission that the provisions of Article 101 or 102 restrict in any way scope of Article 105(3). After a close analysis of the Articles 102,103,104 and 105, and several English authorities and texts, the majority after perusal of the enquiry report found that there was no violation of any of the fundamental rights in general and Articles 14,20 or 21 in particular. The majority was of the view that proper opportunity to explain and defend had been given to the MPs. These observation and findings imply that the Court has affirmed the justiciability issue and consequently its power of judicial review.

Summary of the Principles relating to parameters of Judicial review in relation to exercise of Parliamentary Provisions laid down by the Hon. Supreme Court in Raja Ram Pal Vs The Hon. Speaker, Lok Sabha & Others, (2007) 3 SCC 184).

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to *judicial scrutiny*.

(b) The constitutional system of Government *abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution*. Mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision.

(c) The expediency and necessity of exercise of power or privilege by the Legislature are for the determination of the legislative authority and not for determination by the courts.

(d) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature.

(e) Having regard to the importance of the functions discharged by the Legislature under the Constitution and the majesty and grandeur of its task, *there would always be an initial presumption that the powers, privileges, etc. have been regularly and reasonably exercised, not violating the law or the constitutional provisions*, this presumption being a rebuttable one.

(f) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power.

(g) While the area of powers, privileges and immunities of the Legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error.

(h) The judicature is not prevented from scrutinising the validity of the action of the Legislature trespassing on the fundamental rights conferred on the citizens

(i) The broad contention that the exercise of privileges by Legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct.

(j) If a citizen, whether a non-Member or a Member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences.

(k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution.

(l) The manner of enforcement of privilege by the Legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212.

(m) Article 122(1) and Article 212 (1) displace the broad doctrine of exclusive cognizance of the Legislature in England of internal proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India.

(n) Article 122(1) and Article 212 (1) prohibit the validity of any proceedings in Legislature from being called in question in a court merely on the ground of irregularity of procedure.

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the Legislature.

(p) Ordinarily, the Legislature , as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or malafide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the Legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the Legislature has to make for regulating its procedure and the conduct of its business ***have to be subject to the provisions of the Constitution;***

(r) Mere availability of the Rules of Procedure and Conduct of Business, as made by the Legislature in exercise of enabling power under the Constitution, ***is never a guarantee that they have been duly followed.***

(s) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality ***are not protected from judicial scrutiny;***

(t) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action.

(u) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

RELATIONS BETWEEN THE LEGISLATURE AND JUDICIARY

A Critical Analysis

Parliament enjoys the inherent right to conduct its affairs without interference from any outside body. It is the sole judge of its procedure. The doctrine of separation of powers and its associated principle of checks and balances has been acknowledged world wide. The founding fathers of our Constitution adopted a via media of the American system of “Judicial Paramountacy” and the English principle of “Parliamentary Supremacy”. Thus, the Indian Constitution has not recognised this doctrine in its absolute rigidity because it is impossible to have rigid and water-tight separation of powers between legislature, executive and judiciary. Though the functions of the three organs of the State viz., the legislature, the judiciary and executive have been sufficiently demarketed, there are some grey areas where these powers are overlapping each other and gave rise to confrontation, especially between legislature and judiciary. The most adversely affected constitutional body in this regard is the Office of the Speaker/Chairman, as the case may be and the main target is decisions given by him while conducting the proceedings of the House.

The Presiding Officers of Parliament and State Legislatures hold a pivotal position in the scheme of Parliamentary Democracy and are supposed to be the guardians of the rights and privileges of the House. They are expected to take far reaching decisions in the functioning of Parliamentary Democracy. The accepted principle so far has been that the proceedings of the House as also its rights and privileges were totally protected from intervention by outside bodies including the Courts. For some time past, however, the powers, privileges, and immunities of Indian Parliament and Legislatures have been a subject of controversy and what is regretted indeed is the involvement of the fundamental rights of citizens and powers of judiciary. These controversies have not spared even the dignity and status of the high Office of Presiding Officers which is supposed to be the symbol of Parliament and State Legislatures.

The framers of the Constitution were expecting that the, powers of each one of the three organs would be exercised as fundamentally, subject to the provisions of the Constitution relating to that organ individually as well as to the provisions relating to other organs. They expect that all organs of the State would exercise their authority and realise their responsibility in proper coordinated manner and try to realise the ultimate interest of the people. However, in practice the situation is quite different.

Having accepted that the legislative bodies are sovereign within its respective ambits it logically follows that each House has the power to punish its Members for disorderly conduct and other contempts committed in the House - while it is sitting. 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 also observed by the Allahabad High Court that 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: The Speaker, who preserves order in the House has all powers necessary for the purpose of enforcing his decisions.

It will be pertinent to closely look at the constitutional provisions in this respect. Art. 194(2) reads as follows :—

“No Member of the Legislature of a State shall be liable ‘ to any proceeding in any Court in respect of anything said or any vote given by him in the Legislature or any Committee thereof and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.”

Thus 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 punish either by imprisonment or reprimand, any person whom it considers 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 Speaker/ Chairman may direct an erring Member to discontinue his speech or expunge from the proceedings defamatory, undignified words and in extreme cases ask Member to withdraw from the House or initiate process of suspension from the service of the House.

Now let us turn to Art. 212 which reads as follows :

“212. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No Officer or Member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers”.

Looking to the constitutional provisions, one has to study the subject of relationship between Legislature and Judiciary in a calm and dispassionate manner.

At the one hand the Legislature claims that it has power to decide by itself matters arising in connection with the proceedings of the House and at the other the Judiciary contends that it is final arbiter in the matter.

Glaring examples in this respect are worth mentioning. In 1964, Keshav Singh case had given rise to direct confrontation between the Judiciary and Legislature. As things assumed alarming proportions, the President of India made a Special Reference to the Supreme Court and the Court while helping to defuse the situation did not deny that “in a conflict between Article 19 (a), regarding the Freedom of Speech and ‘Article 194 regarding Legislative Privileges, Article 194 prevails and the former is subsumed and subsidiary to the absolute privilege of the later, except when Article 21 regarding the Right to Life and Article 32 regarding the Right to seek judicial scrutiny are involved”. Similarly in famous ‘Searchlight Case’, the Supreme Court had given its interpretation of the scope of Art. 194 and while discussing the petition held that Art. 19(1) and 194(3) have to be reconciled and that the principle of harmonious construction must be adopted and so construed that provisions which are of general nature must yield to the provisions which are of Special nature i.e. Art.194. It will thus be seen that where privileges of House, its Members or Committees conflict with the fundamental rights of its citizens under the Constitution, a citizen would be entitled to exercise such fundamental rights and the Courts will have jurisdiction to decide the matter.

This opinion of the Supreme Court was discussed by the Conference of Presiding Officers held in Bombay (Mumbai) in 1965 wherein then Chairman (Hon. Speaker) Hukum Singh, while pointing out the intention of the Constituent Assembly observed as follows:

“If you go to the history of the provisions contained in Articles 105 and 194 of the Constitution, you will find that the intention has all along been that the Legislatures in India should have the same powers and privileges as are enjoyed by the British House of Commons, more particularly the Privileges of committing for contempt by a general warrant without the scrutiny of the Courts”.

In spite of these specific constitutional provisions and judicial pronouncement made from time to time, the cases of confrontation between Legislature and Courts are not wanting.

As decided earlier, the Conference of Presiding Officers of Legislative Bodies in India held at Bombay (Mumbai) on the 11th and 12th January, 1965 had unanimously adopted a resolution which inter-alia recommended that suitable amendments to Article 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubts so that the powers, privileges and immunities of Legislatures, and their members and Committees could not in any case be construed being subject or subordinate to any other Article of the Constitution.

But what we see today is not conducive for the healthy relationship between the two important organs. The spirit of mutual ‘understanding and will to work within the framework of Constitution is not a one way route but it requires spontaneous response from the other end also.

Considering the position obtaining today, steps can be taken by the Legislatures which may help to avoid conflicts. Firstly, the Legislatures must resolve as a matter of future conduct, as did by the British House of Commons on February 6, 1978, that the House will exercise its penal jurisdiction as sparingly as possible and only when satisfied that it was essential to do so, in order to provide reasonable protection for the House and its officers from obstruction causing substantial interference with the performance of their functions.

Secondly, the Legislatures should constitute a Central Privileges Forum composed of members of Parliament and the Legislatures, to which a person may appeal, if so desires, instead of seeking a review from the courts, which Legislatures do not desire.

Late Pandit Jawaharlal Nehru has said “No Supreme Court, no judiciary can stand in judgement over the sovereign will of Parliament, representing the will of entire community”. We have to consider this matter in all sincerity and seriousness to protect the dignity and prestige of the Legislature. The Judiciary is always held in high esteem and it is expected that they should consider our difficulties in same manner so that an amicable solution could be found out. Indeed, it would be in the best interest of democracy in this country if both function with mutual trust and respect, each recognising the independence, dignity and jurisdiction of the other.

CHAPTER – 7

CODIFICATION OF PRIVILEGES**Question of Codification : Historical Background:**

The question of undertaking legislation on the subject has engaged the attention of the Presiding Officers since 1921. The matter has also been considered from time to time at the Conference of Presiding Officers.

In September, 1949, when the question of enacting legislation on the subject was considered by the Conference of Presiding Officers, the Chairman, Shri G.V. Mavalankar, Speaker, Lok Sabha, expressed the following 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.

In the present set-up, any attempt at legislation will very probably curtail our privileges. Let us, therefore, content ourselves with our being on 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.”

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, interalia 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 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.”

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, Shri G.V. 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:—

- (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.

(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 on the United Kingdom to conditions in India.

I may here invite your attention to the Secretary's note on the subject which is being circulated to you."

The note of the Secretary (Shri M.N. Kaul) interalia 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.

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.

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.

The plea for codification of privileges was also put forward in 1954 by the Press Commission, 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.

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 recognised as have existed by long time custom. No codification, therefore, appears to be necessary."

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

Speaking in Lok Sabha on a 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:-

"After all, it is now acknowledged more or less universally that matters of privilege should be left uncodified rather than codified. It is all the more so in this country. Though in England, Parliament may, if it chooses, pass any law concerning privileges 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 the limitations which the Constitution imposes upon us. That matter has been made quite clear in the recent judgement 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.

Therefore, I think it will be 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."

A plea for the codification of powers, privileges and immunities of the legislature 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 13 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.

The Conference of Chairmen of Committees of Privileges of Legislative Bodies in India held at New Delhi in March, 1992, also considered the issue of codification of Parliamentary privileges. The Conference unanimously decided that it was not necessary to codify Parliamentary privileges.

Effect of Non-codification: Legal view

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. 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."

Recent Developments

In the wake of certain developments in 1992 in Tamil Nadu which led to near confrontational situation between the Legislature and Press on the one hand and the Legislature and Judiciary on the other, the demand for codification of Parliamentary Privileges was again made in various fora.

On 21 April, 1992 when the Tamil Nadu issue was sought to be raised in Lok Sabha, Shri Lal Krishan Advani, MP and Leader of Opposition in Lok Sabha, expressed” the following views:-

“The issue is being discussed for the past few years. The reporters sitting in the press gallery are not aware of their limitations. They are asked any time not to record this or that and due to this reason, this issue has been raised here several times, which I would like to repeat today that in view of the freedom of the Press, it is necessary to codify the jurisdictions of the Parliament and the State Legislatures so that the rights and privileges are known to the people and for this you are the right person to take initiative. If the privileges are codified a solution can be found to such issues which have cropped up today, otherwise, if such issues are taken to the courts without codification they will also say they do not want to have friction with the State Assemblies and, therefore, they cannot give you justice even though they want. Due to this reason, it is for you and the Parliament to play a role in this regard and while supporting them I would like to say that the entire House should be concerned that the freedom of the Press is not curbed in any way. The journalists should have the freedom of expression and fulfil their duties with full responsibility.”

CONCLUSIONS ON CODIFICATION OF PRIVILEGES

- The criticism that parliamentary privileges are anachronistic in a democratic set-up like ours is not justified. On the contrary, these are essential for smooth functioning of democracy and for maintaining the freedom and dignity of Parliament.

- The criticism that privileges are a relic of our colonial past is not justified. Privileges are safeguards to enable Parliament and its Members to discharge their duties and responsibilities effectively and usefully. Privileges should, therefore, not be done away with.

- The impression that parliamentary privileges create an elite and exclusive section of society which is immune to the operation of the ordinary laws of the land is totally erroneous and ill-founded.

- Parliamentary privileges are enjoyed and exercised by the representatives of the people so that they can perform their parliamentary duties without any let or hindrance. In no way can the privileges be said to be enjoyed by the representatives of the people against the interests of the people at large.

- The criticism that Legislatures are keen on extending their privileges is not justified. Privileges are not created but are evolved.

- Parliamentary privileges are certain and ascertainable and not vague and inscrutable as is often alleged. There was, however, a general feeling that the relevant Constitutional provisions leave much to be desired in specifying the exact privileges and immunities the legislators are entitled to.

Parliamentary privileges need not be codified.

If parliamentary privileges are codified, they will lose their flexibility in their application to the circumstances and cases as and when they arise.

If codified, the parliamentary privileges will become subject to fundamental rights enshrined in the Constitution and they will come within the ambit of judicial scrutiny and determination.

Majority feels that codification would not erode Parliament's power to punish for its contempt.

Even if the parliamentary privileges were to be codified, it would not be possible to achieve precision at the risk of sacrificing substance.

Absence of codification is not responsible for confrontation between the legislature and judiciary. If there is mutual trust and respect between these two organs of democracy, there is hardly any need to codify the law of privileges.

Majority felt that there ought to be greater awareness amongst Members that privilege matters need not be raised casually. Exercise of this right by Members should be rare and action by the House in such matters should be rarer. Members should exercise control and self discipline while 'dealing with members of the Executive and others.

It is also the view of a large number of persons that impartial and judicious exercise of the privileges by the Members needs to be guaranteed. It is also necessary to evolve a mechanism to ensure against misuse or abuse of privileges.

Whether the privileges should be Codified :

Ever since the time of the Constituent Assembly, the question has been agitated as to whether independent India should not have her own code of Parliamentary privileges instead or relying upon the uncodified law of the British House of Commons . But, even though the Constitution in the present Clause, expressly envisages such legislation, it has not so far been undertaken in view of some practical considerations:

Firstly, the privileges of the House of Commons cover a wide variety of subjects and their outstanding virtue, there is their elasticity. Any attempt in India to exhaustively codify them must be a supremely difficult task and would be at the cost of the virtue of elasticity to meet different circumstances.

Secondly, in England it is established at Common law, that where the House does not specify any grounds for commitment for contempt, the courts are powerless, even in habeas corpus proceedings to inquire into the grounds for a commitment or the causes of detention. Hence, in cases of serious contempt of the House, the House may shield itself from judicial interference by not specifying the grounds of commitment. Any code can hardly confer such uncharted freedom to the House.

Thirdly, another ground for leaving the privileges uncodified had arisen because of the decision of the Supreme Court in *Sharma v. Sri Krishna* that so long as Parliament does not exercise its legislative power to codify any of its privileges, the latter part of Cl. (3) of Arts. 105 will operate to make the privileges of the British House of Commons available, regardless of any limitations imposed by the Fundamental Rights included in Part III of the Constitution; but that as soon as Parliament seeks to legislate, all the Fundamental Rights in Part III will operate as limitations on the Legislature power by reason of Arts. 13(2). In other words, if Parliament now enacts a statute embodying any of its privileges, the courts will be entitled to examine the constitutionality of its provisions, with reference to any of the Fundamental Rights, such as the freedom of speech and expression guaranteed by Arts.19.

Mr. Hidayatullah, an Ex-Chief Justice of the Supreme Court of India unequivocally oppose codification on the curious ground that-

The most important reason why the conflict between fundamental rights and privileges arises is because they have not yet been codified by the Legislatures. Clause 3 of article 105 and 194 lays down that as long as the Parliament does not enact a law codifying parliamentary privileges, the privileges of the House of Commons would apply to the Indian Legislatures. One such attempt was made in 1956 with the Parliamentary Proceedings (Protection of Publication) Act. It exempted from civil and criminal liability newspaper reports and radio broadcasts of parliamentary proceedings in certain conditions like when publication was for a true proceeding, in public good and not made in malice. However, this was repealed during Emergency but later enacted again in 1977.

The Constituent Assembly Debates show that the intention of the framers of the Constitution was to provide for clause 3 of Articles 105 and 194 as only temporary. They envisaged codification of privileges. In *Keshav Singh's* case, it has been laid down that any law made under Article 194(3) would be considered as law within the meaning of Article 13 and the courts would therefore be competent to examine its validity vis-à-vis fundamental rights. In *Sharma* case, the Supreme Court opined that a law made by the Parliament or any State Legislature in pursuance of earlier part of Article 105(3) or 194(3) respectively, would be considered to be law made under ordinary legislative power and therefore, the courts will have the power to test it on the touchstone of Article 13. This provision was sought to be amended by Section 21 of the Forty Second Amendment, providing for the evolution of powers, privileges and immunities of Parliament itself, dispensing with the need for legislation. However, this section was not brought into force and was repealed by the 44th Amendment.

Mr. Hidayyatullah, an Ex-Chief Justice of the Supreme Court of India, has rightly pointed out that, "if the privileges were codified, the Legislature will be exposed to an alien body" (i.e., the judiciary), And that if they were left uncodified, the Speaker or the Chairman would have the final power to decide each case, without interference from 'another body'. Therefore, there has as yet been no codification of privileges.

It is welcome news" that a Committee has been formed in Parliament to examine the question, where the question would be examined solely from the objective point of view, apart from the subjective opinions of particular persons.

CHAPTER – 8

ANALYSIS AND CONCLUSION

“Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their Parliamentary function effectively. Without this protection members would be handicapped in performing their Parliamentary duties and authority of Parliament itself in confronting the executives and as a forum for expressing the anxieties of citizens would be correspondingly diminished. The privileges of each House have both external and internal aspects: they protect it against outside interference that would erode freedom to conduct its own proceedings; they impose duties on its members, restraining them from conduct that would abuse their privileged position. Privilege is an important part of law and custom of Parliament, but aspects of law are still obscure. It has been developed over centuries by the response of Parliament, especially the Commons; to changing circumstances and also such privileges affect those outside Parliament, by decision of the courts. Since neither House separately exercises legislative supremacy, neither House can by its own resolutions create new privileges. When a matter of privilege is disputed: “it is for the courts to decide whether a privilege exists and for the House to decide whether such privilege has been infringed. In United Kingdom, the law and custom of Parliament, so far as they relate to the origins of privilege, are enshrined in the traditions of the institutions, and only exceptionally have been defined by Statute.”

Each House exercises certain powers and privileges which are regarded as essential to the dignity and proper functioning of Parliament. The Members also have certain privileges, although these exist for the benefit of the House and not for the personal benefits of the members “As every court of justice hath laws and customs for its direction”, says Coke. “So the High Court of Parliament *suis propriois legibus et consuetudinibus subsistit.*” ERSKINE MAY defines Parliamentary privilege as a constituent part of the High Court of Parliament and by members of each House individually without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus the privilege, though part of the law of the land, is to a certain extent an exemption from the general law.

Parliamentary privilege is part of the “*lex et consuetudo Parliament*“, the law and custom of Parliament. It consists of special rules evolved by the two Houses in order to protect themselves collectively and their members acting in their public capacities, against outside interference so as to enable them to carry out their constitutional functions effectively. Most of these special rules are non-statutory; they have been laid down by resolutions of the two Houses. Some are statutory. They are part of the Common law in so far as their existence and validity are recognized by court, but they are in general, enforced not by the courts, but by each House. The two Houses justify special rights, powers and immunities conferred by Parliamentary privilege as being necessary for the welfare of the Nation.

Nothing is harder to define than the extent of indefinite powers or the right possessed by either House of Parliament under the head of privilege or law and custom of Parliament. Though all the three powers, privileges and immunities are invariably used in almost in all Constitution of the world, they are different in their meaning and also in contents. “Power” means “the ability to do something or to act in a particular way”. It is a right conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties, liabilities or

other legal relations either of himself or of other persons. It is a comprehensive word which includes procedural and substantive rights which can be exercised by a person or authority. "Privilege" is a special right, advantage or benefit conferred on a particular person. It is a peculiar advantage or favour granted to one person or against another to do certain acts. Inherent in the term is the idea of something, apart and distinct from a Common right which is enjoyed by all persons and connotes some sort of special grant by the Sovereign. "Immunity" is an exemption or freedom from general obligation, duty, burden or penalty. Exemption from appearance before a Court of Law or other authority, freedom from prosecution, protection from punishment etc. are immunities granted to certain person or office bearers.

The privilege is an ancient Parliamentary power. All of countries that have democratized or will soon have democratized provide them by own constitution. The purpose of the Parliamentary privilege is to permit members of the Legislature to speak freely and express their opinion of political position, and not worry about retaliation on the basis of political motives. The Parliament formulates itself its own rules of procedure and maintains the discipline of Parliament itself and so on, in order to ensure that the Parliament can independently, freely discharge of its duties and perform its functions. Parliamentary privilege, however, is often misunderstood by people who believes that the privilege is the special protection of all of the elites of society. That is ironic, because privilege was originally produced as a whole of the protection of Parliament, and it protected members of Parliament from the elites at that time. It may be said that Parliamentary privilege is a special institutional arrangement based on the principles of democracy. Compared with other Parliamentary powers, it is special because it is the defensive power of Parliament rather than an offensive power which the Parliament must proactively exercise.

The evolution of the English Parliamentary Privileges has thus historical development. It is the story of conflict between the Crown's absolute prerogatives and the Common's insistence for powers, privileges and immunities; struggle between high handed actions of Monarchs and peoples' claim of democratic means and methods. Parliamentary privileges are the rights which the Houses of Parliament and Members possess so as to enable them to carry out their functions effectively and efficiently. Some of the Parliamentary privileges thus preceded Parliament itself. They are, therefore, rightly described by Sir Erskine May as fundamental rights of the Houses as against the prerogatives of the Crown, the authority of ordinary courts of law and the special rights of the House of Lords.

While concluding we may say that, under a system of parliamentary government, the privileges of the Legislature, its members and committees are an essential guarantee of its efficient working. However, many a times, these privileges are in conflict with the fundamental rights that are guaranteed by our Constitution. Keeping in mind the necessity of these privileges, it therefore becomes imperative to lay down whether they will be subject to fundamental rights or not. As has been decided by the courts, Articles 105 and 194 are special in nature and the fundamental rights general. The general must yield to the special. However, this is only with reference to the fundamental right of speech and expression. As far as other fundamental rights are concerned, like Articles 21 and 22, they will always prevail.

Much of the dispute regarding this issue of conflict between fundamental rights and parliamentary privileges can be resolved if the Legislature codifies its privileges. This would conversely lead to such law being subject to Article 13(2). Being made under the ordinary legislative powers of the Parliament, it would mean that any codified Parliamentary privilege that takes away or abridges the fundamental rights can be struck down by the judiciary at the touchstone of Article 13(2). On 16 October, 1949, Dr. Rajendra Prasad noted that, 'Parliament may never legislate on that point and it is therefore for the members to be vigilant.' The warning has proven prophetic. Therefore, till such time as the privileges of the Parliament are not codified, utmost care should be taken by the legislators that they do not abuse this benefit that has been given to them. The purpose of privileges is to ensure that their business is not interrupted and their business is to ensure a smooth running of the affairs of the country, much of which is achieved through discussion and debate. Being the representatives of the people they must always be prepared to face public criticism and should never consider themselves to be above such criticism.

CHAPTER 9

IMPORTANT PRIVILEGES CASES DEALT WITH BY MAHARASHTRA LEGISLATIVE ASSEMBLY

(1) WAGH'S CASE (1938)

L. A. BILL No. XXIV of 1938 (A Bill to provide for the protection of tenants in the province of Bombay) was being considered on its first reading when P. W. Wagh, a member, raised a question of privilege and said —

“Sir, before the honourable member Sardar Vinchoorkar proceeds, I want to draw the attention of the Chair to one matter affecting the privileges of this House. Yesterday, in one of the daily newspapers of this city, a statement was published. That statement is calculated to cast a reflection on me, suggesting that I did something which is strictly prohibited by the rules of this House. Indirectly, it casts a reflection on the Chair also for having allowed me to do a thing, which is strictly prohibited. May I read that statement or send you a copy of that paper.”

The Honourable, the Speaker : The Honourable member may tell me the purport of it. Then P. W. Wagh read the statement which consisted of two lines, which was in Marathi.

“ श्री. वाघ यांचा दुहेरी हल्ला

श्री. पी. जी. डब्ल्यू. वाघ यांनी आपले लिहून आणलेले भाषण सणसणीतपणे वाचून दाखविले ”

“ Now, Sir, he continued under the rules of this House , I am not entitled to read my speech. This statement, therefore, is a deliberate lie, and I leave it to the Chair as to what steps should be taken and in what way.” Honourable Speaker G. V. Mavalankar tried to ascertain the facts. Wagh stated that he had notes before him and that he perused them and was entitled to refer to them. Thereupon Hon. Speaker observed as follows.-

“It is now clear from the statement of the Honourable Member that he was referring to his points and not to a written speech, as perhaps the reporter, from a distance, may have thought. I do not think any serious notice need be taken of this matter. I hope the press will not repeat such a mistake.

(2) TIMES OF INDIA CASE (1953)

On 26th March 1953 a starred question by M. B. Shah, MLA, regarding Liquor Permits held by Magistrates and Judges was answered in the Assembly by the Minister for Finance, Prohibition and Industries. The Member asked specifically for the names of the Judges who were so granted permits and this supplementary question too was answered when the Member explained, pursuant to the query by the Hon. Speaker, that he wanted the information in public interest.

These proceedings in the House were criticised severely in an editorial in the Times of India's issue of 28th March 1953 under the caption "Contemptible". The editorial contained expressions such as, "Contemptible", "Calculated efforts", "degrading design", "Singling out of magistrates and judges for public obloquy, "It, therefore, cannot but be part of a deliberate pattern", "that there was obvious design in this pattern", "mean and petty performance", "the entire performance in its malice and vituperation is unworthy of the Legislature of what was once a premier State." "But perhaps it is too much to expect elementary good manners and good taste from those who know no standards and observe none", besides suggesting that it was a pre-eminent case where such a question should have been disallowed.

Committees' recommendations:

The Committee of Privileges to which the case was referred for examination and report, was chaired by K. K. Shah, a prominent member of the Assembly. The Committee considered the matter in all its aspects aided by the Advocate-General as also by the Counsel for the Editor, Nani Palkhiwala. The Editor, Frank Moraes gave his written defence-statement. The Committee by a majority view came to the conclusion that the criticism in the editorial exceeded the bounds of decency, reasonable and fair comments as it attributed motives to a member in particular and also to the House in general and that the whole trend of the editorial was such as to lower the dignity of the Legislature in public esteem. The Committee found the editor guilty of breach of privilege and recommended that the House should disapprove of the conduct of the editor for publishing the said editorial and that until the Times of India gave an unconditional apology and published it, the press facilities given to the paper should be withdrawn.

The Report of the Committee came before the House for consideration on 16th April, 1953. K. K. Shah, Chairman of the Committee moved the motion that the Report of the Committee be taken into consideration which was passed by the House. Before the substantive motion, to be moved by the Chief Minister, Morarji Desai, was taken up, the Speaker D. K. Kunte observed as follows:-

Speaker's observations :

"Before I call upon the Hon. Chief Minister to move the motion, I would like to inform the House that I have written to Moraes, Editor of the "Times of India" to be present in this House and make his plea, if any, before the House begins discussion on the Report. If Moraes wants to say anything, he may come before the House and address it."

Statement by Frank Moraes :

Frank Moraes made his statement as follows :—

Sir, I should like to say at the outset that the whole object and purport of my editorial in question was to uphold and maintain the dignity of the Assembly and not to lower it; and likewise to uphold and maintain the dignity of the judiciary. I have not cast any reflections and did not intend to cast any reflections on the Legislative Assembly. I have only offered fair comment and fair criticism on a discussion in this House, which, apart from its unconstitutionality, tended in my opinion to lower the prestige and dignity alike of the Legislative Assembly and the Judiciary.”

“I submit with all respect that no privilege attached to the discussion in the Assembly which was the subject matter of the editorial, and the grounds on which I make this submission have already been clearly mentioned in my affidavit dated the 4th April 1953 and have been argued on my behalf before the Committee of Privileges. Assuming while denying that any privilege attached to the said discussion in the Assembly, the editorial in my submission does not amount to breach of privilege of the Assembly or of Madhavlal B. Shah.”

“I respectfully submit that I have not been guilty of any breach of privilege as alleged, but have only discharged my duty as the Editor of a newspaper in public interest, without any malice and without any object other than that of maintaining the dignity and high traditions of the Legislature as well as the Judiciary. I should like finally to say in all sincerity that I had not the remotest intention to bring the Assembly into contempt or ridicule or to cast any aspersions on this House which I hold in high esteem and respect.”

Morarji R. Desai, Chief Minister, moved the following motion.—

“That the House having considered the Report of the Privileges Committee appointed on 30th March 1953 in the matter of breach of Privilege by the Editor, Printer and Publisher of the Times of India, Bombay, by the publication of the editorial article in the issue of the said paper dated 28th March, 1953 under the heading “Contemptible” accepts the recommendation of the Committee, and resolves “.

“That the House should disapprove of the conduct of Moraes for publishing the said article “Contemptible “ in the issue of the Times of India on 28th March 1953 and that until the Times of India gives an unconditional apology and publishes the same, the press facilities given to the Times of India be withdrawn.”

The Press having complained that they did not hear properly the statement of the Editor. The statement was read out in the House by the Secretary.

Morarji Desai, S. M. Joshi, D. A. Deshmukh:

Morarji Desai, Chief Minister who moved the motion, observed, “Sir this is the first time in the history of this Legislature, that such a Motion has had to be moved. It becomes my duty as the Leader of the House to move this Motion after the receipt of the Report of the Privileges Committee appointed by you. Three questions, Sir, are involved in this issue: the dignity, rights and privileges of this Hon. House, the dignity, rights and privileges of the Hon. High Court and the Freedom of the Press. The question, therefore, is very important and requires to be considered in a very dispassionate manner.” I am, Sir, very thankful to the Committee for treating the whole matter very dispassionately and in a very liberal manner. I see that there is only one dissent and I am not surprised at it, because that hon. Member had made up his mind even before the Com- mittee had been appointed and he has acted practically as the

advocate of this Paper, in this issue. He may not be an Advocate engaged by the Paper, I readily grant, but when he said at the time when the Committee was appointed, that his mind was made up, well, it was clear that he was not prepared to reconsider his views." The Chief Minister strongly supported the Report of the Committee and its recommendations. The dissenting Member was Naushir Bharucha. Naushir Bharucha participated in the debate and spoke against the recommendations in the Report. It was supported by S. M. Joshi, an Opposition Member from Pune. He observed, "It is my misfortune that I cannot agree with the viewpoint just now expressed by my hon. friend Bharucha and also expressed by him in the Privileges Committee. But it is not always possible for us to agree on all points. Truth manifests itself to different eyes in different forms and the path of truth is not easy to tread. As once Gandhiji pointed out: "If you really want to be unattached in life, take a disinterested decision in all cases and tread the path of truth even if blood brothers have to part. "So I find that the view-point placed before this House by my hon. friend Bharucha is unacceptable to me, and I say, it should be unacceptable to the House also.

D. A. Deshmukh, who also participated in the debate observed that he, after hearing both the sides of the question, neither supported the Motion nor opposed it. A number of Members participated in the discussion and eventually the motion was put to vote and carried. S. L. Silam, who was the Chief Whip asked for the division which was Ayes-149; Noes-2.

Press facilities withdrawn :

As a result of the Resolution passed by the House , the Press facilities given to the Times of India were withdrawn as no apology was tendered by the Editor. The press facilities remained withdrawn for a long period of 17 years when the matter was reconsidered on a letter dated 11th February 1970 of the Editor of the Times of India requesting for restoration of the Press facilities to the Times of India. He pleaded that the paper had borne the penalty for 17 long years and this was enough punishment to meet the ends of justice under resolution passed by the Assembly in 1953. After reconsideration and on a further motion moved by the Chief Minister and passed by the House on 8th May 1970, the press facilities were restored to the Times of India.

(3) PRABHAT CASE (1957)

On 21st June, 1957, the Chief Minister raised a question of privilege arising out of the publication in 'Prabhat' a Marathi Daily of Puna, in its issue, dated 14th June, 1957 of an Editorial under the caption. " मुंबई राज्याचे कायदेमंडळ व समितीचे आमदार " (Bombay Legislature and Samiti Members).

The editorial contained an exhortation to the members of the Legislature belonging to the Samyukta Maharashtra Samiti that they should bear in mind the injustice done to the people by the Government and conduct themselves in the House in such a way as to pique the Congress Ministers, even in total disregard of Parliamentary conventions and etiquette. They should always refer to the police firings under the Congress rule and attempt to transform the Legislature into a market place. They should flout the rulings of the Speaker and if they are asked to leave the House they should flout that order also.

The Motion by the Chief Minister alleged that the Editorial attempted to induce or procure Samiti Members of the House.—

- (a) to commit acts of disrespect to the House, and in particular to the Honourable Speaker ;
- (b) to commit acts calculated to interfere with the procedure of the House ;
- (c) to commit acts of disobedience to the lawful orders of the House and in particular of the Honourable Speaker ; and
- (d) generally to disregard and flout Parliamentary decorum and procedure and the rulings of the Honourable Speaker and thereby to create utter confusion in the conduct of the business of the House.

Committee's recommendations :

After considering the written statements of the Editor and the Printer and Publisher in the light of the authoritative pronouncements and the provisions of the Constitution, the Committee came to the conclusion that the Editor, had attempted to incite and to induce or procure the Samiti M.L.As to commit acts calculated to interfere with the due and proper procedure of the House and to disregard and flout Parliamentary decorum, practice and procedure in the House. The Committee further concluded that the Editor had also attempted to incite and to induce or procure; the Samiti M.L.As to commit (i) acts of disrespect to the House and in particular to the Speaker and (ii) acts of disobedience to the lawful authority of the House and the Speaker, so as to create utter confusion in the conduct of the business of the House by disobeying the rulings of the Speaker and thus to lower the authority and dignity of the House in the estimation of the people. The Editor, therefore, in the Committee's opinion, was guilty not only of breach of privilege but also of contempt of the House and its Honourable Speaker . The Committee recommended that the Editor should be called to appear before the Bar of the House and should be asked to give an unconditional apology for his acts and publish the same in all daily newspapers of this State at his cost and until he did so, he should remain in imprisonment till the prorogation of the House.

When the Report of the Committee came for consideration before the House on 20th July, 1957, Shri D. S. Bhirud, Chairman of the Committee moved the Motion that the Report of the Committee be taken into consideration. The Motion was put and agreed to. The Honourable Speaker observed as follows.—

Speaker's observations :

“Now, I would like to tell the House, before I call upon the Hon. Chief Minister to move the next Motion, that Shri V. R. Kothari, Editor of Prabhat, Puna and Shri C.H. Gandhi, the Printer and Publisher of Prabhat have been informed to remain present in the House, if they so desire, to make a plea before the House. If Kothari and Gandhi are present, they may come before the House and make their plea, before the Report is taken into consideration.” Kothari was allowed to make his plea before the House. But his statement contained a number of objectionable matters which if allowed to stand would have further aggravated his offence. The Speaker, therefore, ruled that the portions in the statement which are irrelevant and objectionable should be deleted from the proceedings. He also directed, at the same time, that the Press should not publish his statement. Kothari in his statement had urged that he had no intention of bringing the House into disrepute. The prestige and authority of the House was as dear to him as to any member of the House, whether he was a Maharashtrian or a Gujarathi. However, his tone and tenor of the statement in justification of what he had written in his editorial, was highly objectionable.

Y. B. Chavan, Chief Minister thereupon moved the following substantive motion :—

“That this House having considered the Report of the Privileges Committee appointed on 21st June, 1957 in the matter of breach of privilege by the Editor and the Printer and Publisher of the daily “ Prabhat “ of Puna, by the publication of the editorial article in the issue of the same paper, dated the 14th June, 1957, under the caption. “ मुंबई राज्याचे कायदेमंडळ व समितीचे आमदार ” accepts the finding of the Committee and accordingly resolves (1) that Shri C. H. Gandhi, Printer and Publisher of the daily “ Prabhat “ of Puna and Shri V. R. Kothari, Editor of the Daily “ Prabhat “ of Puna are adjudged guilty of breach of privilege and of contempt of this Hon. House and of the Speaker ; and (2) that they may, therefore, be called to appear at the Bar of the House and be administered a stern admonition by the Hon. the Speaker .”

Y. B. Chavan and Speaker's (S. L. Silam) admonition :

The debate was wound up by Shri Y. B. Chavan, Hon. Chief Minister saying that he agreed with the recommendations of the Committee, but suggested a modification as regards the punishments in view of the general opinion of the House.

This motion was in modification on the recommendations of the Committee as is evident from the Committee's recommendations and the substantive motion moved by Hon. Chief Minister. It was opposed by A. S. Shaikh, Udhavrao Sahebrao, Jayantilal Dalal, V. D. Deshpande and V. N. Pail, S. M. Joshi, however, supported the motion and stated that the question of privilege cannot be and should not be, looked into, from a partisan point of view. He, however, suggested and moved a small amendment to the motion to the effect that the word 'stern' occurring therein, should be deleted. The Chief Minister accepted the amendment in his reply and the motion as amended was carried. Ayes 210, and Noes 86. Thereupon Kothari was asked to appear before the Bar of the House. The Speaker administered the admonition in these terms :

“Shri V. R. Kothari, the House has adjudged you guilty of the breach of its privilege and also guilty of contempt of the House and its Speaker for writing the editorial under the caption “ मुंबई राज्याचे कायदेमंडळ व समितीचे आमदार ” in the issue of the daily “Prabhat”, dated the 14th June, 1957. The editorial in question interfered with the due and proper procedure of the

House and shows complete disregard and disrespect for Parliamentary decorum, practice and procedure. It also seeks to lower, in the estimation of the public, the authority and dignity of the House and its Speaker. I, therefore, in the name of the House administer you an admonition for the offences committed by you.”

(4) Speaker’s observations in R. B. Chaudhary’s case :

The Speaker S. L. Silam in the matter of privilege motion against Dr. R. B. Chaudhary observed.-

“It is now time for the House to rise. But before we rise, I have to give my decision in a matter of the question of a breach of privilege raised by the hon. member, Shri Homi Taleyarkhan, Parliamentary Secretary to the Chief Minister.

As the House is aware, last time, the hon. member Shri Homi Taleyarkhan, Parliamentary Secretary to the Chief Minister, raised a question of privilege arising out of a letter addressed to the Speaker by Dr. Chaudhary M.L.A. which contained aspersions on the conduct of the Chairman of the Privileges Committee. I had deferred my decision to refer the question to the Committee of Privileges.

It may be recalled that many hon. members of the House were agreed on the point that it was not right on the part of Dr. Chaudhary to make these allegations against the Chairman of the Committee. Some of the prominent members of the Opposition had also appealed to me last time that in view of the admonition which I had already administered to Dr. Chaudhary in my chamber after making him realise the position, I should drop the matter by not proceeding further. I have given a careful consideration to the whole matter and have decided not to refer this matter to the Committee of Privileges.

It will be recalled that when the matter was raised in the House, there was a lot tension and the situation had become a bit explosive. Dr. Chaudhary had written a scurrilous letter to the Chairman of the Committee and had also cast aspersions on the Speaker in a certain privilege matter against him before the Committee. But the letter had not come to the notice of anyone because it was in the record of the proceedings of the Privileges Committee which was confidential. It was only when this record was placed before the House at the instance of the Opposition members that the letter saw the light of the day and gave rise to the question of breach of privilege against Dr. Chaudhary. This was of course a long time after the letter was addressed to the Speaker. There was lot of argument, heated argument on the question whether the letter in question could be considered as a matter of recent occurrence as required under Privilege rules.

The Speaker had, advisedly, looking to the temper and mood of the House said that he would consider the question of referring the matter to the Committee of Privileges at a later date, which, the rules permitted him to do, instead of straight away referring the question to the Committee of Privileges as he might have normally done, since it did involve a question of breach of privilege and the matter was also otherwise in order. This situation had created a lot of heat and probably some unseemingly things might have taken place if the Speaker had referred the matter to the Committee of Privileges just at that time. He, however, weathered the storm by postponing the decision. The House which was extremely tense at that time immediately became relaxed when the Speaker deferred the consideration of question to a later date.”

(5) LOKSATTA CASE (1963)

Between 2nd July, 1963 and 2nd August, 1963, nine members of the Opposition in the Maharashtra Legislative Assembly had given different notices of “No Confidence Motions” against the Council of Ministers. All these motions were admitted by the Speaker as and when they were received. On 6th September, 1963, K. N. Dhulup, MLA, gave notice of his intention to raise a question of breach of Privilege arising out of the editorial in question. The contention of the member was that the Editorial sought to condemn the “No Confidence Motion” of the opposition members, which was admitted by the Hon. Speaker. This, in his opinion constituted disrespect both to the Speaker and also to the House. The Hon. Speaker after calling for the explanations from the Editor and Printer, Publishers of the newspaper gave his consent to the raising of the matter in the House. The matter was accordingly raised in the House on the 4th October, 1963. After the House granted leave, the Hon. Speaker referred the matter to the Committee of Privileges, for examination and report within 3 months.

The Committee had sought the assistance of the Advocate-General who duly appeared and explained the whole position without taking any side. As a result, the Editor expressed regrets in these terms.—

“Since exception is taken to the words ‘meaningless and ridiculous’ as causing offence to members of the House or the House, I wish to say at once that I had no such intention to hurt anybody’s feelings or to insult any member of the House, or the House and I hereby express my regrets for having done so.”

The Printer and Publisher also expressed regrets in similar terms.

In view of the expression of regrets by them, the Committee in its Report, recommended that no further action be taken in the matter.

When the matter came before the House for consideration, the House, following the usual procedure agreed with the Report and resolved that no further action be taken in the matter. The Committee was chaired by Shri D. S. Bhirud, one of the distinguished members of the House.

(6) BOMBAY MUNICIPAL CORPORATION CASE (1964)

On the 31st July, 1964, during the discussion for short duration on the collapse of the Khan Bahadur Bhabha Hospital at Bandra, in the Maharashtra Legislative Assembly, the Bombay Municipal Corporation and its administration were severely criticised by the participating members of the Assembly, that is, F. M. Pinto, P. G. Kher and Rafiq Zakaria (the Minister for Urban Development) and a report of those speeches appeared in the press. Relying on press reports, the Bombay Municipal Corporation at its meeting held on the 3rd August, 1964, unanimously passed an adjournment motion to record their strong resentment against the speeches made in the Assembly in respect of the Councillors and the civic administration. The Councillors at that meeting made a strong attack on the members of the Assembly in respect of speeches made by them on 31st July, 1964 in the Assembly and also challenged the right of the members to do so. This act, on the part of the Councillors, was alleged to have given rise to a breach of privilege of the members and also the contempt of the House in as much as it affected undoubtedly the privilege of freedom of speech and further the tone, the tenor and the contents of the speeches of the Councillors together with the passing of the adjournment motion seriously jeopardised the high prestige and authority of the House .

Defence of the Corporation :

The defence put forward by the Corporation and its Councillors was that their action in passing the adjournment-motion was mainly actuated by a desire to defend themselves and that they had every right to do so. So far as the Corporation was concerned, it was pleaded that the Corporation possessed no mens rea and could have no knowledge, intention or motive whatsoever for doing what it did and could not be guilty of breach of privilege. Besides it could not in law commit contempt and the Corporation acted according to the law which governed it and in accordance with its procedural rules and regulations and that the charge of contempt and breach of privilege against it could not, therefore, be sustained. Bandoorkwala, who presided over the meeting of that day, stated that he had no other alternative but to allow, the adjournment motion to be moved which was given in accordance with the rules, the motion itself being brought for the purpose of giving expression to their hurt feelings. The proposer, Madhavan, the seconder, Bapat and the other councillors who followed them, contended that they gave expression only to their hurt-feelings against the sweeping allegations made against them, their action being purely defensive and that they were perfectly right in defending themselves when they were publicly attacked, lest, the public of Bombay should carry wrong notions about the Corporation, its Councillors and its employees, and the motion of adjournment was neither by way of protest nor by way of censure against the members of the Assembly; and that the Corporation was an old institution of repute and with noble traditions and it had produced several eminent men in public life; and that to run down the Corporation wholesale was something which shocked their sense and that they had no other alternative but to move the said motion of adjournment.

Committee's recommendations :

After thorough and careful consideration of the evidence both oral and documentary brought before it, the Privileges Committee came to the conclusion that the Bombay Municipal Corporation had committed breach of privilege and the contempt of the Assembly. The Committee also came to the conclusion that the Councillors participating in the debate in the Corporation were guilty of breach of privilege and contempt of the Assembly. The Committee, therefore, recommended that the Bombay Municipal Corporation should be called upon to rescind the resolution of 3rd August, 1964 and in case it failed to do so within six weeks of the

date of presentation of the Committee's report to the House, an exemplary punishment by way of fine of Rs.10,000 should be imposed on the Corporation. As regards the individual councillors, the Committee recommended that they be called before the bar of the House and admonished unless within six weeks from the date of presentation of the report to the House, they apologised unconditionally to the House. As regards V. P. Bapat the Councillor who subsequently was elected as a member of the Legislative Council with effect from 25th April, 1966, the Committee found that there was a prima facie case of breach of privilege and contempt against him, and that this position should be brought to the notice of the Maharashtra Legislative Council for further action in the matter."

Discussion of the report in the House :

The report of the Committee was discussed in the Legislative Assembly on the 29th of September, 1966. After the formal motion moved by the Chairman, D. S. Bhirud, for taking the report into consideration, was passed, V. P. Naik, Chief Minister, moved the following resolution.-

"That this House having considered the report of the Privileges Committee, dated 28th April, 1966, on the question of breach of privilege arising out of the passing of an adjournment Motion and the debate which took place, on the occasion, in the Bombay Municipal Corporation, at its meeting held on the 3rd August, 1964, accepts the findings of the Committee and accordingly resolves.—

(1) that the Bombay Municipal Corporation be called upon to rescind the Resolution of 3rd August, 1964. In case, they fail to do so within six weeks of the date of the passing of this resolution, the Corporation be fined a sum of Rs.10,000 (Rupees ten thousand);

(2) that the individual Councillors, viz. Shri Issakbhai Bandukwala, Shri M. Madhavan, Dr. B. M. Dhabuwala, Dr. R. B. More, Shri A. S. Jariwala, Shri L. P. Pujari, Shri H. P. Advani and Shri B. K. Boman Behram, be called upon to appear before the Bar of the House and admonished unless within six weeks from the date of the passing of this resolution, they apologise unconditionally to the House ;

(3) that in the case of Shri R. G. Kharat, no action be taken in view of the unconditional apology already tendered by him and;

(4) that in the case of Shri V. P. Bapat who has been subsequently elected a member of the Maharashtra Legislative Council, the Maharashtra Council be appraised of the position obtaining in his case and requested to take such further action as it may deem necessary, in the matter.

Dr. P. V. Mandlik raised some points of orders which were found to be without substance. Pinto who participated in the debate, supported the motion, and paid compliments to the Committee for carrying out the work in a thorough and impartial manner. He, however, urged the Chief Minister to deal with these recalcitrant members of the Bombay Corporation in such manner as he thinks best, with a sense of justice.

The Chief Minister replied to the debate at the end. He observed that it was his duty to uphold the prestige and authority of the House and would take such action as is necessary to ensure that. He made it clear that he had no malice or feeling of vengeance against anyone. He also assured that if, in this case, it was felt necessary to take any steps by way of reconsideration of the matter, he was always prepared to do so. The question was thereupon put to vote and agreed to.

Corporation's Subsequent resolution :

Subsequently, the Bombay Municipal Corporation passed a resolution No. 1664 dated the 2nd February, 1967 accepting the decision of the Assembly but requesting to reconsider the matter and to withdraw the punitive part of the motion adopted by the Legislative Assembly on the 29th September, 1966. The resolution was placed before the Legislative Assembly for its consideration. The Chief Minister moved a motion on the 28th March, 1967, accepting the plea made by the Municipal Corporation and accordingly, the motion was passed recommending that no further action be taken in the matter.”

As regards Bapat the Council took similar action and passed a similar resolution. A message to that effect was received from the Council and it was read out in the Assembly on the 19th June, 1967 and the matter was allowed to rest there.

(7) MAMDANI CASE (1965)

On the 1st February, 1965, A. H. Mamdani, a member of the Legislative Assembly gave notice of breach of privilege arising out of an article published in "Maratha" a Marathi Daily of Bombay, dated the 1st February, 1965 under the caption. "यवतमाळचा चारसोबीस कॉंग्रेस आमदार ममदानी" The allegations made in the news-item were in short as follows

In 1961, Shri A. H. Mamdani took a loan of Rs. 10,000 from the Director of Cottage Industries for starting a printing press. He did not utilise the money for the purpose for which it was taken nor did he return the amount to Government. It was also alleged that the security given by Shri Mamdani for the loan was false. The news item further alleged that Shri Mamdani tried to obtain another loan of Rs.30,000 from the State Finance Corporation for expansion of the non-existent printing press. The newspaper, therefore desired, that an inquiry may be instituted against Shri Mamdani and a prosecution launched against him for cheating Government.

In the notice, the member had contended that all the allegations contained in the newspaper were false and that it would not be possible for him to perform his duties as a member of the Legislative Assembly under the shadow of such false and defamatory allegations. The Speaker granted his consent to raise the matter in the House, and on the House granting leave to raise the matter, it was referred to the Committee of Privileges for examination and report. The Committee after an exhaustive review of the precedents, came to the conclusion that no breach of privilege was involved in the matter as the allegations made in the news item related to the private conduct of the member and had nothing to do with his character or conduct as a member of the Legislative Assembly.

The matter came before the House on the 29th of September, 1966 and the House put its seal of approval on the report of the Committee and resolved that no action is called for in the matter.

(8) DHOTE CASE (1968)

On 8th February 1968, Shri Pranal Vora, M.L.A. gave notice of breach of privilege and contempt of the House alleged to have been committed by Shri J. B. Dhote, M.L.A., by continuously shouting during the Governor's Address on 7th February, 1968 defying the orders of the Governor and by his disorderly behaviour both inside the House and outside in the lobby and thus deliberately disturbing the proceedings of the House.

The Speaker gave his consent to raise the question of breach of privilege in the House on 8th February, 1968 and after the leave was granted by the House, the Speaker referred the question to the Committee of Privileges for examination and report.

Dhote's defence :

During the course of the proceedings, Shri Dhote raised issues such as (i) whether the House is considered to be duly constituted at the time of the Governor's Address; (ii) whether the Governor's Address forms part of the proceedings of the House; (iii) who presides on this occasion; and (iv) whether simultaneous action in Court and the Committee for the same offence is in order. As for (i) to (iii), the Committee held that none of these points, though important in another context, had any relevance to the present proceedings in as much as the whole gist of the offence in this case consisted in behaving in an unbecoming and undignified manner, and in showing utter disrespect to the Governor when he is fulfilling a mandatory constitutional obligation, and utter disregard of the reciprocal constitutional obligation, to listen to the Address with decorum and dignity and the oath of allegiance to the Constitution taken by a member. As regards (iv) i.e. simultaneous proceedings in Court and the Committee, the Committee stated that while there was no objection to do so, the Criminal Court had stayed the proceedings, pending enquiry before the Committee.

The Committee held that Shri Dhote had committed breach of privilege and contempt of the House. The Committee also held that there was no substance in the argument (advanced in the House, when the matter was being referred, to the Committee) that the question properly falls to be considered by a Parliamentary Committee as in Lok Sabha, and not by the Privileges Committee, for the reason, that both the Committees being Parliamentary Committees were duly empowered to investigate into the matter. In any case, it was only proper that this matter should go to the Privileges Committee once it was held that such conduct constituted breach of privilege and also contempt of the House.

Committee's recommendation :

The Committee, therefore, recommended that Shri J. B. Dhote, M.L.A. may be suspended from the service of the House for the remainder of the Session. It further recommended that in case he tendered an unconditional apology within one week from the adoption of the Report, he may be pardoned.

When the matter came before the Legislative Assembly on the 30th July 1969, the usual motion that the report be taken into consideration, was moved by the Chairman of the Committee, A. N. Namjoshi. The motion was adopted. The substantive motion, on the report, was moved by the Chief Minister Vasant Rao P. Naik. The motion was in these terms —

“Sir, I beg to move that this House having considered the report of the Privileges Committee in the matter of breach of privilege and contempt of the Assembly alleged to have been committed by Shri J. B. Dhote, M.L.A. during the Governor’s Address on 7th February 1968, accepts the findings of the Committee and accordingly resolves that Shri J. B. Dhote, M.L.A. be suspended from the service of the House for the remainder of the Session; and that in case he tenders an unconditional apology to the Assembly for his improper and unbecoming conduct within one week from the date of adoption of this Report by the House, he may be pardoned.”

A number of members participated in the debate. R. K. Mhalgi moved an amendment in these terms: “In line 4 after the words “Shri J. B. Dhote, M.L.A. “ add “be reprimanded “ and delete the portion beginning with “be suspended” and ending with “may be pardoned’ in line seven of the motion”. The Chief Minister accepted the amendment and it was put to the vote of the House and declared carried. Subsequently, the original motion as amended was put to vote and declared carried. The Speaker then requested Dhote to remain standing in his seat. Dhote declared that he was not going to stand. The Speaker then reprimanded Shri Dhote for his unbecoming, improper and unpardonable conduct in the House while the Governor was addressing the Joint Session of the Assembly and the Council.

(9) PRASHASTI CASE (1973)

On 6th August, 1973 a member of the Maharashtra Legislative Assembly gave notice of his intention to raise a question of breach of privilege and contempt of the House arising out of an article in Marathi captioned "Burn these Members of the Legislative Assembly alive" appearing in "Prashasti" dated 24th July, 1973 a Marathi weekly of Bombay. The said article was critical of the members, suggesting that members are not attentive in the House and many of them spend their time outside the House in pursuit of matters unconnected with the business of the House. The article also alleged that many members lacked the necessary qualification or knowledge to serve on the Committees of Legislature and abused their rights. The article also criticised the Speaker of the Assembly.

The matter was allowed to be raised in the House. After leave was granted by the House, the matter was referred to the Committee of Privileges for investigation and report.

Committee's report :

The Committee in its report presented to the House on 15th November, 1973 held that a breach of privilege and contempt of the House was committed by the Editor who also happened to be the Printer and Publisher of the said weekly, and recommended that he, be committed to prison, for a period of not less than 30 days, the sentence to be undergone in one session or in two sessions depending upon whether or not the whole period of 30 days falls within one session."

When the matter came before the House on the 16th of November, 1973, the formal motion, moved by Smt. Kamala Raman, the Chairman, that the report be taken into consideration was passed by the House.

N. M. Tidke, the Minister for Legislative Affairs moved the following motion.-

" Sir, I beg to move that this House, having considered the Report of the Privileges Committee in the matter of breach of privilege and contempt of the Maharashtra Legislative Assembly arising out of an article captioned "Burn these members of the Legislative Assembly Alive" published in " Prashasti " (a Marathi weekly) of Bombay, dated the 24th July 1973, agrees with the Report of the Committee and resolves that Shri Pradeep Dalvi, the Editor, Printer and Publisher of the said weekly, be committed to prison for a period of 30 days. If the whole period of 30 days is not undergone in this Session, the remaining period of sentence shall be undergone in the next Session " .

After some discussion in the House, the debate was wound up by N. M. Tidke, the Minister for Legislative Affairs. The Minister stated that it was a question of prestige of the House and its members. He also pointed out that the report was unanimous. He cited a similar example of the 'Prabhat' case which had arisen sixteen or seventeen years before. The Motion was put to vote and declared carried."

(9) LOKMAT CASE (1973)

On 16th November, 1973, the Maharashtra Legislative Assembly, by a resolution passed by it, committed the Editor, of "Prashasti" (A Marathi weekly), to imprisonment for a period of 30 days as he was held guilty of breach of privilege and contempt of the Assembly. On 18th November 1973, there appeared in "Lokmat" a Marathi daily of Nagpur, an editorial captioned "Misconduct of the Maharashtra Legislative Assembly" which contained some comments on the manner in which the decision to imprison the said editor was taken by the Assembly. On 22nd November 1973, a member raised a question of breach of privilege arising out of the publication of the editorial referred to above with the consent of the Speaker. The matter was referred to the Committee of Privileges by the Speaker after the House granted the leave and while doing so, the Speaker informed the House that the Chief Editor of the "Lokmat" was a member of the Maharashtra Legislative Council and that the matter would have to be referred to the Chairman of the Legislative Council so far as that member was concerned, in accordance with the resolution passed by both the Houses in laying down the procedure to be followed in such cases.

The Chairman of the Legislative Council after receipt of the matter referred it to the Committee of Privileges of the Council in so far as it related to its member, the Chief Editor of Lokmat. The Presiding Officers of both the Houses directed that both the Privileges Committees, that is, of the Assembly and of the Council, may sit together and examine the issues and the witnesses appearing before them, as they will have to travel the same ground in regard to the common issues and laws involved in the case except that the Committees may submit separate reports to the respective Houses. Accordingly, both the Committees submitted their reports to their respective Houses, on the 13th of August 1974.

Committee's report :

The Committee of the Legislative Assembly, in its report, held, that a breach of privilege and contempt of the House was committed by the Editor and recommended that he may be called before the Bar of the House and admonished. When the matter came before the House on 20th of December 1974, H. M. Dalvai, Chairman, moved the usual motion that the report, in so far as it concerned, the editor of the paper, P. V. Gadgil, be taken into consideration. The motion was put to vote and carried. The Chief Minister, V. P. Naik then moved the substantive Motion in these terms.

CM's Motion :

"That this House, having considered the report of the Privilege Committee in the matter of breach of privilege arising out of an editorial captioned " Maharashtra Vidhansabha aprashast vartan" published in Lokmat (a Marathi Daily) of Nagpur, dated the 18th November 1973, agrees with the report of the Committee, and resolves that Shri P. V. Gadgil, the Editor of the said Daily, be called before the Assembly and be admonished."

S. S. Dighe's amendment :

S. S. Dighe moved an amendment to this motion which was in these terms:

Omit the words beginning with, "agrees with the Report" and ending with "be admonished" and substitute in their place the following – viz –

"agrees with the recommendation of the Committee that Shri P. V. Gadgil, the Editor of 'Lokmat', Nagpur is guilty of breach of privilege and contempt of the Maharashtra Legislative Assembly for the editorial in question, disapproves of his conduct and also expresses its displeasure for the said publication."

R. K. Mhalgi, a member moved the following amendment to the amend-ment moved by S. S. Dighe which was, in these terms.-

"In line 4, substitute the word "recommendation" by the words "finding" and

In lines 9 and 10, omit the words beginning with "also" and ending with "publication" and substitute in their place the following :-

"Resolves that Shri P. V. Gadgil, the Editor of the said Daily, be called before the Assembly and admonished."

After discussion of the matter in the House by several members, it was wound up, by the Chief Minister, V. P. Naik.

V. P. Naik (CM.)

The Chief Minister felt that the House was obliged to take the cognizance of this article which was certainly defamatory of the members. At the same time, he felt that no harsh action should be taken against the Editor, P. V. Gadgil who was respected all over Maharashtra for his balanced views and his outstanding work both as an editor and in the field of cooperation. The amendment to amendment proposed by Mhalgi was put and negatived. Then the amendment moved by Dighe was put and declared carried after a division: 98 ayes and noes 16. The motion, thus, as amended was put to vote and declared carried."

As regards the printer and publisher, Darda, who was also the Chief Editor, similar action taken by the Council in that House was conveyed to the Assembly for its information.

(11) SOBAT CASE (1980)

On 3rd July 1980, some members of the Maharashtra Legislative Assembly gave notice of their intention to raise a question of breach of privilege arising out of the publication of an article in the issue of "Sobat" a Marathi Weekly of Pune, dated 29th June 1980. In this case the Member alleged that the said article contained very serious allegations against them by referring to them as 'foxes, Prostitutes', 'customers', and 'thieves' etc. In the article, Members were compared to prostitutes. The members, alleged that it therefore, constituted a breach of privilege of the members and also contempt of the House. Hon. Speaker after satisfying himself that there was a prima facie case of breach of privilege, gave consent to raise the matter in the House. The matter was accordingly raised by the Members on 7th July, 1980 and on 10th July 1980, it was referred to the Committee for investigation and report.

Subsequently, two more notices were received from the Members raising another question of breach of privilege arising out of an editorial appearing in the same Weekly in its issue dated 20th July, 1980. Therein, the Members alleged that the said editorial which was very much defamatory constituted a breach of privilege and also contempt of the House. The Speaker gave his consent to raise the matter in the House and when the House granted the necessary leave, the matter was referred to the Committee for examination and report. But when it was specifically brought to his notice that the latter matter was in effect a continuation of the matter which was referred earlier to the Privileges Committee, the Speaker directed that both the matters may be considered by the same Committee together and a report be submitted on the same day.

On 5th March, 1981 the Committee presented its report to the House. It held that a breach of privilege of the members and also contempt of the House, had been committed by the writer of the said article and the editor, printer and publisher of "Sobat" and recommended that they should be called before the Bar of the House and admonished.

When the matter came before the House on 24th April, 1981, F. M. Pinto, the then acting Chairman of the Privileges Committee, moved that the report be taken into consideration. It was put to vote and passed. There-upon A. R. Antulay, the then Chief Minister, moved a substantive motion on the report that after taking into consideration the whole case, " the House agrees with the report and resolves that the writer of the said article Anil Thatte and the editor, printer and publisher G. V. Behere, instead of admonishing them by calling before the bar of the House, expresses its utter displeasure which should be intimated to the said writer, and the printer and the publisher, in respect of the said article. The motion was put to vote and declared carried.

F. M. Pinto appreciated the true sense of generosity and broadmindedness shown by the Chief Minister, A. R. Antulay in this respect though the Committee had suggested a different course.

(12) MUMBAI SAKAL CASE (1981)

On 4th August, 1981, Ram Mahadik a member of the Maharashtra Legislative Assembly gave a notice of his intention to raise a question of breach of privilege and also of contempt of the House arising out of the publication of the write-up captioned “त्यांचे नेतेपद गेले” appearing under the column of “Chaufer” in Mumbai Sakal, a Marathi Daily of Bombay in its issue on 3rd August, 1981. The member alleged that the said write-up while commenting upon the decision of the Hon. Speaker who had earlier withdrawn the recognition of the Con. (U) Legislative Party as the party in opposition in those days and consequent derecognition of Sharad Pawar who was the then Leader of the Opposition cast serious reflections on the character and conduct of the Speaker. The statement taken objection to, was to the effect that the Speaker did not act independently and took the decision to derecognise Pawar as the Leader of the Opposition at the behest of the then Chief Minister and as such, was mere a rubber-Stamp. The Speaker directed to call for explanations from Madhavrao Gadkari who was then the Editor of the paper as well as from its Printer and Publisher.

Gadkari’s Explanation :

In his (Gadkari’s) explanation it was stated that the statements made by him, in the write-up were completely true and were based on facts. The explanation was not found satisfactory. The Hon. Speaker consented to the matter being raised in the House. On 24th August, 1981 the matter was taken up in the House and the Speaker read out the impugned write-up as also the correspondence between Gadkari and the Legislature Secretariat and explained the procedure followed in granting recognition and its withdrawal. Ram Mahadik who gave the notice then raised the matter in the House and after leave was granted, the matter was referred to the Committee of Privileges for investigation and report. The Com-mittee was directed to present its report within the period of one week.

Committee’s report :

On 13th November, 1984 the Committee presented its report to the House on the case. It held that the said write-up constituted a breach of privilege and also contempt of the House, as it cast reflections on the impartiality and character of the Speaker in the discharge of his duty. The Committee further observed that though it had no doubts about the gravity of the offence, it did not like to suggest any formal punishment in the hope that the Press, whose freedom the Legislature greatly values and highly respects, would not give offence in any way to the Legislature or its Presiding Officers or its members and even while criticising, will keep some restraint and balance and not fling derogatory words at them. The Committee therefore recommended that the House merely communi-cate its displeasure to the Editor and the Printer and Publisher of the Mumbai Sakal daily for the write-up which in its opinion would meet the ends of justice.

On the 17th November, 1984, after the motion that the report be taken into consideration was passed, Vasantdada Patil, then the Chief Minister moved a substantive motion agreeing with the report and its recommenda-tions. The motion was put to vote and carried.

Special features of these cases

The special features of these cases are these:—

In the **Times of India case**, it was a question of interfering with the due discharge of parliamentary duty by a member, besides using a language, to lower the Legislature in the estimation of the people. The member had a right to put a question to Government for eliciting information, on the question of Liquor Permits, in public interest, as he himself clarified when questioned by the Speaker. It was this right which was sought to be challenged by the editorial in question.

In the **Prabhat case**, the editorial sought to break the entire fabric of the Legislature as an institution. It openly advocated to commit acts of disobedience and defiance of the rules and orders of the House including those of the Speaker.

In the **Loksatta case**, the procedure of the House which wisely provided for “No Confidence Motion” was held to ridicule. Members have every right to table a “No Confidence Motion” against the Ministry and nobody expects that the Ministry would fall after the discussion of such motion. The rigid party system being what it is, it is hardly to be expected that the ruling party will lose office by such motions. But it serves a great purpose of laying bare the short-comings of the Government which in turn help form public opinion against the Government.

In **Mamdani case**, it was held after an exhaustive study of the previous cases on the subject that a member’s private conduct, however, reprehensible it may be, cannot become a subject matter of privilege as it no way concerns with the conduct or the character of the member as such.

In **Dhote’s case**, the position is that the address by the Governor, to the Joint Session of the two Houses is a constitutional obligation. Like-wise, it is a constitutional obligation on the part of members to listen to it with respect and decorum. Any disorderly conduct during the address would amount to misconduct of the member attracting breach of privilege.

In **Prashasti, Lokmat and Sobat Cases**, the members of the Assembly were abused in such a vulgar language that it is bound to create in the minds of the public a very degrading picture of the Legislature and its members which can not be tolerated.

In **Mumbai Sakal case**, there was a direct attack on the Speaker who is the custodian of the rights and privileges of the House.

Daily Mail case

House of Common’s Committee’s observations

“Under the law and usage of Parliament as established in the course of the last three centuries, contempts of Parliament may vary greatly their nature and in their gravity. At one extreme they may consist in a little more than vulgar and irresponsible abuse. At the other, they may constitute grave attacks undermining the very institution of Parliament itself. In some cases, investigation by the Committee of Privileges would involve protracted, and possibly inconclusive, inquiries, leading to no useful results. Indeed, the summoning of irresponsible persons as witnesses and the hearing of their evidence would merely afford such persons an opportunity of making defamatory statements in circumstances of absolute privilege which protected them from liability to action. In other cases, to canvass them before the Committee of Privileges would merely give added publicity to statements which had only been made in the hope that their very sensationalism would attract to their author a public attention which he was otherwise quite unable to command.

Your Committee are of opinion that it is not consistent with the dignity of the House that penal proceedings for breach of privileges should be taken in the case of every defamatory statement which strictly, may constitute a contempt of Parliament. Whilst recognising that it is the duty of Parliament to intervene in the case of attacks which may tend to undermine public confidence in and support of, the institution of Parliament itself, your Committee think it important that on the one hand, the law of parliamentary privilege should not be administered in a way which would fetter or discourage the free expression of opinion or criticism, however, prejudiced or exaggerated such opinion or criticisms may be, and that, on the other hand, the process of Parliamentary investigations should not be used in a way which would give importance to irresponsible statements.”

In view of this position, it becomes a little difficult to understand why a section of the Press and the public are agitating for codification of the privileges. In similar cases, if they were to be dealt with, by the courts, severe punishment would have been the result. The Legislative bodies in India have consistently taken up the position that they will not countenance any proposals to codify their privileges. The reasons are not far to seek. One thing is that it is difficult, if not, impossible to define what is “contempt” of the Legislature. It has not been so defined even in the case of ‘contempt ‘ of courts. Besides, no Presiding Officer would like to go before a Magistrate complaining of the contempt of the House or his own contempt. An Eminent English Judge Lord Ettenboraugh has himself described this position in a case of *Burdett Vs Abbott*, before him. The codification if made, would result in the Legislatures and the Presiding Officers moving the courts either in justification of their actions or for protection from attacks.

CHAPTER 10

**LATEST CASES RELATING TO BREACH OF PRIVILEGE AND CONTEMPT OF
MAHARASHTRA LEGISLATIVE ASSEMBLY****(1) D.N. INGLE CASE (1999)**

One Mr. Dnyandeo Narayan Ingle, Govt. employee was convicted for breach of privilege and contempt by the House and sentenced to simple imprisonment for 30 days in 1999. He filed a Writ Petition in the Hon'ble High Court, Bombay challenging the punishment imposed by the House. Hon'ble High Court passed an ad-interim order and stayed the operation of the order of the House. The order of the House could not therefore be implemented. The issue was hotly discussed in the House. Hon. the Speaker decided to obtain opinion of Ld. Advocate-General & also to refer the matter to the Hon. President of India.

After prorogation of the Budget Session, on the next date of hearing Hon'ble High Court vacated the ad-interim stay and rejected the Writ Petition. But meanwhile the Legislative Assembly was dissolved and therefore next Session of that Assembly could not be held. Hence, the implementation of the sentence in this case could not be carried out by the House.

(2) MAPDAND CASE (2004)

A report of the Privileges Committee in the matter of breach of privilege and contempt of the House arising out of the false, misleading and defamatory news published in the Marathi Daily, "Mapdand" regarding the behaviour of the members of Panchayati Raj Committee of Maharashtra Legislative Assembly when the committee was on study tour of Nanded District, was presented to the House.

The Committee after great deal of deliberations and detail enquiry into the matter came to the conclusion and recommended in its report that, considering the unconditional apology tendered by the Editor of Daily 'Mapdand', before the committee as well as apology published by him in the newspaper as per the draft given by the committee, the matter should be closed.

The said report of the Privileges Committee was taken into consideration on a motion moved by the Chairman of the Committee and a resolution was passed on a motion moved by the Hon'ble Minister of State for General Administration Department that, the House agrees with the recommendations of the said report.

(3) MANJIT SINGH SETHI CASE (2005)

On 7th April, 2005, one Hon'ble member of Maharashtra Legislative Assembly gave a notice of his intention to raise a question of breach of privilege & contempt of the House arising out of libelous statement made by one Manjit Singh Sethi, President, Bar Owner's Association, criticising the announcement of banning the Dance Bars in Maharashtra excluding Mumbai, made by the Hon'ble Dy. Chief Minister in the House.

The Hon'ble Speaker, Maharashtra Legislative Assembly gave consent to the Hon'ble member to raise the matter. In this matter also, the members unanimously consented to the motion and the motion was passed in the House on 7th April, 2005. Hon'ble Speaker referred the matter to the Committee of Privileges for examination & report.

A report of the Privileges Committee in the matter of breach of privilege and contempt of the House arising out of threatening statement made by one Manjit Singh Sethi, President, Bar Owners' association criticising the announcement of banning the Dance Bars in Maharashtra made by the Hon'ble Dy. Chief Minister in the House, was considered by House, on 12th April, 2006. In this report the Committee had recommended 90 days civil imprisonment to Manjit Singh Sethi, President, Bar Owners' Association for breach of privilege and contempt of the House.

On the same day a resolution was moved by the Hon'ble Chief Minister, stating that, this House agrees with the recommendations in the said report and Manjit Singh Sethi, President, Bar Owners' association be imprisoned in the civil jail for 90 days for breach of privilege and contempt of the House. The resolution was passed unanimously by the House. The 'Warrant of Commitment' was issued by the Hon'ble Speaker immediately for the arrest of Manjit Singh Sethi. Accordingly, Manjit Singh Sethi was arrested & sent in the civil jail on the same day i.e., on 12th April, 2006. As per the precedents in privileges, he was released on 21st April, 2006 when the Budget session prorogued. In this session, he undergone 10 days imprisonment out of 90 days imprisonment.

Two writ petitions filed by Manjit Singh Sethi in the Hon. High Court of Bombay were dismissed by the Hon'ble High Court, Bombay However, in Special Leave Petition filed by Manjit Singh Sethi against the orders of the Hon'ble High Court, Hon'ble Supreme Court granted ad-interim stay to the sentence of punishment awarded by the House. Till then, Manjit Singh Sethi had undergone 29 days of imprisonment out of 90 days. But in winter session of 2006, remaining part of punishment could not be executed due to stay granted to the order of the House by the Hon'ble Supreme Court. On the application for vacating stay filed by the Parliamentary Affairs Department of State Government, although urgency of the matter was urged before the Court, Supreme Court denied to vacate the stay and ordered that, "Let the matter come in due course." Nothing crucial happened at the next dates of hearings afterwards. In Budget Session 2007 also the House could not implement its order. The matter is still pending in the Hon'ble Supreme Court (May 2013).

(4) NAND LAL CASE (2006)

On 10th April, 2006, one Hon'ble member of Maharashtra Legislative Assembly gave a notice of his intention to raise a question of breach of privilege & contempt of the House arising out of the step taken by the State Election Commissioner of issuing the notification without the leave of the House & stating therein that henceforth all elections to civic organisations & Zilla Parishads will be conducted by the State Election Commission.

On the same day, after House has granted leave to the member to raise the question of privilege, Hon'ble Speaker referred the matter to the Committee of Privileges to submit the report in the next session.

First report was concerned with the matter of contempt of the House arising out of obstruction created in the Constitutional and Legislative Functions of the Committee by Shri Nand Lal, the State Election Commissioner, by taking an evasive stand in submitting a clarification under his own signature as sought by the Committee as well as by refusing to appear before the committee for recording the evidence in respect of notice of Breach of Privilege given against him by Shri. Janardan Chandurkar, MLA.

The Committee after great deal of deliberations and detail enquiry into the matter came to the conclusion that there is contempt & breach of privilege of the House and recommended 7 days Civil imprisonment to Shri Nand Lal, the State Election Commissioner. The report was presented to the House on 27th March, 2008 and on the same day it was taken into consideration by the House. A resolution was moved by the Hon'ble Chief Minister that this House agrees with the recommendations of the said report and Shri Nand Lal, the State Election Commissioner be imprisoned in the Civil Jail for 2 days for committing contempt of the House. The resolution was passed unanimously by the House and "Warrant of Commitment" was issued by the Hon'ble Speaker immediately for the arrest of Shri Nand Lal, the State Election Commissioner and Shri. Nand Lal was accordingly arrested and sent to jail for 2 days.

Shri Nand Lal challenged this sentence in the Hon'ble High Court of Bombay, which upheld the decision of the Legislative Assembly. Shri Nand Lal filed a Special Leave Petition in Hon'ble Supreme Court against the decision, which is pending before the Hon'ble Supreme Court. (May, 2013)

(5) SASEMIRA (2007)

A report of the Privileges Committee in the matter of breach of privilege and contempt of Hon'ble Speaker and the House arising out of publishing baseless and defamatory statements without verifying the same, by Shri Madhukar Londhe, Editor and Publisher of weekly "Sasemira" was presented to the House, on 28th March, 2007. Shri Madhukar Londhe, Editor and Publisher of weekly "Sasemira" published baseless and defamatory statements on 1st November, 2005 in his weekly "Sasemira". The Committee after great deal of deliberations and detail enquiry into the matter came to the conclusion that Shri Madhukar Londhe has committed contempt and breach of privilege of the Hon'ble Speaker and of the House and recommended 10 days civil imprisonment in it's report.

On the 30th March, 2007 the said report of the committee was taken into consideration by the House. A resolution was moved by the Hon'ble Parliamentary Affairs Minister stating that, this House agrees with the recommendations in the said report and Shri Madhukar Londhe, Editor and Publisher of weekly "Sasemira" be imprisoned in the civil jail for 10 days for breach of privilege and contempt of Hon'ble Speaker and the House. The resolution was passed unanimously by the House. The 'Warrant of Commitment' was issued by the Hon'ble Speaker immediately for the arrest of Shri Londhe. Accordingly, Shri Londhe was arrested & sent in the civil jail on the 1st April, 2007. He was released on 10th April, 2007.

(6) G.N. WALVI CASE (2009)

Shri Eknathrao Khadse-Patil, Hon. Leader of Opposition, Legislative Assembly, moved a Notice of Breach of Privilege against Shri G.N Walvi, Project Officer (Under Suspension), Integrated Tribal Development Project, Yaval, Dist. Jalgaon. Shri Walvi tried to suppress the ongoing inquiry of malpractices against him by lodging a complaint under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act against the Hon. Leader of Opposition before the District Police Administration and before the Hon. High Court in a fit of anger as the Hon. Leader of Opposition and other Members on 14th December, 2009 during the discussion on Calling Attention Notice demanded to take action against Shri G.N Walvi, Project Officer for his involvement in the Corruption and Malpractices in the office of Integrated Tribal Development Project under Tribal Development Department at Nandurbar and Yaval.

The Legislative Assembly has unanimously passed a resolution to refer the said matter to the Committee of Privileges to examine and submit the report thereon.

The report of the Committee on Privileges was presented to the House on 8th December, 2010. The Committee on Privileges of Legislative Assembly opined in this report that Shri G. N Walvi has exerted pressure on Shri Eknathrao Khadse-Patil, Leader of Opposition, Legislative Assembly to suppress the enquiry into the allegations of malpractices made against him and recommended to admonish Shri G. N .Walvi, the then Project Officer, Integrated Development Project Office, Yaval, Dist. Jalgaon by summoning him before the House.

The said Report was taken up for consideration on 13th April, 2011 in the House. The Members have objected to the recommendations of the Committee and requested to refer back the report for reconsideration. After taking into consideration the overall views of the members of the House, the Hon.Speaker referred back the matter for reconsideration to Committee on Privileges of Legislative Assembly.

The Committee on Privileges of Legislative Assembly reconsidered the matter and arrived at a conclusion that to protect the dignity and honour of the House and also to set an example in such type of matters, it is necessary to award severe punishment and, therefore, recommended Civil imprisonment of 3 (Three) days to Shri G.N.Walvi, the Project Officer, Integrated Development Project Office, Yaval, Dist. Jalgaon and presented the report to the House on 12th August, 2011. The Report was taken into consideration by the House on a motion moved by the Chief Minister and the Assembly resolved that Shri G.N.Walvi be imprisoned in the Civil Jail for 2 (Two) days. Accordingly the Warrant of Commitment was issued by the Hon'ble Speaker, Legislative Assembly and Shri G.N.Walvi was arrested on 14th April, 2012 at 19.55 P.M. and sent to the Jalgaon District Prison at 21.45 P.M. He was released on 15th April,2012 before closing hours of the Prison.

CHAPTER 11

IMPORTANT PRIVILEGES CASES IN MAHARASHTRA LEGISLATIVE COUNCIL**(1) Bombay Municipal Corporation Case (1964)**

The Councillors of Bombay Municipal Corporation at a meeting of their Corporation made a strong attack on the Members of the Assembly in respect of speeches made by them on 31st July 1964, in the Assembly and also challenged the right of the Members to do so. This act on the part of the Councillors was alleged to have given rise to a breach of privilege of the Members and also the contempt of the House, inasmuch as the tone, the tenor and contents of the speeches of the Councillors as also the passing of the Adjournment Motion affected the dignity and authority of the House.

After thorough and careful consideration of the evidence both oral and documentary brought before it, the Privileges Committee came to the conclusion that the Bombay Municipal Corporation had committed breach of privilege and also contempt of the Assembly. The committee also came to the conclusion that the Councillors participating in the Debate in the Bombay Municipal Corporation were guilty of breach of privilege and contempt of the Assembly. The Committee, therefore, recommended that the Bombay Municipal Corporation should be called upon to rescind the Resolution of 3rd August 1964 in case it failed to do so within 6 weeks of the date of presentation of the Committee's Report to the House an exemplary punishment by way of fine of Rs.10,000 should be imposed on the corporation. As regards individual Councillors the Committee recommended that they be called before the Bar of the House and admonished unless within 6 weeks from the date of presentation of the report to the House they apologised unconditionally to the House. As regards Shri V.P.Bapat the then Councillor or Bombay Municipal Corporation who subsequently became elected as a Member of Legislative Council with effect from 25th April 1966 the Committee held that he too was guilty of breach of privilege and contempt of the House and that this position may be brought to the notice of Maharashtra Legislative Council for further action by way of punishment.

The Report of the Committee was discussed in the Legislative Assembly on 29th September 1966 and a Motion adopting the operative part of the committee's recommendations was also adopted by the House. The Bombay Municipal Corporation however, passed a Resolution No. 1664 dated the 2nd February 1967 accepting the decision of the Assembly but requesting to reconsider the matter and to withdraw the punitive part of the motion adopted by the Legislative Assembly on 29th September 1966. The resolution was placed before the Legislative Assembly for its consideration and the Chief Minister moved a motion on 28th March 1967 accepting the plea made by the Municipal Corporation and accordingly the motion was passed recommending no further action in the matter.

As regards Shri V.P. Bapat the matter was referred pursuant to the motion adopted on 29th September 1966 to the Council for further necessary action. The Council referred the matter to its Privileges Committee which found Shri Bapat guilty of breach of privilege and recommended that Shri V.P. Bapat be admonished unless within 6 weeks from the date of adoption of the Report by the Council he apologised unconditionally to the Legislative Assembly. However the Legislative Council reconsidered the matter in view of the resolution of 2nd February 1967 of the Bombay Municipal Corporation and the motion adopted by the Assembly on 28th March 1967 and passed a motion on 31st March 1967 to the effect that no action be taken against Shri Bapat also. This decision of the Council was communicated to Assembly by letter, dated 29th May 1967.

The message received from the Council was read out in the Assembly on 19th June 1967 and the matter was allowed to rest there.

(2) SHARMA CASE (1968)

On 16th July 1968, Sarvashri N.W.Limaye, R.P. Samarth, B.V. Shende, M.N. Anjekar, H.S. Barmukh and P.B. More, M.L.Cs., gave notice of their intention to raise a question of breach of privilege and contempt of the Council against the two professors who were alleged to have led an assault and five students of the Nagpur Medical College, who were alleged to have participated in an assault on Shri R.K. Sharma, M.L.C. on 13th July 1968 when he had gone to attend the opening ceremony of the Dental College, Nagpur. They alleged that Shri Sharma was assaulted by the students because he had made a speech in the Legislative Council against them during the debate on 22nd March 1968.

The Hon. Chairman gave his consent to the raising of the issue as he found that there was a prima facie case of breach of privilege and contempt of the Council and it was accordingly raised in the House on 19th July 1968 by Shri N.W. Limaye, M.L.C. one of the signatories to the notice. After the House had granted the necessary leave, the Chairman referred the matter to the Committee of Privileges for examination and report.

While examination of the issue was still pending before the Committee the Professors and the Students tendered apology in writing.

The Committee in its report came to the conclusion that in view of the apology tendered, the matter need no longer be pursued. The Committee therefore, recommended to the House that no further action might be taken in the matter.

The House adopted the report on a motion moved by the Chief Minister on 22nd August 1969.

**(3) Depressed Classes Mission Society of India
(Poona Branch) Case (1969)**

On 1st August 1969, Dr.V.R. Pandit, a Member of the Maharashtra Legislative Council, gave notice of his intention to raise a question of breach of privilege arising out of the Memorandum issued by the Poona Branch of the Depressed Classes Mission Society of India. The member had, along with the notice, sent a copy of starred question No.3911 tabled by Shri J.G. Bhave, M.L.C., which was answered in the Council, on 27th June 1969. The facts of the case are :

The Depressed Classes Mission Society of India, Poona Branch, conducted a High School, named the Mahatma Jyotirao Phule High School, at 896, Nana Peth, Poona. It appeared that in March 1969, the Society obtained a declaration from the teachers in the High School, containing inter alia an undertaking for deposits and donations for augmenting the resources of the school. On 27th June 1969, Shri J.G.Bhave, M.L.C., tabled a starred question about the said declaration and Government in reply informed the House that a strict warning had been given to the Society that no amounts by way of donations should be cut from the teachers' salaries in pursuance of such declarations under duress or coercion.

Subsequently, the Society held a meeting of its well-wishers and expressed strong protest against the Council Question tabled by Shri Bhava, M.L.C., condemning his action (in asking the question). The Society thereafter issued a Circular Memorandum, embodying the minutes of the meeting and expressing deep regrets for Shri Bhava's aforesaid act. The Memorandum also invited people devoted to the cause of education to visit the Institutions to see the atmosphere there and make suggestions, which it assured, will be sincerely implemented. A copy of the said cyclostyled memorandum, signed by Shri G.B. Shinde (Chairman of the Poona Branch of the Society) and 15 others and bearing the rubber stamp of the Society, was alleged to have been found by Dr.V.R. Pandit in his pigeon-hole near the Council Chamber, and he promptly gave notice of the breach of privilege.

Dr. Pandit contended that the said memorandum constituted breach of privilege of the Hon. Member and of the House for the following reasons :-

(1) The Memorandum attributed motive to Shri J.G. Bhava in asking the question and condemned him.

(2) The Member (Shri J.G. Bhava) was held responsible also for the publicity in the newspapers in regard to the question.

(3) The Memorandum was issued to the public with a view to circulation and propaganda.

The House took up the notice for consideration on the same day and, with the leave of the House, the question of breach of privilege involved, was referred to the Committee of Privileges for examination and report.

The Committee called for the explanations from the General Secretary and the Treasurer of the said Society. They submitted identical explanations in which they contended that they did not challenge the member's right to table a question in the Council nor did they attribute any motive to him. The idea of condemning Shri Bhava, M.L.C., did not even occur to them nor did they intend any disrespect to him. Finally, they submitted that in case any misunderstanding was created regarding this matter in the mind of Shri Bhava or any other members, they expressed their sincere regrets.

The Committee, after giving anxious thought to the whole questions, felt that the matter was such that the House should rather consult its own dignity and decide not to take any further action. The Committee recommended accordingly.

The report was adopted by the House on 18th December 1969 on a motion moved by the Chief Minister.

(4) Shri N.D. Patil Case (1972)

On 21st November 1972, three members of the Maharashtra Legislative Council raised a question of breach of privilege against some Police Officers who were alleged to have given the Chairman of the Legislative Council false information about the time of arrest of a member on 19th October 1972.

The matter was allowed to be raised in the House. The House, after discussion, granted leave and the matter was referred to the Committee of Privileges for investigation and report.

The Committee presented its report to the House on 27th March 1973. It was held that a breach of privilege was committed but the Committee recommended that in view of expression of regrets and apologies by the concerned police officers the matter might be dropped.

The House on a motion by the Chief Minister on 30th March 1973 unanimously adopted the said report.

(5) Lokmat Case (1973)

On 16th November, 1973, the Maharashtra Legislative Assembly, by a resolution passed by it, committed the Editor, of "Prashasti" (A Marathi weekly), to imprisonment for a period of 30 days as he was held guilty of breach of privilege and contempt of the Assembly. On 18th November 1973, there appeared in "Lokmat" a marathi daily of Nagpur, an editorial captioned "Misconduct of the Maharashtra Legislative Assembly" which contained some comments on the manner in which the decision to imprison the said editor was taken by the Assembly. On 22nd November 1973, a member raised a question of breach of privilege arising out of the publication of the editorial referred to above with the consent of the Speaker. The matter was referred to the Committee of Privileges by the Speaker after the House granted the leave and while doing so, the Speaker informed the House that the Chief Editor of the "Lokmat" was a member of the Maharashtra Legislative Council and that the matter would have to be referred to the Chairman of the Legislative Council so far that member was concerned, in accordance with the resolution passed by both the Houses in laying down the procedure to be followed in such cases.

The said resolution provided inter alia that when a member of one House was involved in a case of alleged breach of privilege of the other House the matter would be referred by the Presiding Officer of the complaining House to the Presiding Officer of the other House to which the contemnor member belonged and that Presiding Officer shall deal with the matter in the same way as if it were a case of breach of privilege of that House and communicate to the Presiding Officer who made the reference, a report about the enquiry and the action taken on the reference received.

Pursuant to the above resolution and on receiving a reference from the Assembly, the Chairman, Maharashtra Legislative Council referred the matter to the Privileges Committee of his House so far as the said case related to the Chief Editor of Lokmat who happened to be an M.L.C.

The Presiding Officers of the respective Houses directed that both the Privileges Committees, viz., that of Assembly and Council may sit together and examine that issues and the witnesses who might appear before them as they would have to traverse the same grounds in regard to the common issues of facts and law involved in the case except that the Committees might submit separate reports to the respective Houses. Accordingly both Committees submitted their reports to their Houses on 13th August 1974.

The Assembly Privileges Committee in its report held that a breach of privilege and contempt of the House was committed by the Editor and the Printer and Publisher of the said daily and recommended that he may be called before the Assembly and be admonished. As regards the Printer and Publisher, the Committee recommended that no action be taken against him. On 20th December 1974, the Chief Minister moved a motion for adopting the said report. The motion was passed with an amendment with the result that the House held the Editor guilty of breach of privilege and contempt of the House for the said editorial and disapproved of his conduct and expressed its displeasure for the said publication and recommended that no action be taken against the Printer and Publisher.

The Council Privileges Committee in its report held that a breach of privilege and contempt of the House was committed by the Chief Editor and recommended that the displeasure of the Council be conveyed to him and he may be admonished before the House.

The Council on a motion moved by the Minister for Legislative Affairs on 9th August 1975, unanimously resolved that the Chief Editor Shri Darda was guilty of breach of privileges and contempt of the Maharashtra Legislative Assembly and disapproved his conduct and also expressed its displeasure for the publication of the said editorial.

(6) Writ Petition No. 1490 Case (1981)

On 18th December, 1981, Sarvashri Kevalchand Jain, Kamalprasad Dube, Ulhas Pawar, P.M. Chavan, Wamanrao Mahadik, Pramod Navalkar and Manohar Joshi, M.L.Cs. gave a notice of their intention to raise a question of breach of privilege against another member of the House Shri G.P. Pradhan alleging that certain statements contained in paragraph 7-B of Writ Petition No.1490 filed by Shri G.P. Pradhan, the then Leader of Opposition and other gave rise to breach of privilege of members and contempt of the House. It was mentioned in the petition that Shri G.P. Pradhan, M.L.C. was also one of the several members of the House who were carried away by the impression that the "Indira Gandhi Pratibha Pratishthan Trust" was a Government Trust and, therefore, voted for sanctioning the amount. The members also stated that the said Writ Petition contained the statement to the effect that the then Chief Minister obtained the funds for the said trust by practising deception and fraud both on the Maharashtra Legislative Assembly and the members of the public. They, therefore, contended that the said statement made in the Writ Petition amounted to giving a perverted and distorted version of the proceeding. Besides, by stating that the fund for the said trust were obtained by practising deception and fraud the petitioner viz., Shri G.P. Pradhan, among others, cast reflection on the then Chief Minister who was also then the Leader of the House. This also involved a breach of privilege of the Leader of the House who was next to the Presiding Officer.

On 18th December, 1981 after leave was granted by the House, the Chairman referred the matter to the Committee for investigation and report.

On 22nd December 1981, the Chairman, Maharashtra Legislative Council was informed by the Speaker, Maharashtra Legislative Assembly that he had referred to the Committee of Privileges of the Assembly a question of Privilege against some persons arising out of submission of certain averments and statements in the Writ Petition No.1490 filed before the High Court, Bombay. Since G.P. Pradhan, M.L.C. happened to be one of the said persons, the Speaker referred the matter to the Chairman, Maharashtra Legislative Council for further action so far as it related to Shri G. P. Pradhan in accordance with the prevailing convention as agreed to by the Maharashtra Legislative Council by a resolution passed by it on 17th December 1969. The Chairman, Legislative Council pursuant to the said resolution and under Rule 246 of the Maharashtra Legislative Council Rules, therefore, referred the said matter of breach of privilege to the Committee of Privileges of the Maharashtra Legislative Council for investigation, examination and report so far as it related to Shri G.P. Pradhan, M.L.C. with a direction that the Committee might present its report by the end of the first week of the then ensuing session.

Since the subject matter of both the cases happened to be the same i.e., arising out of certain averments and statements contained in the Writ Petition No.1490 in respect of proceedings of the Legislature, the Committee decided to take them up for consideration simultaneously.

In the mean time Shri Sadanand Varde, who was one of the petitioners in the said Writ Petition, was elected to the Maharashtra Legislative Council. The Speaker, therefore, referred the said question of privilege to the Chairman, Legislative Council so far as Shri Sadanand Varde (now a member of the Legislative Council) was concerned.

The Committee in its report presented to the Council on 9th July 1984 held that the impugned averments in the writ petition relating to the obtaining of supplementary grant were couched in rather strong terms and that, though they might not be strictly construed as amounting to distorted or perverted version of proceedings, they could still be taken to verge on breach of privileges. Since the said averments of members were concerned with the action of the Chief Minister as head of the Executive rather than his action as Leader of the House, the Committee found it unsafe in the circumstances of the case to give a positive, conclusive and categorical finding that Sarvashri Pradhan and Varde had committed a breach of privilege and contempt of the House. The Committee further observed that as their grievance appeared to be against the Chief Minister as a Member of the Executive and not against the Legislature or any of its members. The Committee, therefore, felt that benefit of doubt be given to them and no clear finding could be given against Shri Pradhan and Shri Varde and recommended for closing the matter in view of the positive averments of Shri Pradhan and Shri Varde that they never had any intention to castigate either the House or its Leader or lower their prestige.

On a motion by the Chief Minister on 12th July 1984 the report was unanimously adopted by the House.

The Chairman, Legislative Council forwarded to the Speaker, Legislative Assembly a copy of report of the Council Privileges Committee and communicated to him action taken by the Legislative Council on the said report.

The Speaker communicated to the Assembly the action taken by the Legislative Council in the matter by an announcement on 20th July 1984.

(7) Production of Documents in High Court Case.(1985)

On 2nd April 1985- the Chairman, Maharashtra Legislative Council informed the House that he was referring to the Committee of Privileges a matter arising out of a letter of request received from the High Court, Bombay seeking production of three document in the said High Court on 7th February, 1985 in connection with the case of Ramdas Shrinivas Nayak Vs Abdul Rehman Antulay (Special Case No.24 of 1982). It appeared that the letter itself was received in the Maharashtra Legislature Secretariat on 7th February, 1985 and the Honourable Chairman, Legislative Council before whom the letter was placed, examined the concerned documents and after consideration of relevant aspects of the matter felt it necessary to apprise the House when it met next and refer the matter to the Committee of Privileges so far as it related to two of the three documents referred to therein which related to the Legislative Council. The Committee in its report presented to the House on 28th July, 1986 stated that it perused the documents referred to by the High Court and considered the matter in the light of norms normally applicable to production of documents concerning the Legislature and its Secretariats and felt that the purpose and necessity for production of documents from the Legislature Secretariat needed to be stated more precisely. The Committee also noticed that the identity of one of the documents was not firmly established. The Committee therefore sought clarification from the High Court on these points. No, reply was received from the High Court inspite of two reminders sent by the Legislature Secretariat. In the absence of any reply from the High Court, the Committee recommended that the matter be closed for the time being. The Committee also felt that if in future the request was repeated by the High Court and the needed clarification was also given to the Secretariat, the matter could be revived and proceeded further if the House chose to refer it to the Committee.

The report of the Committee was presented to the House on 20th July, 1986 and was adopted by the House on 31st July, 1986.

(8) MANESH MASAND CASE (2008)

Two Hon'ble members viz. Dr. Deepak Sawant & Shri Madhukar Chavan gave a notice of their intention to raise a question of breach of privilege arising out of denial of information and arrogant replies given by Shri Manesh Masand, C.E.O., Jaslok Hospital, Mumbai to the visiting ad-hoc Committee of the House, regarding concession in medical treatment given by the Hospital to poor and indigent patients, as per government norms.

The Hon'ble Chairman, Maharashtra Legislative Council gave consent to the hon'ble member to raise the matter in the House on 24th April, 2008. The hon'ble members unanimously agreed and the motion was passed in the House on the same day. Hon'ble Chairman referred the matter to the Committee on Privileges for enquiry and report.

A Report of the Committee on Breach of Privileges was presented to the House of the Legislative Council on the 22nd December, 2009 during winter session in the matter of breach of privilege of the Hon. Members and the Maharashtra Legislative Council arising out of the denial of Shri Manesh Masand, CEO, Jaslok Hospital, Mumbai to provide record to the Committee when the Ad-hoc Committee of the members of the Maharashtra Legislative Council visited Jaslok Hospital on 16th January, 2008 and asked for the record of the patients in the context of checking of the Charitable Hospitals such as Lilavati, Hinduja and Jaslok etc. as well as imprudent answers and insulting treatment meted out to the Hon. Members of the Committee by him. The Committee had recommended in the report that as Shri Manesh Masand has tendered an apology to the Hon. Members of the Ad-hoc committee, Hon. Chairman and the House, the House should accept his apology wholeheartedly and close this matter without taking any further action. Accordingly, when the motion of Hon. Chairman of the Committee and the Hon. Chief Minister was moved before the House, on Thursday, the 8th April, 2010 the House disapproved the recommendations made by the Committee and resolved unanimously that Shri Manesh Masand, CEO, Jaslok Hospital, Mumbai be called before the Bar of the Legislative Council and admonished. Accordingly, Shri Manesh Masand was called before the Bar of the House on Wednesday, the 21st April, 2010 and admonished.

(9) SUZLON INFRASTRUCTURE CASE (2009)

“A Report of the Committee on Privileges was presented to House of Legislative Council on 27th July, 2010 during Monsoon Session in the matter of breach of privilege of Hon. Members and the Maharashtra Legislative Council, arising out of the publication of a press note by **M/s. Suzlon Infrastructure Pvt. Ltd.** in the newspapers namely; Daily Lokmat, Daily Loksatta and Daily Sakal on 12th June, 2009 incidental to discussion on a Calling Attention Notice with regard to “Lands of agriculturists being acquired by Power Generating Company for Wind Mills in some districts of the State” in the House of Legislative Council on 10th June, 2009.

Since **M/s. Suzlon Infrastructure Pvt. Ltd.** has published an unconditional & unambiguous apology in the newspapers, in which they have published the said objectionable press note, the Committee recommended in the report that the House may accept this apology and close the matter without taking any further action.

The Motion for consideration of the said report by Hon. Committee Chairman and Hon. Chief Minister was moved on 9th April 2011 and adopted by the House unanimously.

CHAPTER 12

LAND MARK CASES IN PARLIAMENT AND OTHER STATE LEGISLATURES**(1) PROVISIONAL PARLIAMENT (1950):****Point of privilege**

Alleged arrest and removal of a member and non-intimation of this fact to the House or the Speaker.

Facts of the case and action taken by the House

On the 1st March, 1950 Shri H.V. Kamath, a member, raised a question of privilege regarding the arrest and removal from Delhi on the previous day, under the East Punjab Public Safety Act, 1949, of Shri Shibban Lal Saksena, a member during the session of Parliament, without communicating this fact to the House or to the Speaker. He also urged for appointment of Committee of Privileges to examine the matter.

2. The Minister of Home Affairs and the States (Sardar Patel) stated inter alia as follows:-

“When I heard about it... Immediately communicated to the Home Secretary that Mr. Shibban Lal if he is here and not removed, should be removed to his House in Delhi and not anywhere else. But he had already been removed by that time. Immediately I informed the Home Secretary that the order, so far as removal from Delhi or externment was concerned, should be cancelled forthwith and that Shri Shibban Lal should be informed of the Government’s regrets that he had been put to inconvenience. It was not the intention to extern him from Delhi. The intention was that he should not fast at that place (Rajghat) as he was advised by the Prime Minister also...”

I am glad that the House is so anxious about the presentation of the privileges of the members of the House. The Government, more than any-body else, would be anxious to protect the privilege of the House and of its members... In this particular case, all courtesy due to a member of this House was shown to Shri Shibban Lal Saksena...”

3. The Prime Minister and Leader of the House (Shri Jawaharlal Nehru) stated inter alia as follows:-

“.....It is gratifying to me that the House should be so interested in maintaining its privileges and the privileges of its members. And, as my colleague the Deputy Prime Minister said, certainly no member of Government is less interested in maintaining those privileges. Something has happened, and there can be little doubt that if mistakes have been committed-inadvertently-the Government of course, is responsible, for every mistake. I entirely admit that responsibility, though neither the Deputy Prime Minister, nor I, nor any other member of Government was aware of what has been done till actually the House itself met here, or slightly before that, yesterday... There was no question of his arrest or his removal from Delhi, or anything else... Now, a certain error was committed... And for that the Deputy Prime Minister has expressed his regret to Mr. Shibban Lal Saksena himself. And for my part, certainly would like to express my regret and the Government’s regret to you. Sir, specially and to this House; that this blunder was committed by any officer of Government in this respect. As for the rest, if you or the House considers that the matter should be gone into by a Committee of Privileges, I have the last objection.”

4. Shri Goenka, another member, moved the following motion which was adopted by the House after a lengthy debate:-

“That in view of the statements made by the hon. the Prime Minister and the hon. the Deputy Prime Minister on the point of privilege raised by Shri H.V. Kamath in the House today the matter be dropped.”

(2) LOK SABHA (1953) :**Point of privilege**

Arrest and detention of a member under Public Security Act

Facts of the case and ruling by the Deputy Speaker

On the 12th May, 1953, the Deputy Speaker (Shri M.A. Ayyangar) informed the House that he had received the following telegram from the Chief Secretary to the Jammu and Kashmir Government regarding the arrest of Dr. Syama Prasad Mookerjee, a member:-

“Dr. Syama Prasad Mookerjee declared publicly his intention to enter Jammu and Kashmir State in connection with his agitation launched against the Government by Praja Parishad, a local party. In Jammu for the last six months an organised movement started with a view to subverting law and order through unlawful and violent means. This movement had the avowed support of Bhartiya Jana Sangh in India. Dr. Syama Prasad Mookerjee as the President of Bharatiya Jana Sangh did not merely justify this unlawful movement but also lent it the full support of the Sangh for the purpose of continuing and intensifying it. Even today in some parts of Northern India volunteers inspired and organised by Bharatiya Jana Sangh have in defiance of law been demonstrating in support of this movement. It was apprehended that the presence of Dr. Syama Prasad Mookerjee who along with his political party has been supporting the subversive movement launched by the Praja Parishad in Jammu would constitute a grave threat to public peace and law and order. It was therefore, with deep regret that the Jammu and Kashmir Government had to serve a notice under section 4(1) of the Jammu and Kashmir Public Security Act on Dr. Syama Prasad Mookerjee according to which his entry was banned into the State. Dr. S. P. Mookerjee in defiance of this notice entered the territory of Jammu and Kashmir State. Taking into account the presence of Dr. S. P. Mookerjee in the State and also the threat that it constituted to the peace and tranquility of the State, the Inspector General of Police ordered his detention under section 3 of the Jammu and Kashmir Public Security Act.”

The Deputy Speaker also informed the House that he had received a notice of a question of privilege from Shri N. C. Chatterjee, a member, concerning the arrest of Dr. Mookerjee and that he would take it up on the next day.

2 On the 13th May, 1953, Shri N. C. Chatterjee stated that it was the privilege of every Member of Parliament to visit any part of any State, or territory of India just as every citizen of India had freedom of movement throughout the territory of India and especially when the Government had not put any fetter or embargo. He added that it was the right and duty of a member to go and visit any State, see things for himself and report to Parliament or fight for the redress of any grievance there. There was no territorial limitation with regard to a member of Parliament that he could only represent the grievances of his own constituency and no other part of territory.

3. The Deputy Speaker observed inter alia as follows:

“As was decided by the Committee of Privileges in connection with the arrest of Mr. Deshpande there ought to be no special privilege in the case of a member of the House as opposed to any ordinary person. No discrimination or no special privilege of freedom from arrest was granted to him. In the usual course he is arrested. All that is required is that the arresting authority must intimate the factum of arrest to the House. That was done and I read it out of the House.

“It is for the Government of the particular State to consider whether permitting any member or any other person will seriously jeopardise the law and order situation there or the sense of security there. We are not sitting in judgement as to whether meticulously the apprehension that the entry of any hon. member, even be he a member of this House, might provoke or create a situation which they expected ought not to arise in the State, is right. There is no question of special privilege so far as a member is concerned. If he is detained like any other person, he can have recourse in the ordinary course, to placing his case and getting a decision. All that we are concerned with this whether in the due course he was detained or whether any exception was made in his case, which would not be made in the case of an ordinary person. From the telegram, it is seen no such thing has been done. All that has to be done so far as this House is concerned is to keep this House informed regarding the arrest of any member so that this House may keep a watch over that matter. That has been done. I am advised having regard to facts here; I am not called upon to give my consent. There is no special privilege so far as this matter is concerned.”

(3) LOK SABHA (1958) :**Point of privilege**

Attendance of a member of the House as a witness before the other House or a Committee thereof

Facts of the case and reference to the Committee of Privileges

On the 16th April, 1958, the Secretary of the Bombay Legislature Department requested the Speaker to permit Shri L. V. Valvi, Member, Lok Sabha, to appear as a witness before the Committee of Privileges of the Bombay Legislative Assembly at their sitting to be held on the 23rd April, 1958, at 10 A.M. in the Council Hall, Bombay.

2. The evidence of Shri L.V. Valvi was required by the Committee of Privileges of the Bombay Legislative Assembly in connection with a question of breach of privilege in that Assembly arising out of the alleged failure on the part of police authorities in Bombay State to intimate the Speaker' about the fact of arrest of

Dr. R.B. Chaudhri, a member on the 13th February, 1958 at Vadjai village in Dhulia Taluka of West Kandesh District.

3. The Secretary of the Bombay Legislature Department also intimated that Shri Valvi had agreed to appear before the Committee of Privileges of the Bombay Legislative Assembly to tender his evidence.

4. On the 21st April, 1958, the Speaker (Shri M. Ananthasayanam Ayyangar) referred the matter to the Committee of Privileges, and the Secretary of the Bombay Legislature Department was informed telegraphically that the decision of Lok Sabha in the matter would be communicated to him as soon as it , was reached.

Findings and recommendations of the Committee

5. The Committee of Privileges in their Third Report laid On the Table of the House on the 24th April, 1958, reported, inter alia, as follows:-

(i) "According to May's Parliamentary Practice, 'attending as a witness before the other House or any Committee thereof without the leave of the House of which he is a member or officer would be regarded as contempt of the House. (May's 16th Edition. p. 117)."

(ii) "In all such cases, therefore, permission of the House is necessary before a member of the House can appear as a Witness before the other House or a committee thereof."

(iii) "The procedure to be followed in such cases in the United Kingdom has been described by May as under:-

'If the attendance of a Peer should be desired, to give evidence before the House, or any Committee of the House of Commons, the House sends a message to the Lords, to request their lordships to give leave to the Peer in question to attend as a witness before the House or Committee, as the case may be. If the Peer, should be in his place when this message is received, and he consents, leave is immediately given for him to be examined, his lordship consenting thereto, if the Peer be not present, the House gives leave for his lordship to attend 'If he thinks fit. Exactly the same form is observed by the Lords, when they desire the attendance of a member of the House of Commons

‘Whenever the attendance of a member of the other House is desired by a Committee, it is advisable to give him private intimation, and to learn that he is willing to attend, before a message is sent to request his attendance.’ (May’s 16th Ed., p. 669.)

6. The Committee recommended that as in the present case the Secretary, Privileges Committee of the Bombay Legislative Assembly, had formally requested the Speaker, Lok Sabha to permit Shri L.V. Valvi, member, to tender evidence before the Committee of Privileges of the Bombay Legislative Assembly, Shri Valvi might be permitted to appear before that Committee if he thought fit.

Action taken by the House

7. On the 25th April, 1958, the Chairman of the Committee of Privileges (Sardar Hukam Singh) moved the following motion:-

“That this House agrees with the Third Report of the Committee of Privileges laid on the Table on the 24th April, 1958.”

8. The motion was put and agreed to.

(4) LOK SABHA(1958) :**Point or privilege**

Evidence given by a member before a Select Committee of a State Legislative Assembly without the permission of the House

Facts of the case and action taken by the House

On the 19th December, 1958, the Speaker (Shri Ananthasayanam Ayyangar) informed the House that he had received the following letter, dated the 17th December, 1958, from Shri Liladhar Kotoki, a member : —

“Being ignorant of the rules of privileges of the House I submitted a Memorandum on the Assam Panchayat Bill, 1958 and gave evidence before the Select Committee on the Bill on 16th October last at Shillong. In both submitting the memorandum with certain amendments suggested by me and giving evidence I took the initiative and volunteered to do so, which was agreed to and accepted by the Select Committee.

From the sixth Report of the Privileges Committee of Lok Sabha circulated to us. I realised that I committed a grave mistake in omitting to seek your previous permission and referring the matter to the Privileges Committee and the House yesterday, I approached the Deputy Speaker and told him about it and sought his advice. He was kind enough to direct me to submit a petition. In course of placing the Report in the House today both the Deputy Speaker and yourself have explained the future course to be taken in the matter of giving such evidences.

I submit I never meant any breach of privilege of the House, and all that I did was prompted by my interest in the Bill in question, and my ignorance of the rules, as submitted above.

I hereby tender my most unqualified apology to you and through you to the Privileges Committee and the House and most humbly beg that I may kindly be pardoned for this first and unintentional mistake on my parts.

I assure Sir, that I shall not commit such a mistake in future.”

2. No further action was taken by the House in the matter.

(5) LOK SABHA (1959) :**Point of privilege**

Publication of expunged proceedings of the House by a newspaper.

Facts of the case and ruling by the Speaker

On the 21st December, 1959, Shri Surendranath Dwivedy, a member, sought to raise a question of privilege stating that the Free Press Journal of Bombay, in its issue, dated the 17th December, 1959 had published a portion of the proceedings of the House, dated the 16th December, 1959 which had been expunged by the Speaker. Shri Dwivedy contended that the publication of the expunged proceedings appeared to be international because after publishing the expunged portion, it was added in the newspaper that it was later expunged by the Speaker.

2. The Speaker (Shri M.A. Ayyangar) observed, inter alia, as follows:

“I have drawn the Editor’s attention to it and I have asked for an explanation... After the receipt of this reply, I will bring it before the House, for such action as it may deem proper.”

3. On the 9th February, 1960, the Speaker informed the House as under: “The Editor of the Free Press Journal has since expressed unconditional apology for the oversight in a letter dated 21st December, 1959 which reached me on 23rd December, 1959, that is, after the House had adjourned sine die and was, therefore, published in Bulletin Part II, dated the 23rd December, 1959.

In view of this unconditional apology, the matter may be closed.”

4. The House agreed and the matter was closed.

(6) LOK SABHA (1967):**Point of Privilege**

Display of a shoe in the House

Facts of the case and ruling by the Speaker

On the 28th July, 1967. Shri Nath Pai, a member, drew the attention of the House, under rule 377, to the fact that on the previous day when the House was discussing the question of excise duties on shoes as proposed in the Finance Bill, Shri N. N. Patel took out his shoe and said 'this is the shoe....., and subsequently Shri S. M. Banerjee also took out his chapal and said this is the chapal'.

Shri Nath Pai contended that even though the members might not have meant any disrespect to the House, the practice of display of shoes was dangerous and against the dignity of the House .

2. Shri N. N. Patel then apologised as follows:

"I respectfully submit to you that it was not my bad intention. If the feeling is hurt, I offer my apologies."

3. Shri S. M. Banerjee also regretting the incident stated as follows:-

"I wish to say that what happened yesterday was bad and was not in the interest of the House. There was nothing in it like that. Believe it, have great respect for this House. I respect it so much that I consider it to be temple and we to be its Pujaries."

4. The Deputy Prime Minister (Shri Morarji Desai), intervening, observed:

"May I say that while the intention of both the hon. members was not to create any ugly scene in the House I agree entirely with my hon. friend Shri Nath Pai that such practices are not good and are reprehensible and, therefore, they should never be tolerated by the House, I on my part immediately censured Mr. Patel because could do. I could not do it to Mr. Banerjee."

5. The Speaker (Dr. N. Sanjiva Reddy), treating the matter as closed, observed:

"The point is this, not only chapals but so many times in this House things are shown. Some papers can be placed on the Table of the House; some letters can be placed; I could understand: that can be handed over to the Speaker. But so many other articles, torn clothes and other things were shown here last year; have seen that practice. We should give up that practice and set up healthy conventions so that the Assemblies may copy us; what we do here is done ten-fold in the Assemblies and we will not be in a position to say anything against them. I am sure the whole House is one with me and Mr. Nath Pai when we say this."

(7) LOK SABHA (1969):**Point of privilege**

Procedure regarding making of allegations

Facts of the case and ruling by the Speaker

1. On the 3rd April, 1969, some members, alluding to a rumour published in the 'Organiser', a weekly news magazine alleged that the Minister of Industrial Development, Internal Trade and Company Affairs (Shri Fakhruddin Ali Ahmed), who was not then present in the House, had married a second time with a young girl of 21 years.

2. Later, during the day, Shri Fakhruddin Ali Ahmed, when he came to the House, denied the allegations completely and said that it was a false rumour.

3. Thereafter, all sections of the House condemned the irresponsible publication of the matter by the Organiser.

4. On the 9th April, 1969, the Speaker (Dr. N. Sanjiva Reddy), referring to the above incident, observed inter alia as follows:-

“This is not the first occasion when personal allegations against Ministers or members have been made in the House without the members making the allegations having taken any steps to verify the authenticity thereof and without giving notice to the Chair in advance. There have been occasions in the past also when a notice based on news-item contained in a newspaper like the 'Organiser' has been tabled. I have no doubt that everyone of us here will agree that baseless personal allegations made in the House bring down the dignity and prestige of this august House .

I may inform members that notices relating to any allegations based on newspaper reports will not be considered by me unless the member tabling the notice gives me substantial proof that the allegations have some factual basis.

I may also invite the attention of the members to my ruling dated 31st May, 1967 in which I stated the procedure to be followed for investigation of allegations against Members or Ministers. I would once again appeal to Members to follow the prescribed procedure.”

(8) LOK SABHA (1970) :**Point of Privilege**

Allegations by a member in Rajya Sabha of bribery of members for voting against a Bill in Lok Sabha

Facts of the case and action taken by the House

On the 2nd September, 1970, Shri Bhupesh Gupta, a member of Rajya Sabha, made the following remarks during the course of a debate in Rajya Sabha-

“I have definite information and personal information and I can produce the evidence through witnesses. Last night several M.Ps. were taken to the Houses of some Princes and Maharajas and I know in one case where a member of a certain party was taken to the residence of one Maharaja, the Rajmata offered him bribe. I am ready to present him to you. I can ask him to come and tell you...”

What guarantee we have and what is the Central Government doing. The whole night it went on and poor Adivasi members were picked up and then they were told: ‘You can take as much money as you like.’”

2. On the 3rd September, 1970, Shri Ram Charan, a member of Lok Sabha, sought to raise a question of privilege in Lok Sabha against Shri Bhupesh Gupta, on the ground that in his above remarks made in Rajya Sabha, as reported in the Nav Bharat Times, in its issue dated the 3rd September, 1970 Shri Bhupesh Gupta had alleged that four Adivasi and other M.P’s. had voted in Lok Sabha against the Constitution (24th Amendment) Bill, 1970, because they had been bribed.

3. After some discussion, the Speaker (Dr. G.S. Dhillon) observed that he would take up the matter with the Chairman of Rajya Sabha. Accordingly, the Speaker addressed a letter to the Chairman, Rajya Sabha, inviting his attention to and eliciting his views in the matter.

4. In his reply, addressed to the Speaker, the Chairman (Shri G.S. Pathak), Rajya Sabha, observed inter alia as follows:-

“The allegations by Shri Bhupesh Gupta to which Shri Ram Charan, M.P., apparently refers, did not relate to any particular member of either the Lok Sabha or the Rajya Sabha... You would thus see that Shri Bhupesh Gupta did not refer personally to any member of either House .

I have always held the view that members of one House should not make allegations or cast reflections on the floor of the House, or outside, on the members of the other House. In the Rajya Sabha, the Chair has invariably deprecated such conduct on the part of any member. In the present instance also, the Deputy Chairman, Shri Khobragade, who was in the Chair at the time Shri Gupta said this, made the following observations:-

‘Members of Parliament of both Houses are very responsible persons and at the time of voting they will surely use their judgement and vote according to their conscience. I do not think they will be swayed by any other consideration.’”

The matter was, thereafter, treated as closed.

(9) LOK SABHA (1970):**Point of privilege**

Alleged making of enquiries by the police from a member.

Facts of the case and ruling by the Speaker

On the 11th May, 1970, Shri Janeshwar Misra, a member, raised a question of privilege against Shri Ramanand, a Sub-Inspector of Police for entering his House on 8th May, 1970, at about 9.30 A.M. without ringing the door-bell, and making enquiries from him in connection with the incidents which took place on the 6th April, 1970 at Patel Chowk, New Delhi during the S.S.P. demonstration. The member contended that as the matter was under investigation by a Judicial Commission of Inquiry, making of enquiries about that matter by a Sub Inspector amounted to a breach of privilege of the House. He also stated that the members of Parliament should not be disturbed one or one and a-half hours before the commencement of the sitting of the House so that they could concentrate on the business of the House.

2. The Speaker (Dr. G.S. Dhillon) observed that he would consider the matter on receipt of a reply from the Minister of Home Affairs to whom the matter had been referred.

3. The Minister of Home Affairs (Shri Y. B. Chavan), thereupon, made inter alia the following statement:-

“The Hon. member has raised the question whether in view of the judicial inquiry that has been ordered, any investigation can take place or not. My information about this is that an officer did go to the hon. member’s House. But he merely went there in the course of his duties, as he was ordered to make investigation to get some information. If the hon. member had refused to give him information, he could not have forced the hon. member to give that.

....If the hon. member had asked him to get out, then he would have gone away. How could he stay there in that case?

If there is any complaint about any threat, etc. I am prepared to look into the matter. If there is any complaint about any threat not only to a Member of Parliament but even to any other citizen of India, I am prepared to look into it. But now the question has been reduced to this, namely whether the field of privilege of a member of the House can extend to that position where normal investigation also cannot be undertaken. If hon. members want me to take that position then I do not want to stand in their way.”

4. The matter was thereafter closed.

(10) LOK SABHA (1973):**Point of Privilege**

Alleged statement by the Attorney-General of India before the Supreme Court that an Act would be amended within ten days

Facts of the case and ruling by the Speaker

On the 2nd April, 1973, the Speaker (Dr. G.S. Dhillon) informed the House that he had received notices of question of privilege, adjournment motion, calling attention etc. in respect of the statement reported to have been made by the Attorney-General of India (Shri Niren De) before the Supreme Court about amendment of the Maintenance of Internal Security Act, 1971.

Some members contended that it was improper for the Attorney-General of India to make such statements before the Supreme Court as it was a clear breach of privilege and contempt of the House to take the House for granted and assure the Court that certain Act would be amended within a certain period.

2. Adjournment motion on the subject was admitted and during the discussion thereon, the Minister of Law, Justice and Company Affairs (Shri H.R. Gokhale) stated inter alia; as follows:-

“I had a discussion with the Attorney-General myself and the Attorney-General felt, as I felt, that it was necessary to point out to the Court that all the actions taken by the Government were in good faith and were taken under the law which was valid, and indeed was valid according to the earlier pronouncement of the Supreme Court. Therefore, the Government would have to take into consideration what would be the consequences of the decision or otherwise, if Section 17A particularly was struck down. Therefore, I am assured by the Attorney-General authentically that he has not given any assurance to the court that the law will be amended. He has not told the court that the Government also is considering the amendment of the law. All that he has told the court is that in view of the fact that the consequences of an adverse view taken by the Supreme Court can be serious, the Government would like to consider the position, to consider as to what steps they should take; and also consider as to whether or not it is necessary to amend the Act and then amend the Act if considered necessary. Therefore, all the argument that Parliament was taken for granted, that an assurance as given that the law will be amended, implying thereby that not only the Attorney-General's feeling but on the basis of the Government decision, the law will be amended that he has already said so before the court is, in my humble submission, without foundation.

What the Attorney-General said, after he discussed it with me, before the court was this. Since the judgement was given a long time back, in Gopalan's case, and if that judgement is likely to be overruled, as it appeared to him from the reaction of the judges when the case was going on, he requested for some time, about a week or 10 days's time.

And he said that the Government would consider the matter in the meantime including an amendment of the Maintenance of Internal Security Act if considered necessary. The gist of the matter is, he did not say that the Act would be amended or that the Government had decided to amend the Act. No assurance was given that the Act would be amended. He only said that Government would consider whether any amendment was necessary. I respectfully submit that there is no substance in the submission that Parliament was taken for granted or that any assurance was given about the amendment. For that matter, Government has not

taken any decision. The Attorney-General could not have said that it was the Government's intention to amend it. He could not have told the court that we were going to amend it. On this basis, I submit the entire discussion is without any foundation."

3. The adjournment motion, after discussion, was negatived.

4. On the 4th April, 1973, some members sought to raise a question of privilege against the Minister of Law, Justice and Company Affairs (Shri H. R. Gokhale) for allegedly misleading the House on the 2nd April, 1973, by making a wrong statement in the House denying that the Attorney-General had told the Supreme Court that "the Government will have the law amended in ten days' time". They pointed out that two advocates, who appeared in the Supreme Court on behalf of the parties, had stated in a written statement that the Attorney-General did make the impugned statement before the Supreme Court.

5. After some discussion, the Speaker disallowed the question of privilege and ruled *inter alia* as follows:-

"...You gave four types of Motions the other day, and you based your Motions on the newspaper report...For three hours you had been discussing it. And, the House gave a decision on it.

Today, I received the letter from two honourable lawyers. References were made to that letter... After quoting the Attorney-General, this is what the lawyers have stated:

'The newspaper reports referred to in this not are correct and statements attributed to the Attorney-General in the newspaper set out the position absolutely correctly.'

Now, that Motion which I allowed was based on the newspaper report. It is again on the same newspaper report that the lawyers are now basing their claim, which report, they say, is correct. There is no question of saying that the lawyers are right or wrong or that the Attorney-General is right or wrong. The basis of the whole discussion was the same newspaper report which these lawyers are quoting now. On that basis the discussion was allowed. The subject-matter was discussed for three hours. The House gave its finding, its decision. An identical matter cannot be discussed now in the House once again. It is an identical matter and, therefore, there is no question of raising the same matter in any other form, in any other motion. I am not allowing it."

(11) LOK SABHA (1973):**Point of Privilege**

Issue of a warrant of arrest against a member

Facts of the case and ruling by the Speaker

On the 18th December, 1973, Shri Madhu Limaye a member complained in the House that a warrant of arrest had been issued against Shri S.A. Shamim, another member, by the Government of Jammu and Kashmir, for writing an article in the annual number of the Illustrated Weekly of India.

2. The Speaker (Dr. G.S. Dhillon) observed inter alia as follows:-

“A member is at par with any other citizen when there is a breach of the law.... It is only when he has a privilege not to be obstructed from coming to this House that the position is different. There is no question of privilege. I am not allowing you to bring any matter before the House unless I have proper information and notice in advance and unless I had examined it.

A member is like any other citizen. He cannot claim protection like this. If a member commits a crime, he cannot come here and say that he has the privilege not to be arrested....If the police arrest without any justification, you raise it in the Court, not in this House.”

3. On the 19th December, 1973, Shri Madhu Limaye again sought to raise this matter as a question of privilege and contended that during the Sessions of Lok Sabha a member could not be arrested in that way.

4. The Speaker disallowed the question of breach of privilege and ruled inter alia as follows:-

“..So long as Shri Shamim is speaking in this House, he is protected. But if he does something outside the House, he is not protected. After writing that article, he can come to this House. Nobody will arrest him so long as he is sitting in this House.”

5. When a suggestion was made that the Speaker might go through the impugned article in the magazine and determine whether a warrant of arrest could be issued on that basis the Speaker observed that he could not assume judicial functions and that was a matter for the courts to decide.

(12) LOK SABHA (1974)**Point of privilege**

Publication of proceedings of the meeting of the Speaker with the Leaders of Parties/Groups in Lok Sabha by newspapers.

Facts of the case and ruling by the Speaker

On the 17th December, 1974, Shri Atal Bihari Vajpayee, a member, drew the attention of the Speaker to a news-item published in certain newspapers of that date regarding the proceedings of a meeting of the Speaker with the Leaders of Parties/Groups in Lok Sabha in connection with perusal of the C.B.I. Report and connected documents in the Import Licences case by the Leaders of Parties/Groups. Shri Vajpayee stated that the said news report was not correct and he requested the Speaker to contradict the said news report.

2. The Speaker (Dr. G.S. Dhillon) thereupon observed inter alia as follows:-

“It is really very unfortunate that what happened inside the Committee should have come out in the press though in a wrong way and due to that the reactions should have come in this House ... whatever has appeared in the press is not correct. There was no walk-out, nor did I give any ruling that this should be the condition or that should happen... I wish to point out that in case of the Leaders Committee also the same Direction (that is Direction 55¹ of the Directions by the Speaker) goes. So, I would request the members that they observe these rules in regard to whatever we do inside also.... So, I end this note with my request to both of you and also to the Press that in dealing with this matter they should be helpful to me.”

(13) LOK SABHA (1974)**Point of privilege**

Notice received by the Speaker from the Supreme Court in the matter of Special Reference under Article 143 of the Constitution regarding Presidential Election.

Facts of the case and ruling by the Speaker

On the 2nd May, 1974, some members raised the question of Notice reportedly issued to the Speaker by the Supreme Court in the matter of Special Reference under Article 143 of the Constitution regarding the Presidential Election. The Speaker (Dr. G. S. Dhillon), while informing the House that he had not till then received any such notice, observed inter alia as follows:—

“When it comes. I will take the General Purposes Committee into confidence and whatever they decide, I will follow it. It is not an individual matter. I am the Speaker and, as the Speaker, I will not do anything unless I consult you.”

2. On the 9th May, 1974, the Speaker informed the House inter alia as under:-

“I received the Notice dated May, 1974 from the Supreme Court on the evening of the 2nd May 1974. The notice states inter alia as follows:-

‘Whereas under Article 143 of the Constitution, the President of India has been pleased to refer to this Court the following questions of law for consideration and report.’

After reproducing the questions referred by the President to the Supreme Court and stating certain facts, the Notice states further:-

‘Notice is hereby given to you so that you may, if so advised, enter appearance in the above matter and file 100 copies of the written arguments by 12 noon on the 20th day of May, 1974.

Take further notice that the above Special Reference will be listed for hearing before the Court on Monday, the 27th day of May, 1974. . . . when you may appear before the Court by an Advocate of the Court and take such part in the proceedings before this Court as you may deem fit.’

I placed the matter before the General Purposes Committee on the 7th May, 1974. The General Purposes Committee advised that neither the Lok Sabha, nor the Speaker, should enter appearance in this matter.

If the House agrees, the Supreme Court may be informed accordingly.”

3. The House agreed and the Supreme Court was informed accordingly.

(14) LOK SABHA (1976) :**Point of privilege**

Request from Central Bureau of investigation for making available to them “ admitted writings” of an ex-Member of Lok Sabha on connection with investigation of a case.

Facts of the case and reference to the Committee of Privileges

The Deputy Inspector General of Police (Inv-I), Central Bureau of Investigation, New Delhi, in his letter dated the 12th July. 1976, addressed to Secretary-General, Lok Sabha, stated as follows :—

“In connection with the investigation of the Baroda Dynamite Seizure Case [R.C. No. 2/76- CIU(A)] we urgently require admitted writings of Shri George Fernandes. Shri George Fernandes was a member of the Lok Sabha from 1967 to 1971. I shall be grateful if the admitted writings of Shri Fernandes could be made available to us from your records.”

2. In reply, the Deputy inspector General of Police, Central Bureau of Investigation, was informed vide Lok Sabha Secretariat letter dated the 14th July, 1976 of the correct procedure for making available for investigation or production in courts of documents connected with the Lok Sabha or its Committees as laid down in the First Report of the Committee of Privileges of Second Lok Sabha which was adopted by Lok Sabha on the 13th September, 1957. The Deputy Inspector General of Police, Central Bureau of Investigation, was also requested to clarify the term “admitted writings of Shri George Fernandes.”

3. The Deputy Inspector General of Police (Inv-I), Special Police Establishment, Central Bureau of Investigation, in his further letter dated the 23rd July, 1976, stated inter alia as follows:—

“(1) The writings and (or) signatures of Shri George Fernandes, who was a member of the Lok Sabha from 1967-71, are required by us to establish the authorship of some writings and signatures of Shri George Fernandes, which have come to light during our investigation of the Baroda Dynamite Seizure Case,

(2) The writings and (or) signatures are, at present, required for purposes of investigation and not for production in Court,

(3) Admitted writings are writings executed in the ordinary course of business which are purported to be in the handwriting of the person concerned the authorship of which is not in dispute.

(4) If no admitted writings are available we would like to get the original documents on which Shri George Fernandes has made his signatures in the ordinary course of business.

Field investigation of the Baroda Dynamite Seizure Case has already been completed. It is therefore, requested that the documents bearing admitted writings and (or) signatures of Shri George Fernandes may be made available to us as early as possible so as to enable us to finalise the investigation of our case.”

4. On 24 July, 1976, the Speaker (Shri B.A. Bhagat) referred the matter to the Committee of Privileges under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition).

Recommendations of the Committee

5. The Committee of Privileges, in their eighteenth Report, presented to the Speaker on the 12th August, 1976, and laid on the Table of Lok Sabha on the 16th August, 1976, recommended inter alia as follows :—

(i) “In the present case the Committee have perused two notices dated the 29th June, 1967, and the 26th March, 1969, from the files of the Lok Sabha Secretariat, purported to be in the handwriting of Shri George Fernandes, ex-M.P.”

(ii) “Although the Deputy Inspector General of Police, Central Bureau of Investigation, has stated that the writings of Shri George Fernandes, ex-M.P., are, at present, required for purposes of investigation and not for production in Court, it is quite possible that these documents may have ultimately to be produced in a Court of Law.”

(iii) “The Committee recommend that the two notices dated the 29th June, 1967 and the 26th March, 1969, mentioned above, purported to be in the handwriting of Shri George Fernandes, ex-M.P., and purporting to bear his signatures may, with the permission of the House, made available to the Deputy Inspector General of Police, Special Police Establishment, Central Bureau of Investigation, Department of Personnel, Cabinet Secretariat, Government of India, New Delhi.”

Action Taken by the House

6. On the 20th August, 1976, Shrimati Maya Ray, a member of the Committee moved the following motion which was adopted by the House :

“That this House do agree with the Eighteenth Report of the Committee of Privileges laid on the Table of the House on the 16th August, 1976.”

7. The two notices in question were, accordingly, made available to the Central Bureau of Investigation.”

(15) RAJYA SABHA (1978) :**Point of privilege**

Physically restraining a member from addressing the House by another member

Facts of the case and ruling by the Chairman

On the 21st February, 1978, during the course of proceedings in the House regarding alleged disrespect shown to Shri Jagjivan Ram, Minister of Defence, at Varanasi, Shri Piare Lal Kureel urf Piare Lal Talib, a member, went across the floor to physically restrain Shri Nageshwar Prasad Shahi, another member, who was speaking, from addressing the House.

2. Thereupon, the Deputy-Chairman (Shri Ram Niwas Mirdha) inter alia observed as follows:—

“I will request that the proceedings of the House should be conducted peacefully in the required manner. The scene created a short-while ago cannot but be deplored. I do not want to add anything more. The hon. member is an elderly person. I do not think it proper to say anything more nor it would be fair on my part. to take any action on it. I would like to request that the gravity of the incident should be realised by the hon. member as well as by all other hon. members ... If anything is said in the House which is wrong in the opinion of the hon. members, they can raise objections and there are certain ways to raise them.... It is not proper to interrupt the proceedings of the House in such manner. You may be given, an opportunity to express your unhappiness in accordance with procedure of the House,”

(16) LOK SABHA (1979) :**Point of Privilege**

Notice received from the High Court of Karnataka in the matter of a Writ Petition requiring the appearance of the Secretary, Lok Sabha, before the High Court.

Facts of the case and ruling by the Speaker

On the 12th April, 1979, the Speaker (Shri K.S. Hegde) informed the House as follows:-

“I have to inform the House that on 11 April, 1979, a notice has been received from the Assistant Registrar of the High Court of Karnataka in the matter of Writ Petition No. 2865 of 1979, requiring the Secretary, Lok Sabha, to appear in the High Court in person or through an Advocate duly instructed or through some one authorised by law to act for him in the case on the 17th April, 1979. With the notice, a copy of the writ petition filed by Shri C. Nanjappa, a voter of Chikmagalur Parliamentary Constituency, challenging the validity of the resolution passed by Lok Sabha on the 19th December, 1978, and the subsequent notification of that date issued by the Lok Sabha Secretariat, regarding expulsion of Shrimati Indira Nehru Gandhi from Lok Sabha has also been enclosed.

As per past practice of the House, the Secretary, Lok Sabha, has been asked not to respond to the notice. The Minister of Law is being requested to apprise the High Court of Karnataka of the correct constitutional position in this regard.”

(17) LOK SABHA (1980) :**Point of privilege**

Alleged defamatory remarks made by a Minister in the House about the people of Kerala

Facts of the case and ruling by the Speaker

On 16th December, 1980, Prof. P. J. Kurien, a member, gave notice of a question of privilege against the Minister of Tourism and Civil Aviation (Shri A. P. Sharma) for allegedly making defamatory remarks about the people of Kerala. The member in his notice of question of privilege stated inter.alia as follows:-

“In reply to a supplementary raised by me on starred question No. 377 on 12-12-1980, Shri Sharma said-the people of Kerala are also very beautiful at night. And the foreigners come to Kerala as tourists for different purposes’. By this reply, the Minister has cast aspersion on people of Kerala, particularly women. And as a member from Kerala, I feel that my privilege as a member has been breached.”

2. On 17th December, 1980, when Prof. P. J. Kurien sought to raise the matter in the House , the Minister of Tourism and Civil Aviation stated inter -alia as follows:-

“As explained personally by me, if my replies to Question No. 377 on ‘International Flight from Trivandrum to West European Countries on 12th December, 1980 are read as a whole, it would be seen that I have the highest regard for that most beautiful part of our country and the gifted people of Kerala. In reply I have also said that the foreigners come to Kerala for different purposes and this has been correctly interpreted by the member who followed soon thereafter to state that there were many attractions like the Periyar Game Sanctuary, the Kovalam Beach, which is one of the finest beach resorts in the world, etc. I am really very sorry for any misunderstanding which may have been inadvertently caused and I have corrected the copy of the proceedings.

I have done this, although I did not think that there was anything wrong in that because I never meant anything wrong to the people of Kerala; I cannot, I can tell you with all the force at my command. Therefore, I have given this explanation and, I think, this should satisfy my friend, Mr. Kurien.”

The matter was, thereafter, closed.

(18) LOK SABHA (1982) :**Point of privilege**

Association of members of Rajya Sabha with Committee on Public Accounts and Committee on Public Undertakings.

Facts of the case and ruling by the Speaker

On 28th July, 1982, the Speaker (Dr. Bal Ram Jakhar) observed as follows:-

“Hon. Members from Rajya Sabha have been associated with the Committee on Public Accounts and Committee on Public Undertaking since 1954 and 1964 respectively. As is well known, the Hon. members from Rajya Sabha have been a source of great strength to the Financial Committees and have contributed greatly to the quality of their deliberations. The Hon. Members from Rajya Sabha have always enjoyed great respect and esteem and have been appointed as Conveners of the Sub-Committees/Study Groups of these Financial Committees which are charged with the onerous responsibility of detailed examination of important subjects.

It has been our ceaseless endeavour that the sagacious counsel of Pandit Jawaharlal Nehru, the chief architect and consolidator of the Parliamentary Institutions in India when he spoke on 13th May, 1953, in support of the Motion for association of members of Rajya Sabha with the Public Accounts Committee should be lived up to in letter and spirit. Pandit Jawaharlal Nehru had inter alia observed:

‘Something has been said about associate members. Who are these associate members?..... if they come to the Committee, as the

major function of the Committee is scrutinising, there is no question of two grades of members. They have the same grade and status..., it should be the desire of the House to cultivate to the fullest extent possible cooperation and friendly relations with the other House; the conception of the Constitution is that Parliament is an integrated whole;..... we are joined together in Parliament shouldering the burden of Parliament

(19) LOK SABHA (1985) :**Point of privilege**

Assaulting of an ex-member by a member of Rajya Sabha in the Central Hall

Facts of the case and action taken by the House

On 8th August, 1985, Chaudhary Mohammed Shafi, an ex-member of Lok Sabha was assaulted by Shri Ghulam Rasool Mattoo, a member of Rajya Sabha, in the Central Hall.

2. On 9th August, 1985, when several members sought to raise the matter in the House, the Speaker (Dr. Bal Ram Jakhar) observed as follows :—

“Mr. Mattoo will himself apologise and regret in the Upper House and here on his behalf and on behalf of his party, Mr. Kabuli will apologise to the House.”

3. Shri Abdul Rashid Kabuli, a member, then stated inter alia as follows :—

“..The incident that took place in the Central Hall yesterday is very painful and regrettable. Our party, National Conference, does not agree with whatever was done by its member Shri Ghulam Rasool Mattoo. It was not correct. We should maintain the dignity of the Central Hall and the Parliament at all cost. We regret for the excess committed by our member. So far as Shri Mattoo is concerned he is a Member of Parliament and he and Chaudhary Mohammed Shafi both belong to our State. Chaudhary Sahib is an old freedom fighter and we have great respect for him. I think he should not be sentimental about the unfortunate incident. I think this matter should be closed now. I on behalf of Shri Mattoo and on behalf of my party, express regret and anguish on, the incident. This matter may now be treated as closed.”

The matter was then treated as closed.

4. On the same day, Shri Ghulam Rasool Mattoo, expressed regrets on the incident in Rajya Sabha as follows :—

“Mr. Vice-Chairman, members of this House must have read in today’s newspapers about an incident that took place in which I and another former Member of Parliament Chaudhary Mohammed Shafi was involved. Chaudhary Shafi made certain remarks, very objectionable remarks - at which I was provoked. However, the matter stands closed and I express my regrets for the same.”

5. The Chairman (Shri R. Venkataraman) then observed as follows :—

“In the highest tradition of this House of Elders, the matter is closed.”

(20) MADHYA PRADESH LEGISLATIVE ASSEMBLY

1991

Point of Privilege

Alleged obstruction caused to a member by the police within the precincts of the House.

Facts of the case and reference to the Committee of Privileges

On the 2nd August, 1991, Shri Prem Singh Datti-gaon, a member, gave notice of a question of privilege regarding alleged obstruction caused to him by the police by attempting to arrest him within the precincts of the House.

2. Shri Dattigaon inter-alia alleged that on the 2nd August, 1991 when he was coming out of the Notice Office in Vidhan Sabha precincts, a police officer in a cream colour safari caught hold of him and started dragging him. When he resisted, the police officer told him that he was under arrest. He further stated that Sarvashri Hari Singh Narwaria, Ram Niwas Rawat and Ravindra Chaube, members, were also present there at the time of the incident. Shri Dattigaon further alleged that Shri R.K. Choudhary, Deputy Superintendent of Police and Shri Ajay Singh Bisen, City Police Inspector, were also informed of the incident but they took no action against the erring police officer rather allowed him to escape.

3. On the 2nd August, 1991, the Speaker observed, that there was a prima-facie case against Shri Bachan Singh, Police Officer, Shri Ajay Singh Bisen, City Police Inspector and Shri R.K. Choudhary, DSP, and referred the matter to the Committee of Privileges for examination, investigation and report.

Findings and recommendation of the Committee

4. The Committee of Privileges after examining in person Sarvashri Prem Singh Dattigaon, Ravindra Chaube and Hari Singh Narwaria, members, and Shri R.K. Choudhary, Deputy Superintendent of Police, Shri Ajay Singh, Bisen, City Police Inspector, and Shri Bachan Singh, Police Officer, in their First Report presented to the House on the 7th August, 1991, reported inter-alia as follows :—

(a) That when after lunch break Hon'ble Legislator Shri Prem Singh Dattigaon came out of the Reception Office and reached varan-dah, he was caught by Police Inspector Shri Bachan Singh who tried to take him towards the Western Gate.

(b) Also that when they reached near the Security Office and Shri Prem Singh Dattigaon refused to go towards the Western Gate the Police Inspector Bachan. Singh manhandled him and tried to take Shri Dattigaon towards the Western Gate forc-ibly. Inspector Bachan Singh misbehaved with Shri Prem Singh Dattigaon and thereby committed breach of privilege and contempt of the House.”

(c) “Deputy Superintendent of Police Shri R.K. Chaudhary and City Police Inspector Shri Ajay Singh Bisen did not take any action against Shri Bachan Singh for his mis-conduct and indecent behaviour with the Hon'ble Legislator Shri Dattigaon even after repeated requests from other Hon'ble Legislators to intervene in the matter. They were, therefore, indirectly supporting Shri Bachan Singh's misconduct with Shri Dattigaon. It is thus proved beyond doubt that Shri R.K. Choudhary, DSP, Shri Ajay Singh Bisen, City Police Inspector and Shri Bachan Singh, Police Officer had entered into the prohibited area of the Vidhan Sabha Complex and there-fore all these three persons are guilty of the contempt of the House.”

(d) "Entering into the Vidhan Sabha Complex with the intention to arrest the Hon'ble Legislator and the indecent behaviour with him constitutes contempt of the House and is a breach of privilege as the Vidhan Sabha Complex comes under the jurisdiction of the Speaker."

(e) "The Committee are of the opinion that the above behaviour of the DSP, Shri R.K. Choudhary, City Police Inspector, Shri Ajay Singh Bisen and Police Officer, Shri Bachan Singh with the Hon'ble Legislator Shri Prem Singh Dattigaon is improper and grave."

(f) "Hence the Committee recommend that the DSP, Shri R.K. Choudhary, City Police Inspector, Shri Ajay Singh Bisen and Police Officer, Shri Bachan Singh should be called to the bar of the House and reprimanded."

Action taken by the House

On the 7th August, 1991, the Chairman, Committee of Privileges moved the following motion :—

"That this House do agree with the First Re-port of the Committee of Privileges which has been presented today dated 7th August, 1991 and authorise the Speaker to implement the recommendations contained in the Report of the Committee."

The Motion was adopted by the House.

The Speaker then observed as follows:-

"In this incident the Deputy Superintendent of Police Shri R.K. Choudhary, City Police Inspector, Shri Ajay Singh Bisen and Police Officer, Shri Bachan Singh will be called to the House and reprimanded. I will take necessary action in this regard later on."

On the 8th August, 1991, the Speaker observed as follows:-

"The House will remember that yesterday, the 7th August, 1991 it passed a motion that the House do agree with the First Report of the Privileges Committee. At that time I had said in the House that

I would take necessary action later on in regard to those persons who were to be reprimanded in connection with the incident. Accordingly, today on August 8, 1991 Shri R.K. Choudhary, Deputy Superintendent of Police (Suspended), Shri Ajay Singh - Bisen City Police Inspector (Suspended) and Shri Bachan Singh, Police Officer (Suspended) will be reprimanded.

On this occasion this House will sit as the High Court of the Legislature. Therefore, I urge upon the House that at the time of reprimanding these persons there should be complete silence in the House. We should fully honour our privileges. Now I will call these three persons one by one."

Thereafter, the Speaker asked the Security Officer if Shri R.K. Choudhary was in attendance. The Security Officer replied in the affirmative. The Speaker then asked the Security Officer to bring him in. Shri R.K. Choudhary was then brought to the Bar of the House by the Security Officer, where Shri R.K. Choudhary bowed to the Speaker. The Speaker (Seated in the Chair) then reprimanded Shri R.K. Chodhuary as follows:-

"Shri R.K. Chaudhary, You have obstructed Hon'ble Shri Prem Singh Dattigaon, MLA from discharging his parliamentary duties by helping in the efforts for the arrest of the Hon'ble member.

For this act of yours, you have been held guilty of the contempt of this House as well as breach of privilege.

So, on behalf of the House, I reprimand you because you are guilty of breach of privilege and contempt of House.

You should exercise utmost care and restraint while dealing with Hon'ble members at a time when they are discharging their parliamentary duties. Now you can go."

Shri R.K. Choudhary then bowed to the Speaker and withdrew as directed.

Shri Ajay Singh Bisen was then brought to the Bar of the House by the Security Officer as directed by the Speaker who (seated in the Chair) then reprimanded Shri Ajay Singh Bisen as follows :—

"Shri Ajay Singh Bisen, you have obstructed Hon'ble Legislator Shri Prem Singh Dattigaon from discharging his parliamentary duties by extending your help in the attempt to arrest him.

For this act of yours, you have been found guilty of contempt of the House and breach of privilege.

Hence I reprimand you on behalf of the House after finding you guilty of breach of privilege and contempt of the House.

You should exercise utmost care and restraint while dealing with Hon'ble members at a time when they are discharging their parliamentary duties. You can go now."

Shri Ajay Singh Bisen then bowed to the Speaker and withdrew as directed.

The Speaker then asked the Security Officer to bring Shri Bachan Singh in, if he was in attendance. Shri Bachan Singh was then brought to the Bar of the House by the Security Officer. The Speaker (seated in the Chair) then reprimanded Shri Bachan Singh as follows :—

"Shri Bachan Singh, you have obstructed Hon'ble Shri Prem Singh Dattigaon from discharging his parliamentary duties by attempting to arrest him.

For this act of yours, you have been found guilty of contempt of the House and breach of privilege.

Therefore, I on behalf of the House condemn your behaviour for breach of privilege and contempt of the House.

You should exercise utmost care and restraint while dealing with Hon'ble members at the time when they are discharging their parliamentary duties. Now you can go."

Shri Bachan Singh then bowed to the Speaker and withdrew as directed.

(21) RAJYA SABHA (1992) :**Point of privilege**

Attempt to influence some members of a Joint Parliamentary Committee by a Minister and a Government official

Facts of the case and reference to the Committee of Privileges

On 4 September, 1992, Shri George Fernandes, a member, gave notice of a question of privilege against Shri Rameshwar Thakur, the then Minister of State for Finance, and Shri P. G. Lele, Additional Secretary in the Ministry of Finance, for allegedly attempting to influence some members of the Joint Parliamentary Committee probing into the securities scam with a view to obstructing the work of the Committee.

2. Shri George Fernandes stated inter alia in his notice that the Finance Ministry resorted to a patently clandestine operation by circulating to some selected members of the Joint Parliamentary Committee, a 22 page document in an unofficial envelope without any covering note and contended that if the Government's intentions were honorable, there would have been no question of suppressing the authorship of the note and it should have been sent to all members of the JPC through the JPC Secretariat. Shri Fernandes in his notice charged the Minister of State for Finance and the Additional Secretary (Finance) with committing gross breach of privilege by making attempts by improper means to influence members and of obstructing members in the discharge of their duties. The member further stated that a breach of privilege of a Committee of Parliament is tantamount to breach of privilege of the House . He requested the Speaker to refer the matter to Committee of Privileges.

3. On 11 September, 1992, the Speaker, in terms of the procedure laid down in the Report of the Joint Sitting of the Committees of Privileges of Lok Sabha and Rajya Sabha and adopted by both Houses of Parliament , forwarded the notice given by Shri Fernandes to the Chairman, Rajya Sabha, for "appropriate action" as Shri Rameshwar Thakur, the then Minister of State for Finance, was a member of Rajya Sabha.

4. On 16 November, 1992, the Chairman, Rajya Sabha, referred the matter to the Committee of Privileges for examination, investigation and report.

Findings and recommendation of the Committee

5. The Committee of Privileges after considering the notice of question of privilege given by Shri George Fernandes, MP, and other relevant documents in their Thirty-second Report presented on 19 March, 1993, reported inter alia that the matter did not involve any breach of privilege.

Action taken by the House

6. No further action was taken by the House in the matter.

(22) RAJYA SABHA (1992) :**Point of Privilege**

Alleged intimidation of a member by an outsider

Facts of the case and reference to the Committee of Privileges

On the 24th March, 1992, Shri Viren .J. Shah, a member, gave notice of a question of privilege against Shri Bharat Vora, Managing Director, P.J. Pipes & Vessels Ltd., Bombay for allegedly intimidating him from performing his Parliamentary duties. In his notice of question of privilege Shri Shah stated that on the 22nd March, 1992 Shri Bharat Vora had made two telephone calls on him and had also written a letter dated 21 March, 1992 to him in connection with a matter involving Shri Vora's company raised by Shri Shah in the House on 17 March, 1992 through Special Mention. Shri Shah contended that these telephone calls and the letter reflected an intention on the part of Shri Vora to intimidate and discourage him from performing his Constitutional duties as a member of Parliament.

2. On the 26th March, 1992 Shri Shah raised the matter in the House and the Chairman referred it to the Committee of Privileges for examination, investigation and report.

Findings and recommendation of the Committee

3. The Committee of privileges after examining in person Shri Bharat Vora, Managing Director, P.J. Pipes & Vessels Ltd., Bombay, and after considering the written explanation of Shri Bharat Vora and letter dated 27 March, 1992 from Shri Viren Shah, MP, addressed to the Chairman, Committee of Privileges, in their thirty-first Report presented to the House on 16 July, 1992 reported inter alia as follows :—

(i) Shri Shah inter alia mentioned in his letter (dated 24 March, 1992) that in the course of his second telephone call on March 22, 1992 Shri Bharat Vora told him that having been disturbed by his statements in Parliament , he wanted to see him and that he should be careful about making such statements in Parliament. According to Shri Shah, he told Shri Vora that there was no point in meeting him and if there were any factual inaccuracies he could approach the Minister of Petroleum and Natural Gas to offer clarifications in Parliament , but Shri Vora not only kept on insisting on meeting him, his tone and tenor were also certainly intimidating :

(ii) Shri Bharat Vora (in his reply dated 9 April, 1992) clarified that the telephone calls were made by him only for obtaining an appointment with Shri Viren J. Shah for the purpose of bringing facts to his notice, much as he was concerned that any incorrect impression should not be created about his company and that the letter was written by him with sole aim of seeking particulars of the charges made by Shri Shah against his company. He denied having made any attempt to intimidate or discourage Shri Shah from performing his Parliamentary duties and affirmed that he had always held the Rajya Sabha and its members in high esteem and if, in his anxiety to save his company's reputation, he had made the Hon'ble Member feel that any breach of privilege was committed, he would offer sincere and unconditional apology for the same.

(iii) Shri Viren J. Shah expressed his dissatisfaction with the explanation given by Shri Vora, reiterated his charges against him and asserted that the language in which Shri Vora expressed the regrets was highly objectionable and in fact further aggravated the matter.

(iv) The Committee has noted that in the course of his submissions before it on May 5, 1992 as well as in his letter of May 5, Shri Bharat Vora has disclaimed any intention on his part to intimidate or discourage Shri Viren J. Shah from performing his Parliamentary duties and tendered an unconditional and unqualified apology.

(v) In view of the apology tendered by Shri Bharat Vora, the Committee recommends that the matter not be pursued any further.

Action taken by the House

4. No further action was taken by the House in the matter.

(23) LOK SABHA (1992) :**Point of privilege**

Notice to a member who was former Speaker of Lok Sabha from the Supreme Court of India in connection with a Writ Petition

Facts of the case and ruling by the Speaker

On the 4th March, 1992, a notice was received by Shri Rabi Ray, member and former Speaker of 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.

2. 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.

3. On the 9th March, 1992 the Speaker (Shri Shivraj V. Patil) observed as follows:-

“There is one more matter which I would like to bring to your notice. You know that there is an impeachment matter pending with the Committee. Against that matter one more case has been filed in the Supreme Court. Shri Rabi Ray-ji, who happens to be our former Speaker, has received a notice from the Supreme Court. Shri Rabi Ray-ji has writ-ten to me asking for my views and asking for the suggestions from the present Speaker. Some days back, the hon. leaders of different parties and Shri Rabi Ray-ji had met me and we had discussed this matter. They asked for my views on this matter.

I had explained to them that we had organised a meeting of the Presiding Officers of India and in that meeting nearly unanimously it was decided that the judgement 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 of the 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.

We have said that we would make the relevant papers, which can be given to the court, available to the court for going through the papers and taking the decision. And what-ever the decision given by them will be re-spected by the Presiding Officers and the Legislatures. There were one or two dissenting views on that point. But ultimately everybody agreed to that. 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.”

The House agreed.

The Ministry of Law was informed accordingly.

(24) WEST BENGAL LEGISLATIVE ASSEMBLY (1992) :**Point of privilege**

Alleged casting of aspersions on the Governor of a State and on the Legislative Assembly by an officer of the Assembly Secretariat

Facts of the case and ruling by the Speaker

On the 10th March, 1992 Shri Subrata Mookherjee, a member, gave notice of a question of privilege against Dr. Ranjit Basu, an officer of the West Bengal Legislative Assembly Secretariat for allegedly casting aspersions on the Governor of West Bengal and the House in his book entitled "A Legislature Secretariat at Work".

2. Shri Mookherjee in his notice of question of privilege has inter alia stated that Dr. Ranjit Basu claiming to be a Class I officer of the West Bengal Legislative Assembly Secretariat has cast libellous aspersion upon the character, conduct and performances of all sections of the members of the House particularly the Congress party and the Governor of West Bengal in his book entitled "A Legislature Secretariat at Work". Shri Mookherjee, in particular, took objection to the following portions of the book:-

"The most unconstitutional and undignified action of the Governor of West Bengal was that the Governor appointed Shri K. K. Maitra, Secretary, Legislative Department of the Government also Secretary, West Bengal Legislative Assembly in addition to his own duties. Shri Maitra was put under the dual disciplinary control of the Executive as also of the Legislature. The intentions and purpose for setting up a separate Secretariat for Parliament and State Legislature would be clearly revealed from the speech of Dr. B. R. Ambedkar, the Law Member in the Constituent Assembly while moving the relevant article."

"The role of the present Congress Opposition is disgusting. The role played by the Opposition led by Shri Jyoti Basu, checked the tendency of the Government, if any, to curb the independent position of the Secretariat. The present Congress Opposition has disintegrated, lacks knowledge of parliamentary affairs and interest in the Legislature Secretariat affairs and the will to prevent the growing tendency of the Government to curb the independent position of the Secretariat and the attitude of the present Left Front Government has been turning this parliamentary institution into a mockery of parliamentary democracy. The opposition is expected and ought to be eternally vigilant but no one can expect any sort of vigilance from the Congress Opposition against the encroachment on the independence of the Legislature Secretariat with the Treasury Bench enjoying a steady and comfortable majority the part played by the Opposition is not very enviable."

"In West Bengal in 1972, the Secretary of the Legislative Department of Government was made Secretary, Assembly and in 1974 an amendment of the Rule was made in a high-handed manner providing for the induction of officers from the Executive Government and this was made possible by the absence of effective check from the Legislators."

3. On the 10th March, 1992, Shri Subrata Mookherjee raised the matter in the House and described the publication as illegal, indecent and a heinous attack on the Assembly as a whole. He requested the Speaker to allow the House to discuss the matter and come to a decision without referring it to the Committee of Privileges. The Speaker, thereupon, observed inter alia as follows :—

We will take this subject later on. I do not give any ruling at this moment, I will go through the book and I will see later on if there is any substances at all about which you are saying."

4. On the 13th March, 1992 the Speaker observed as follows :—

“I have received a notice of question of privilege and contempt of the House dated 10th March, 1992 from Shri Subrata Mookherjee, MLA, relating to certain comments made by Dr. R. Basu, an officer of this Assembly Secretariat in his book—A Legislature Secretariat at Work.

Shri Subrata Mookherjee alleges that the publication contains certain comments and insinuations which tantamount to libel and he (Dr. R. Basu) intends to denigrate the members of this Assembly including the Leader of the Opposition, the Chief Minister and the Governor, and as such it tantamounts to a breach of privilege and he should be called to the bar of the House and punished a such.

Now the book is intended to be a work relating to the Secretariat of the West Bengal Legislative Assembly, in which Dr. R. Basu attempts to state how the Secretariat in West Bengal has developed and its method of functioning. He has given certain opinion and comments which are not directly related to or connected with the affairs of the Secretariat of this Assembly, or it can also be stated that some comments are uncalled for. But the relevant part read as such -

‘The most unconstitutional and undignified action of the Governor of West Bengal was that the Governor appointed Shri K.K. Maitra, Secretary, Legislative Department of the Government also Secretary, West Bengal Legislative Assembly in addition to his own duties. Shri Maitra was put under the dual disciplinary control of the Executive as also of the Legislature. The intentions and purpose for setting up a separate Secretariat for Parliament and State Legislature would be clearly revealed from the speech of Dr. B.R. Ambedkar, the Law Member in the Constituent Assembly while moving the relevant article. He said:

In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative Department being appointed to act as the Secretary of the Legislative Assembly, with the result that officer is under a sort of a dual control, control exercised by the Department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.’

It is amply clear from the above speech that the framers of the Constitution denounced the holding of the posts double responsibility,...

And he goes on that way. This portion of the speech, Shri Subrata Mukherjee intends to say, is a direct attack on the office of the Governor and he (Dr. R. Basu) intends to denigrate the office of the Governor.

It is a fact of the history that at one point of time Shri K.K. Maitra, Secretary, Legislature Department was appointed Secretary of the Assembly Secretariat, with dual control of the Assembly Secretariat and the Legislature Department of the Government of West Bengal. We who believe in parliamentary democracy have always opposed the intermingling of Government and parliamentary Secretariat and dual control of one officer of these two Secretariats – Government and Parliament. We have always fought for the independence of Parliament and Parliamentary Secretariat. It was criticised at that time also in the press and other forums when this thing was done.

The question is that whether the language of Dr. R. Basu in making his comments is intended to denigrate the office of the Governor or not? You must keep it in mind that the Book is a treatise on the affairs of the working of the Legislature and the Secretariat. This portion is ancillary to the functioning of the Secretariat. It relates to an incident at a point of time of history when a certain incident took place. He intends to say that this thing should not take place and the Secretariat should function independently of Government control or of Government departments. I cannot agree with this that this is intended to denigrate the office of the Governor. He says it is unconstitutional and undignified. It is a matter of opinion. It can also be a matter of fair criticism.

This portion of the publication does not attract the provisions of the violation of any privilege of any Member nor does it intend to denigrate the sanctity 'or prestige of this House. It can be treated in the category of fair criticism and opinion which any democratic society should respect and recognise. In the other portion he goes on saying that "The role of the present Congress Opposition is disgusting". This portion appears at page 61 of the book. "The role of the present Congress Opposition is disgusting. The role played by the Opposition led by Shri Jyoti Basu checked the tendency of the Government, if any, to curb the independent position of the Secretariat. The present Congress Opposition has disintegrated, lacks knowledge of parliamentary- affairs and interest in the Legislature Secretariat affairs, and the will to prevent the growing tendency of the Government to curb the independent position of the Secretariat and the attitude of the -present Left Front Government has been turning this Parliamentary institution into a mockery of Parliamentary democracy. The opposition is expected and ought to be eternally vigilant but no one can expect any sort of vigilance from the Congress Opposition against the encroachment on the independence of the Legislature Secretariat. With the Treasury Bench enjoying a steady and comfortable majority the part played by the Opposition is not very enviable." Now in a treatise which primarily deals with the working of the Assembly Secretariat the opinion relating to the functioning of the Opposition party is entirely uncalled for. The comments that 'the role of the present Congress Opposition is disgusting' is uncharitable and very unfortunate. It should never be made in this form because the functioning of the Opposition inside a Parliament has no relation to the functioning of Secretariat of the Parliament. It has no relation whatsoever. There is no nexus between these two. It has no connection.

The functioning of the Government inside the Parliament has no connection with the functioning of the Secretariat. A person has the right to criticise in a democratic society. A person has the right to form an opinion. The media, press and every sector have the right to review and to give opinion and criticise. But when a senior member of the staff of this Secretariat through his writings discusses the working of the Secretariat and criticises the Opposition in a very uncharitable terms, then it proves that he has the intention to deal with the affairs of the Secretariat. But dealing with politics and giving opinion relating to politics is unfortunate. It should never be done because a member of the staff of the Assembly Secretariat has to be neutral and independent to all political parties as long as he works in the Secretariat. If he expresses any opinion, biased or unbiased, towards any political party then the very neutrality of the Assembly Secretariat comes into doubt. If a staff of the Assembly Secretariat expresses his opinion about political parties in the Assembly then the neutrality and independence of the Assembly Secretariat comes into question. It is a very serious matter. We have to be very cautious about all these things. This is unfortunate and it should never be done. I do not intend to send this matter to the Privilege Committee. But I do issue serious caution to Dr. R. Basu that he should be very careful in future. He is free to write as many books as he desires

to write. But he should know to what extent he can go and to what extent he cannot go. After he retires from the service he is free to write and he is free to make comments. But as long as he remains in service in the Assembly Secretariat he must not express his opinion either in favour of or against any political party or any member of the House. If he acts in such a manner that will go to the root of the neutrality of the Assembly Secretariat, and that creates a serious problem in the functioning of the Assembly Secretariat. It should never be done.

I hope he will behave himself with caution in future. With these words I would say that I do not like to send this matter to the Privilege Committee. It is disposed of accordingly.

It may be noted in his service record. I would expect all Assembly Secretariat staff to maintain the conduct and behaviour because the Assembly Secretariat has to be very neutral and independent. All political parties have their personal views and have their political views. Everybody has the right to maintain political views. But working in the Assembly Secretariat, they cannot express it. It is not fair.

(25) LOK SABHA (1994) :**Point of Privilege**

Notice to a Secretary-General Lok Sabha, from the Supreme Court of India, in connection with a Writ Petition (Civil) No. 246 of 1993

Facts of the case and ruling by the Speaker

On the 17th March, 1994, the Speaker (Shri Shivraj V. Patil) observed as follows :—

“I have to inform the House that on 9th March, 1994, a notice has been received from the Assistant Registrar of the Supreme Court of India in the matter of Writ Petition (Civil) No. 246 of 1993, requiring the Secretary- General, Lok Sabha, to appear before the Supreme Court personally or through counsel to show cause against the admission of the Writ Petition. The Writ Petition seeks to challenge. inter alia, the Constitutional validity of Section 8A of the Salary, Allowances and Pensions of Members of Parliament Act, 1954 as amended till 1982 vide the Salary, Allowances and Pensions of Members of Parliament (Amendment) Act. 1982.

As per well-established practice and convention of the House , the Secretary-General, Lok Sabha, has been asked not to respond to the notice. The Minister of State in the Ministry of Law, Justice and Company Affairs is being requested to take such action as he may deem fit to apprise the Supreme Court of India of the correct constitutional position and the well established conventions of the House.”

(26) Madhya Pradesh Vidhan Sabha (2003) :**Point of Privilege**

Questioning the ruling given by the Speaker, casting aspersions on the Speaker and the Vidhan Sabha Secretariat and staging a walk-out by members against the ruling of the Speaker.

Facts of the case and reference to the Committee

On 17 February, 2000, Shri Manvendra Singh, a member gave notice of a question of privilege against Shri Kailash Vijayvargiya, and Shri Brijmohan Agarwal, members for allegedly casting aspersions on the Chair as well as lowering its dignity. The member in his notice of question of privilege stated that on 7 February, 2000 a Government Resolution for adoption of Urban Land (Ceiling and Regulation) Repeal Act, 1999 was moved by the Revenue Minister. Shri Brijmohan Agarwal and Shri Kailash Vijayvargiya raised certain technical objections on the admissibility of the Resolution and demanded a ruling from the Chair on their technical objections. The Speaker, after hearing members from both sides, gave his decision overruling the objections of the members. After the Speaker gave his ruling, the members made allegatory remarks against the Chair and the Vidhan Sabha Secretariat which were expunged by the Speaker. The members thereupon staged a walk-out from the House. Shri Vijayvargiya thereafter repeated the expunged portions of the proceedings in the Press room which were carried by the newspapers published from Bhopal on 18 February, 2000. The member in his notice contended that as per well established parliamentary practice and conventions, neither any discussion is held on the ruling of the Speaker nor is it opposed. Hence, such behaviour of both the members on the ruling of the Speaker amounted to lowering its dignity as well as constituted a contempt of the House. The member also stated that Shri Kailash Vijayvargiya deliberately used derogatory language against the Chair and the Vidhan Sabha Secretariat knowing that it was not proper that is why he said that he was prepared to lose his membership. The member also raised the matter in the House on 18 February, 2000.

2. The Speaker, after considering the matter, referred it to the Committee of Privileges on 21 February, 2000 for examination, investigation and report.

Findings and Recommendations of the Committee

The Committee of Privileges after examining in person Shri Manvendra Singh and Shri Kailash Vijayvargiya, members and Shri Brijmohan Agarwal, the then member, as well as considering their written statements, in their Eighth Report presented to the House on 8 August, 2003, reported inter alia as follows :-

(i) "The Committee note that Shri Kailash Vijayvargiya and Shri Brijmohan Agarwal had raised some technical objections to the adoption of Government Resolution on Urban Land (Ceiling and Regulation) Repeal Act, 1999 introduced by the Revenue Minister and the Speaker after hearing the views of the members overruled their objections. As per well established parliamentary convention, the ruling of the Chair is not debated, opposed and no walkout staged thereon. Keeping this in view, the action of Shri Kailash Vijayvargiya, boycotting the House in protest against the ruling of the Speaker, cannot be justified."

(ii) "Committee also opine that even if Shri Kailash Vijayvargiya and Shri Brijmohan Agarwal did not call a Press Conference to air their views against the ruling of the Speaker, yet the fact remains that they did make certain comments in reply to queries from Press

correspondents on the expunged portion of the proceedings of the House.”

(iii) “Though Shri Vijayvargiya stated that the newspapers distorted his statements, the Committee are of the view that he did not refute or deny whatever appeared in the Press.

(iv) “The Committee are of the view that it is the responsibility of members to maintain the dignity and decorum of the Chair as well as that of the House.”

(v) “The Committee feel that undoubtedly the members have a right to protest or disagree but that too within the parameters of parliamentary rules and procedures and if the rules and procedures are violated by members it does tend to lower the dignity and decorum of the House.”

(vi) “The Committee also feel that comments made inside or outside the House by members regarding proceedings of the House are against the parliamentary conventions as it has been the convention of the House that the decisions of the Chair are not commented upon.”

(vii) “The Committee are of the view that members should maintain parliamentary dignity, conventions and strictly adhere to the rules framed for the purpose.”

(viii) “The Committee expect that conduct of senior members would set an example for new members.”

Action taken by the House

No further action appears to have been taken by the House, in the matter.

(27) LOK SABHA (2008) :**Point of Privilege**

Casting of reflections on the impartiality of the Speaker, Lok Sabha in news-items published in 'The Free Press Journal' and 'The Business Standard' dated 29 September, 2008.

Facts of the case and reference of matter to the Committee of Privileges

2. On 29 September, 2008 a news-item appeared in 'The Free Press Journal', Mumbai edition under the caption "Partial Expulsions" which inter-alia reported as follows :-

"It is remarkable that of all the MPs who have been expelled from the Lok Sabha so far for defying the anti-defection law, a vast majority are those who had voted against the Government in the recent trust vote... Indeed, in the opposition circles the credibility of the Lok Sabha Speaker, Somnath Chatterjee has further suffered because of his failure to proceed equally promptly against pro -Government defectors. Also the Speaker's role in not initiating the impeachment process against the Calcutta High Court Judge despite such a course being canvassed by the Chief Justice of India too has attracted adverse comment. It is pointed out that the said Calcutta High Court Judge had begun his legal career as a junior in Chatterjee's chamber and had later worked with his son. Whether accidental or deliberate, the truth is that the Lok Sabha was yet to take the first step in initiating the impeachment process."

3. Similarly, on 29 September, 2008 another news-item appeared in 'The Business Standard', New Delhi under the caption "Not so impartial" which inter-alia reported as follows :-

"Of the MPs who have been expelled from the Lok Sabha for flouting the anti-defection law, the vast majority are those who voted against the Government in the recent anti-trust vote... What is even more curious, Speaker Somnath Chatterjee has not initiated the impeachment process against a Calcutta High Court Judge despite the Chief Justice of India being in favour of this."

4. On 1 October, 2008, the Speaker, Lok Sabha in exercise of his powers under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha referred the matter to the Committee of Privileges for examination, investigation and report.

Findings, conclusions and recommendations

5. The Committee of Privileges, after hearing in person Shri T.N. Ninan, Editor, 'The Business Standard' and Shri Virendra Kapoor, Consultant Editor, 'The Free Press Journal', in their Thirteenth Report presented to the Speaker, Lok Sabha on 16 December, 2008 and laid on the Table of the House on 19 December, 2008 reported inter-alia as follows :-

(i) The issue before the Committee is whether in the news-items carried by 'The Business Standard' and 'The Free Press Journal' reflections had been cast on and motives imputed to the Speaker, Lok Sabha.

(ii) The Committee at this juncture would like to invite attention to the well established position as laid down in "Practice and Procedure of Parliament" by Kaul & Shakhder (5th edn.) that reflections on the character and impartiality of the Speaker in the discharge of his duty, constitute a breach of privilege and contempt of the House."

The Committee further note that in the Erskine May's treatise on 'The Law, Privileges, Proceeding and usage of Parliament', it has been laid down that the "reflections on the character of the Speaker and the accusation of partiality in the discharge of his duty have been held to constitute breaches of privileges and contempt".

(iii) The Committee note that the news-item published in ‘The Free Press Journal’ alleged that the Speaker, Lok Sabha has not proceeded ‘promptly against pro-Government defectors’ while the news-item published in ‘The Business Standard’ stated that majority of members expelled were “those who voted against the Government those who voted with the Government defying the Whip of BJP and other opposition groups are still to be expelled. Furthermore in both the news-items allegations have been made against Speaker, Lok Sabha for not initiating impeachment proceedings against a Judge of Calcutta High Court.

(iv) The Committee are constrained to observe that both the news-items created an impression that the Speaker was delaying disqualifying those members who defied party whip to vote in favour of the Government. The Committee find it pertinent to bring it on record that as a matter of fact the Speaker had passed orders disqualifying three members (Shri Kuldeep Bishnoi, Shri Jaiprakash and Prof. S.P. Bhagel) who had failed to respond to any communications issued by the Lok Sabha Secretariat, seeking their comments on petitions filed against them and also did not appear for hearing. Under the circumstances their cases were heard ex-parte. In all other cases the respondents had sought extensions on various grounds, which were granted by the Speaker.

(v) The Committee also note that the allegations contained in both the news reports regarding not initiating proceedings by the Speaker against Calcutta High Court Judge were a result of ignorance on the part of the newspapers of the legal provisions as to the impeachment of a judge of the High Court. Section (3) of the Judges (Inquiry) Act, 1968 provides that the Speaker, Lok Sabha can admit a motion for presenting an address to the President praying the removal of a Judge if notice of such a motion is given by not less than one hundred members of the House. Under these circumstances, unless a proper notice is given as stipulated under the Judges (Inquiry) Act, 1968, the Speaker cannot suo motu initiate any proceedings for impeachment.

(vi) The Committee would wish to emphasise here that the office of Speaker, Lok Sabha is a Constitutional office and enjoys an exalted status in our democratic set up. This office has to be held in utmost reverence as it, in itself, is an institution. Be it press or anybody else, each and every statement/remark/observation made about the office of the Speaker, Lok Sabha should be made with utmost care and circumspection.

The Committee lament to note that in the news items published by ‘The Business Standard’ and ‘The Free Press Journal’, what to talk about expected reverential niceties, even basic norms of discretion and circumspection seem to have been thrown to the winds. Decisions made by the Speaker, Lok Sabha under the Tenth Schedule to the Constitution and removal of a Judge of High Court, require adherence to well laid down procedure as envisaged in the Constitution and relevant Rules. Before commenting on any such matters, due verification of facts and legal positions becomes a sine qua non for any newspaper. For newspapers like ‘The Business Standard’ and ‘The Free Press Journal’, it should not have been difficult at all to just check up the facts and then report. For the ‘The Business Standard’ whose forte is basically economic matters, it was all the more essential to thoroughly check the facts while reporting about a constitutional authority like Speaker, Lok Sabha. Had they been careful, this kind’ of malicious reporting would never have been taken place.

(vii) “Coming to the article by Shri Virendra Kapoor of ‘The Free Press Journal’, the Committee are simply aghast at what he wrote. He is a journalist with long experience.

How could he have authored such a factually incorrect, baseless and malicious column is beyond comprehension? Regarding decisions given by Speaker, Lok Sabha under the Tenth Schedule to the Constitution, had he made some enquiries, he would have got his facts right. As regards the matter regarding impeachment proceedings against a Judge of the Calcutta High Court, he only needed to refer to relevant legal provisions. But he didn't appear to do either of these or rather didn't care to do so.

Was it sheer recklessness on the part Shri Virendra Kapoor or did he act with malice while writing the impugned article in 'The Free Press Journal'? The Committee wonder. In either case, Shri Kapoor displayed a thoroughly unprofessional approach which in the Committee's view tantamounts to journalistic misdemeanour. The matter doesn't end here. The Editor and Publisher too have a vicarious liability for going ahead with publication of the news item/column.

(viii) The Committee are constrained to observe that both the news-items have unnecessarily alleged bias casting reflections on impartiality of the Speaker and thereby lowered the dignity of the office of the Speaker, Lok Sabha.

(ix) "The Committee, are therefore, of the view that Shri Virendra Kapoor, Consultant Editor of 'The Free Press Journal' and concerned Correspondent/ Columnist of the feature 'Chinese whisper' the column under which, the impugned news write up was published in 'The Business Standard' dated 29 September, 2008 are guilty of breach of privilege and contempt of the House. The liability for publication of such baseless and derogatory news items is also upon Managing Editor & Publisher of 'The Free Press Journal' and the Editor of 'The Business Standard'."

(x) "The Committee note here that the Committee of Privileges (14th Lok Sabha) in their Fourth Report presented to the House on 19 May, 2006 had observed as follows :-

'..... there is no gainsaying the fact that press is an indispensable asset to any democracy. The Committee therefore, feel that the Press being the prime and principal medium for purveying information, must ensure that whatever gone in print must have the hallmark of veracity

(xi) "The Committee take note that the Free Press Journal in its issue of 7 October, 2008 published the following clarification :-

'In our column, inside story, on Monday, September 29, we had taken note of the criticism in the opposition circles regarding the expulsion of a few MPs under the anti-defection law and the still pending action against a number of other members who had defied the respective party whips during the recent trust vote in the Lok Sabha. There was no intention whatsoever to cast an aspersion on the conduct of the Lok Sabha Speaker, Somnath Chatterjee. Nor was there any desire on our part to question his impartiality and independence in the matter of the proposed impeachment of a judge of the Calcutta High Court. The impugned item had merely taken note of the ill-informed criticism heard in certain opposition quarters. We had no intention to question the impartiality and Independence of the Hon'ble Speaker. If any such impression was created, we offer our sincere apologies.—Editor'."

(xii) The Committee also take note that 'The Business Standard' in its issue dated 6 October, 2008 also published a clarification which is as follows:-

‘In the piece, ‘Not so impartial,’ in Chinese whispers on September 29, we had no intention to comment on the independence and impartiality of the Lok Sabha Speaker Somnath Chatterjee. We regret any such impression the piece may have created and offer our sincere apologies;.’

(xiii) The Committee are of the view that by publishing such factually incorrect, baseless and malicious political matters by the newspapers, without verifying the facts, which cast reflections on the impartiality of the Speaker, and thereafter issuing clarification, cannot apply balm to the damage it has already caused to the institution of the Speaker.

(xiv) The Committee are of firm view that the Editors or correspondents of newspapers in future should not only be extra careful but also verify the facts while reporting about the institution of the Speaker, which has a very vital place in a parliamentary system.

(xv) The Committee observe that Editors of both the newspapers as well as the Consultant Editor of the Free Press Journal have apologized for publishing the impugned news-items in their newspapers and have also published corrections in their respective news papers subsequently.

(xvi) The Committee of Privileges of Seventh Lok Sabha in their First Report presented to the House on 8 May, 1981, observed inter-alia as follows:-

The Committee feel that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution is, the great restraint is called for particularly in exercising its penal jurisdiction’.

(xvii) “The Committee also note that it is the tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by taking no further notice of the matters.”

(xviii) The Committee, keeping in view the well established tradition and the apologies tendered by Shri T.N. Ninan, Editor, ‘The Business Standard’, Shri Virendra Kapoor, Consultant Editor, ‘The Free Press Journal’ and Shri GL. Lakhotia, Managing Editor & Publisher, ‘The Free Press Journal’, are of the view that no further action needs to be taken in the matter.

(xix) “The Committee while deprecating such casual and reckless attitude of Shri Virendra Kapoor, Consultant Editor of ‘The Free Press Journal’ and concerned Correspondent of ‘The Business Standard’ as also the Editors and Publishers of the ‘The Free Press Journal’ and ‘The Business Standard’ and cautioning them to be more circumspect and discreet in future while reporting about matters pertaining to the institution of the Speaker, Lok Sabha, recommend that the matter be treated as closed.”

Action taken by the House

No further action was taken by the House in the matter.

(28) WEST BENGAL LEGISLATIVE ASSEMBLY (2011):**Point of Privilege**

Alleged obstruction to Speaker in discharge of his duties and assault on him.

Facts of the case

On 30 July, 2010 Shri Rabindra Nath Mandal and seven other, members gave notice of question of privilege against Shri Firhad Hakim, Shri Aroop Biswas and Shri Dibyendu Adhikary, members for causing obstruction to the Speaker in the performance of his parliamentary duties. The alleged incident occurred in the West Bengal Legislative Assembly at the time of taking up a Motion in the House on 29th July 2010. The members alleged that Shri Firhad Hakim, Shri Aroop Biswas and Shri Dibyendu Adhikary, members rushed towards the Speaker to assault him immediately after he adjourned the House for the day. Due to this act of the members, the Speaker fell seriously ill and had to be taken for immediate medical treatment.

2. Shri Tapan Hore, one of the members who gave notice of question of privilege was permitted by the Speaker, to raise the matter in the House after the question hour on 30th July, 2010. After a brief discussion on the matter, the Speaker ruled, inter alia, as follows :—

“Members concerned are not present. It cannot be taken up today in their absence. I have to hear them before taking a decision.....This matter will be taken up in the next session.”

3. During the next session of the Assembly, on 22nd December, 2010, the Speaker informed the House that he had received representations from the three members complained against and also from the Leader of the Opposition stating that the three members were not served with the notice of question of privilege and that they would not be attending the House due to pre-occupations. The Speaker then instructed the Assembly Secretariat to serve the copies of the notice to the concerned members by that day and ruled that the matter would be taken up on the next day i.e. on 23rd December, 2010.

4. On 23rd December, 2010, when the matter was again taken up in the House, the said three members, were again absent from the House without any intimation. The Speaker then observed inter alia, as follows :—

“Anyway, I fix 27th at 12 noon as the last chance to the 3 members to appear before the House and explain their conduct. If they do not appear on that date, ex-parte decision will be taken.”

5. On 27th December, 2010, the Speaker, while taking up the matter, read out a letter received from the Leader of Opposition which stated that the aforesaid three members would not attend the House on that day following the decision of their Legislative party to boycott the Session. The Speaker ruled that the matter would be taken up in the House in its next session.

6. During the next Session, i.e. Budget Session it was decided that the matter would be taken up in the House on 22nd March, 2011 and accordingly, three members complained against as also the Leader of Opposition were informed to be present in the House on that day. But they failed to turn up. The Chair observed that the matter would be taken up in the House on 23rd March, 2011 and that the failure of three members to attend the House on that day could lead to ex-parte decision.

7. On 23rd March, 2011, the matter was again taken up and the three members complained against were not present in the House on that day too. Finally, the Speaker observed, inter alia, as follows :-

“They are not present even today. Now, it appears that they have intent and purpose to avoid being present in the House. When a direction is made on the floor of the House, no separate notice has to be given. That is the procedure. Time and again, announcements have been made from the Chair but unfortunately, members have refused to attend. Now the intention behind giving notice and affording a chance to be present is to give an opportunity to the members to explain their conduct. A member might have something to say or he may express his regrets and apologize for what has happened. On the spur of the moment, something may happen. The member might not have- intended to do it but it has happened. He may express regret and say ‘ sorry and the matter ends over there. But obviously they have intent not to appear; that means they have nothing to explain. Very blatantly, it is a challenge to the House and the Chair. What do we do in that case? Will we take it lying down? Will we accept what has happened or do we record our protest according to the rules and take steps accordingly. My opinion is we should take steps accordingly. And as such, members should be warned that they should not behave in this manner in future. I would not be in the Chair in the next House. I am not well. I am not contesting the election. Someone else would be here. But the House would go on. And we must keep in mind that the House, the will of the people is much greater than any individual who presides over the House. We are the will of the people of West Bengal, the cumulative will. They send 294 elected members and one is nominated by the Governor from the Anglo-Indian Community. 295 members will represent the will of the people of West Bengal, as the Members of the Lok Sabha represent the will of the people of India. As the representatives of the people of West Bengal, will we accept what has happened? If we do not accept, then we will have to take steps.”

Action Taken by the House

Thereafter, the Minister-in-Charge of the Department of Parliamentary Affairs moved the following Motion which was adopted by the House :-

“This House resolves that Shri Firhad Hakim, Shri Aroop Biswas and Shri Dibyendu Adhikary - all members of the Assembly, having been found guilty of contempt of the House be suspended from the Services of the House till the end of the current session.”

(29) LOK SABHA (2011) :**Point of Privilege**

Alleged casting of aspersions on and imputing motives to the Speaker, Lok Sabha in an article published in a newspaper.

Facts of the case and reference to the Committee of Privileges

On 25 November, 2011, Shri Asaduddin Owaisi, Shri Jagdambika Pal and Shri E.T. Mohammad Bashir, MPs gave a joint notice of question of privilege against 'The Statesman' newspaper for casting aspersions on and imputing motives to the Speaker, Lok Sabha in an article published in its New Delhi edition dated 24 November, 2011 under the caption 'Right to Resign.' The Members contended that the newspaper had criticized the decision of Hon'ble Speaker in rejecting the resignations of 12 Members of the Lok Sabha after 134 days, who had tendered their resignations from Lok Sabha on the issue of creation of a separate Telangana State in July, 2011. Further, the newspaper also imputed ulterior motives to the decision of the Speaker in rejecting the resignations of these MPs, after a prolonged gap. The Members contended that casting of such aspersions on the Speaker amounted to breach of privilege of the House and sought action against the Editor of 'The Statesman' for the same. The Members requested that the matter may be referred to the Committee of Privileges for examination and report.

2. On 28 November, 2011, the Speaker Lok Sabha in exercise of her powers under Rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for examination, Investigation and report.

Findings, Conclusions and Recommendations of the Committee

3. The Committee of Privileges after examining Sarvashri E.T. Mohammed Bashir, Jagdambika Pal and Asaduddin Owaisi, MPs, and Shri Ravindra Kumar, Editor and Managing Director of the Statesman and perusing the material on record in their Third Report presented to the House on 26 February, 2013, reported *Inter alia* as follows :—

(i) "The Committee, before coming to their findings and conclusions, would like to briefly dwell upon three main points made by Shri Ravindra Kumar during his evidence before the Committee and also through his written submissions."

(ii) "The first point, on which Shri Ravindra Kumar laboured at length, was that since privileges of Parliament are not codified, it-is not possible for a common man like him to understand what action would come under the purview of breach of privilege."

(iii) "The Committee would like to observe that the plea taken by Shri Ravindra Kumar that non-codification of Parliamentary Privileges in other respects as per the provisions of clause 3 of Article 105 of the Constitution makes it difficult for him to make a clear cut judgement about what action may lead to a breach of privilege of the Parliament or otherwise is hopelessly without any merit. The non-codification of privileges does not give a mandate to any person particularly as learned editor of a leading newspaper who is also an erudite scholar to feign ignorance of the basic principles of Parliamentary Privileges as per the practices and conventions of Parliament. The Committee are of the view that the use of derogatory words in an article published in a newspaper about the Speaker leaving apart it being a breach of privilege is in the first instance a breach of Journalistic principles and ethos. The Committee are of the view that the Journalist in an 'Editor' does not require any training to judge the usage of words which may commonly

be felt offensive by an ordinary reader of a newspaper. The Committee would further state that a plea regarding non-codification of Parliamentary Privileges was taken by Shri Ravindra Kumar even on an earlier occasion when he had appeared before the Committee of Privileges in 2005. On that occasion the Lok Sabha Secretariat had provided him with a compendium of privilege cases compiled by the Secretariat listing the various instances of breach of privilege relating to casting reflection on and imputing motives on the Speaker to enable him to prepare his defence in that case. Further, the Committee notes that Shri Ravindra Kumar has taken great pains in studying and quoting position of Parliamentary Privileges as obtaining in Australia, UK and the efforts to codify them. The Committee, therefore, finds it difficult to come to terms with his so called ignorance of the Parliamentary Privileges flowing from clause 3 of article 105 of Indian Constitution. The Committee are convinced that had Shri Ravindra Kumar bothered to take even a fraction of that pain by consulting some authoritative book on parliamentary procedure before writing the editorial, he would have refrained from entering upon this misadventure. The Committee are also of the view that it does not behove an Editor of a leading newspaper to invoke flimsy grounds and seek shelter behind his ignorance of Parliamentary Privileges on account of their non-codification.

(iv) “The Committee would also like to observe that the second contention of Shri Ravindra Kumar that a decision taken by the Speaker on file is not a Parliamentary Proceeding and hence criticism of the same in a newspaper does not lead to the breach of privileges of the House, lacks merit. The Committee in this regard would like to reiterate the well established position that “the Speaker’s decision is equally binding whether given in the House or on a departmental file”. Further, the Speaker is not bound to give reasons for his decisions. Members are debarred from criticizing directly or indirectly, inside or outside the House any ruling given, opinion expressed or statement made, by the Speaker. Thus, public criticism of a decision taken by the Speaker is a case of breach of privileges of the House. It is needless to say that the Speaker is the all important conventional and ceremonial head of the Lok Sabha. The Speaker’s authority is based on his absolute and unvarying impartiality the main feature of his office, the law of its life. The obligation of Speaker’s impartiality is even incorporated in the Constitutional provisions which entitles him to vote only in the case of equality of votes. To question the impartiality of the Speaker and imputing motives behind her decisions is a clear case which amounts to a breach of privilege of the House.

(v) “The drift of the third point made by Shri Ravindra Kumar was that while his reporters are supposed to verify facts before filing reports, the Editor of the Statesman is under no such obligation while writing the Editorial.”

(vi) “The issue before the Committee is whether the article captioned ‘RIGHT TO RESIGN — Speaker’s action unconstitutional’ published in ‘The Statesman’ datelined 24 November, 2011 cast reflections on and imputed motives to the Speaker, Lok Sabha.”

(vii) “The Committee note that the thrust of the article in question was on the matter of acceptance of the resignations of twelve Members of Lok Sabha by the Speaker on the issue of demand for Statehood to Telangana. The Committee find that at the very outset even a cursory reading of the impugned article would show that not only aspersions were cast upon the Speaker of Lok Sabha but partisan motives were also imputed to her. Further, the impugned article is replete with derogatory references to the Speaker, Lok Sabha.’

(viii) “The Committee are of the view that the following references are derogatory, damaging and question the impartiality of the Speaker :—

“...Shame on her.’

‘... The only reason for the Speaker to reject them can be to prevent any erosion of the UPA strength in the Lok Sabha. If so, this is not the Speaker’s job.’

‘...Meira Kumar by refusing to accept the resignation of the 12 Members, has devalued the office of the Speaker...’

‘...With the active collaboration of a person (meaning Speaker) expected to be above partisan politic.’”

(ix) “The Committee take note of the defence taken by Shri Ravindra Kumar and find that the said editorial is neither a fair comment nor a reasonable criticism.’

(x) “The Committee would like to reiterate the recommendations made by the Committee of Privileges (Second Lok Sabha) in their, Thirteenth Report, presented to the House on 11 August, 1961 in the *Blitz case inter-alia* stating as follows :—

‘Nobody would deny the press, or as a matter of fact, any citizen, the right of fair comment. But if the comments contain personal attacks on individual Members of Parliament on account of their conduct in Parliament or if the language of the comments is vulgar or abusive, they cannot be deemed to come within the bounds of fair comment or justifiable criticism. Even the Press Commission (1954) held the view that ‘comment couched in vulgar or abusive language is unfair’. Nor can ‘fair comment’ be stretched to include irresponsible sensationalism. ... One of Shri Karanjia’s main contention is that article 105(3) of the Constitution, which provides that “the powers, privileges and immunities of each House of Parliament, and of the Members and the Committees of each House 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 this Constitution’, must be read as subject to article 19(1)(a) which guarantees to all citizens the fundamental right to freedom of speech and expression’, which includes within its scope the freedom of the Press. Shri Karanjia seems to imply thereby that any action taken by Lok Sabha against any newspaper for a breach of privilege and contempt of the House, in pursuance of its powers and privileges under article 105(3), would violate article 19(1)(a) and be void in terms of article 13. This contention is wrong and cannot be accepted. The provisions of article 105(3) [as also of article 194(3)] are constitutional laws and not ordinary laws made by Parliament (or a State Legislature) and therefore they are as supreme as the provisions of Part III of the Constitution. The provisions of article 19(1)(a) of the Constitution, which are general must therefore yield to the latter part of article 105(3) which are special. The correct position in this regard has been stated by the Supreme Court in the Searchlight Case.’

The Committee further observed :—

‘It must, however, be remembered that being only a right flowing from the freedom of speech and expression, the freedom of the Press does not stand on a higher footing than the freedom of speech and expression enjoyed by a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of speech and expression of a citizen. Actually, a newspaper writer should be more cautious than a private citizen as his criticisms are widely publicized. The Committee are, therefore, of

the view that the impugned dispatch constitutes a breach of privilege and contempt of the House’.”

(xi) The Committee further note that in the *Times of India case*, the Committee of Privileges (Sixth Lok Sabha) in their Fourth Report presented to the House on 22 March, 1979, *Inter-alia* observed :—

‘The Committee are conscious that the freedom of the Press is an integral part of the fundamental right of the freedom of speech and expression guaranteed to all citizens under article 19(1)(a) of the Constitution. The Committee consider it important that in a Parliamentary system, the Press should enjoy complete freedom to report the proceedings of Parliament fairly and faithfully. If, however, freedom of the Press is exercised *mala fide*, it is the duty of Parliament to intervene in such cases. At the same time, the Committee are of the view that Parliamentary privilege should in no way fetter or discourage the free expression of opinion or fair comment’.”

(xii) “The Committee here again would like to reiterate that the Committee of Privileges have all through upheld freedom of speech and expression of the Press and their right of fair comment. It has, however, been held that Parliament has a right to intervene in the event of *mala fide* exercise of this freedom or if comments are made with malice.”

(xiii) “The Committee would like to invite attention to the well established position laid down in Practice and Procedure of Parliament by Kaul and Shakhder (6th edn.) as follows :—

‘...It is the right of the Speaker to interpret the Constitution and rules so far as matters in or relating to the House are concerned. And no one, including the Government can enter into any argument or controversy with the Speaker over such interpretation. His rulings constitute precedents by which subsequent Speakers, Members and officers are guided. Such precedents are collected, and in course of time, formulated as rules of procedure or followed as conventions. The Speaker’s rulings, as already stated, cannot be questioned except on a substantive motion.

A Member who protests against the ruling of the Speaker commits contempt of the House and the Speaker. **The Speaker’s decision is equally binding whether given in the House or on a departmental file.** He is not bound to give reasons for his decisions’.”

(xiv) “The Committee note that there is absolutely no time limit prescribed in Clause 3(b) of Article 101 of the Constitution under which the Speaker is bound to accept or reject the resignations submitted by the Members of Parliament.”

(xv) “The Committee find that on an earlier occasion also the Committee of Privileges (14th Lok Sabha) in their 4th Report had strongly deprecated the reckless and irresponsible behaviour of Shri Ravindra Kumar and had cautioned him to be more careful in future and refrain from such journalistic misdemeanours and exercise due restraint and discretion in such matters.”

(xvi) “The Committee while upholding the freedom of press, its role and importance in a democratic polity, wish to state that as every right carries with it a corresponding responsibility, every freedom carries with it an obligation. The Committee are of the view that it is primarily for the Press itself to determine what are its responsibilities and obligations, *vis-a-vis* its freedom.”

(xvii) “The Committee of Privileges note the following recommendations made by the Select Committee on Parliamentary Privileges of House of Commons, UK, (1967) :—

“The House should exercise its penal jurisdiction (a) in any event as sparingly as possible, (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its officers from such improper obstruction or attempt at or threat of obstruction as is causing or is likely to cause substantial interference with the performance of their respective functions’.”

(xviii) “The Committee further note that adopting the above approach the Committee of Privileges of Seventh Lok Sabha, in their First Report presented to the House on 8 May 1981, observed *inter alia* as follows :—

“The Committee feel that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution is, the greater restraint is called for particularly in exercising its penal jurisdiction’.”

(xix) “The Committee further note that it is the tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such case to best consult its own dignity by taking no further notice of such matters.”

(xx) “The Committee also note that Shri Ravindra Kumar, Editor and Managing Director of ‘The Statesman’ has expressed his apology in two parts in ‘The Statesman’ on 15 and 16 July, 2012. The Committee are of the view that adequate amends have been made by Shri Ravindra Kumar by his expression of regrets during his oral evidence before the Committee as well as through his correcting statement published in ‘The Statesman’ on 15 and 16 July, 2012.”

(xxi) “The Committee hope that Shri Ravindra Kumar would in future refrain from such journalistic misdemeanours and exercise due restraint and be more careful while commenting on a Constitutional functionary like the Speaker, Lok Sabha.”

(xxii) “In view of the foregoing discussion and keeping in view the unqualified regrets expressed in the matter by Shri Ravindra Kumar, the editor of the ‘The Statement’. the Committee recommend that no further action needs to be taken in the matter and it may be treated as closed.”

Action Taken by the House

4. No further action was taken by the House in the matter.

(30) RAJYA SABHA (2010)**Point of Privilege**

Alleged misbehaviour with a member by the CEO and MD of Industrial Finance Corporation of India Ltd (IFCI).

Fact of the Case and reference to the Committee of Privileges

On 16 January, 2010, Shri Rajiv Pratap Rudy gave a notice of question of breach of privilege addressed to Dy. Chairman, Rajya Sabha against the Chief Executive Officer (CEO) and Managing Director (MD) of Industrial Finance Corporation of India Ltd. Shri Atul Kumar Rai, for misbehaving with and showing disrespectful behaviour towards him. The Member contended that on 14 January, 2010, he had gone to meet Shri Atul Kumar Rai in connection with rehabilitation of *Marhowrah and Padrouna Sugar Works*, a Company declared sick by Board for Industrial and Financial Reconstruction (BIFR) and which had appointed IFCI as the operating agency to revive it. Shri Rudy wanted to know the latest position in the matter from the CEO. During discussion, when he pointed out the discrepancies in the approach of IFCI, the CMD was loud and argumentative in his reply and made abusive gestures and also said that he would not tolerate such a person (Shri Rudy) in his room.

When Shri Rudy asked him to exercise restraint, Shri Rai allegedly started screaming at the top of his voice and threatened to call the security and get Shri Rudy thrown out of his office. On the basis of the above mentioned allegation of misbehaviour by Shri Rai, Shri Rajiv Pratap Rudy requested that the case may be examined by the Committee of Privileges, Rajya Sabha, to ascertain full facts and do justice in the matter.

2. The notice of Shri Rudy was forwarded to Shri Atul Kumar Rai, for his comments in the matter. Shri Rai *vide* his comments dated 18 February, 2010 submitted, *inter alia*, that he had the highest regard for Shri Rajiv Pratap Rudy, Member, Rajya Sabha, both at personal level and as a member of Parliament. He further stated that Shri Rudy had called him earlier to request him to initiate action for sale of a sugar unit in which IFCI was appointed as an Operating Agency by the BIFR. According to Shri Rai, when Shri Rudy came to his office, he was received with all courtesy, treated with dignity and respect due to him as a member of Parliament, at all times. He further stated that he did not utter a single word which was in any sense disrespectful. According to him, he took all manner of insults quietly and humbly and said or did nothing in the course of the meeting to arouse even a suspicion of anything but the highest regard for Shri Rudy. Shri Rai further informed that, subsequently, Shri Rudy lodged a complaint in the local Police Station against him and he had also been interrogated by the police in this connection. He further mentioned that following the meeting with Shri Rudy, it was decided to approach BIFR with a request to appoint another agency as Operating Agency with reference to the case and relieve IFCI from the assignment, which, according to Shri Rai, was the outcome of the meeting and in accordance with the wishes of Shri Rudy. Shri Rai, in the end, submitted that in spite of his best endeavours to show highest degree of respect and courtesy to the Hon'ble Member, if there was a sign of suffered injustice on his own part, which caused Shri Rudy the slightest irritation, he tenders his unconditional and unequivocal apologies for the same. He, accordingly, requested that the matter may be treated as closed.

3. Shri Rudy, to whom the comments of Shri Rai were forwarded, *vide* his letter dated 9 March, 2010 expressed dissatisfaction over the reply of Shri Atul Kumar Rai. He alleged that

Shri Rai's response skirted the main issue and tendered a misleading apology. According to Shri Rudy, Shri Rai preferred to ignore the main charge and instead, in the garb of carefully drafted words, he chose to cast aspersions on him.

4. Shri Rudy contended that it was he who was aggrieved and who had complained at all levels, not Shri Rai, Shri Rudy further stated that Shri Rai, by tendering unconditional apology, had contradicted his own stand that nothing ever happened. In this backdrop, Shri Rudy made the following specific submissions :—

- (i) Shri Rai outrightly rejected the charges without giving an explanation;
- (ii) Shri Rai preferred to blame Shri Rudy instead of acknowledging his mistake;
- (iii) Shri Rai contradicted himself by offering an apology and stating that nothing had ever happened;
- (iv) Shri Rai further advantaged the incumbent by being instrumental in initiating another legal process by offering to be relieved as an operating agency and hence ensuring *further* delay in the implementation of orders of BIFR and vindicating Shri Rudy's charge; and
- (v) The statement of Shri Rai was not only false and misleading but also mischievous once read carefully.

5. Shri Rudy pleaded that if such instances and misdemeanours were ignored and allowed to go scot free, then the people, who have great faith in the august Parliamentary Institutions, would be completely shattered. He also submitted that any pardon without examination of facts, which impaired his parliamentary obligation, would adversely affect the morale and credibility of all those public representatives, who intended to discharge their parliamentary responsibilities with dignity and respect. Shri Rudy finally argued that since the response of Shri Rai was far from the truth, he would request to get the entire matter examined by the Privileges Committee.

6. The matter was placed before the Chairman, Rajya Sabha, along with the aforesaid facts, who, under rule 203 of the Rules of Procedure and Conduct of Business in the Council of States, referred it to the Committee of Privileges for examination, investigation and report.

Findings, Conclusions and Recommendations of the Committee

7. The Committee of Privileges after examining Shri Atul Kumar Rai, CEO & MD of IFCI, the Secretary, Department of Financial Services, officers of Department of Personnel and Training and examining the documents on record, in its Fifty-seventh Report presented to the House, on 13 December, 2011, reported *inter alia* as follows :—

- (i) "The Committee, at the outset, would like to make it clear as to why in the instant issue, which pertains to the question of breach of privilege arising out of the alleged misbehaviour by Shri Atul Kumar Rai with Shri Rajiv Pratap Rudy, Member, Rajya Sabha, it could not restrain itself from some sort of deviation from its main issue. **As a matter of fact, due to certain disclosures which emerged during the examination of Shri Rai and the officers of the Department of Financial Services, the Committee felt that, apart from the issue of breach of privilege, there were certain other issues of a more serious nature underlying the whole matter. The Committee, therefore, endeavoured to go deep into those issues instead of keeping them aside. The Committee feels that while examining and**

investigating the issues of breach of privilege of Parliament and its Members, if certain issues which smell of undue favour to some individuals in blatant violation of rules by those at the helm of affairs in the Government crop up, it becomes the responsibility of the Committee, being the representative of the highest institution of democracy, to seriously consider such collateral issues too. It was for this reason that the Committee seriously considered the issues like voluntary retirement of Shri Atul Kumar Rai, his appointment in IFCI immediately thereafter huge financial assistance given to IFCI by the Government, control of the Government on IFCI, etc.”

(ii) “In so far as the core issue pertaining to the complaint against Shri Rai for his alleged misbehaviour and thereby, causing breach of privilege of the Member, Shri Rudy, is concerned, the Committee notes that initially, Shri Rai, through written reply, submitted, his ‘unconditional and unequivocal apologies’ for the incident. Though in the same letter, he has admitted that Shri Rudy has also filed an FIR against him in the local Police Station, following the incident. Further, in his written reply he stated that he took all manner of insults quietly and humbly. During his oral evidence before the Committee, he categorically denied that he misbehaved with Shri Rudy and also expressed apology if his attitude had hurt Shri Rudy in any manner. The Committee finds that there is contradiction in the statements of Shri Rai and, therefore, doubts their truthfulness. **The Committee is of the view that had there been no incident of misbehaviour or if the tenor of proceedings when Shri Rudy was talking to Shri Rai had not turned acrimonious, Shri Rudy would not have gone to file an FIR with local Police and, thereafter, given a notice of breach of privilege to the Chairman, Raiya Sabha. In the given circumstances, the Committee would have accepted and appreciated a straight forward expression of regret and submission of an apology from Shri Rai, instead of giving various contradictory explanations, denying the very facts of the incident and then apologizing before the Committee. The Committee, therefore, does not accept his unconditional apologies which are, in fact, conditional apologies.**”

(iii) “The Committee is, therefore, of the opinion that Shri Rai must have said or done things which had hurt the dignity of a Member of Parliament and his rude behaviour had prompted Shri Rudy to not only give a notice of breach of Privilege but also file an FIR with the local Police. **The Committee affirms its belief that Shri Rai must have misbehaved with Shri Rudy on the basis of the unbecoming behaviour that was observed by the Committee when he appeared before it.**’

(iv) “When Shri Rai appeared before the Committee on 14 May, 2010, and the Committee put some preliminary questions to him, he **replied to them in a conspicuously arrogant manner. He was argumentative and, in utter disregard of the august body, kept his tone and tenor at a high pitch, though later he apologized on being cautioned. The Committee expects that Shri Rai, who had been in responsible positions during his service in the Government, must be aware of the manner in which a Parliamentary Committee should be treated and, therefore, expresses its displeasure over the behaviour of Shri Rai while being examined by the Committee.**”

(v) “While being examined by the Committee, Shri Rai categorically stated that IFCI was not an instrumentality of the State and there was no substantial interest of the

Government in IFCI. The Committee fails to understand that despite being at the helm of affairs in IFCI, Shri Rai was quite unaware of the fact that these questions were under consideration of the Delhi High Court and IFCI was a petitioner in one case and respondent in another case. The Committee notes that in the Delhi High Court Judgements delivered on 9 July, 2010 and 17 August, 2010 in WP (C) 7097/2008 and in WP (C) 4596/2007 respectively, the IFCI has been held to be a Public Finance Institution, a public authority under Section 4A of the Companies Act. IFCI has also been held to be under substantial control of the Central Government by the decision of 17 August, 2010 of the Delhi High Court. **The Committee feels that Shri Rai could have given this factual information to the Committee and restrained himself from giving his own decision on the core issue. The Committee would have appreciated had Shri Rai simply abstained from answering the specific question in this regard and stated that the matter was under consideration of a Court of law. Even on 25 January, 2011, long after the decisions of the Delhi High Court, when he appeared again before the Committee, he maintained his earlier stand on the legal status of IFCI. The Committee is not only surprised at the attitude of Shri Rai on this issue but also holds him guilty of misleading the Committee on account of his sheer arrogance and blatant denial of the facts.”**

(vi) “Shri Rai, during his submission before the Committee on 25 January, 2011 while replying to a specific question categorically denied that he formally applied for the post of CEO & MD of IFCI. **The Committee notes the submission of Shri R. Gopalan, former Secretary, Department of Financial Services, given before it on the same day in this respect. Shri Gopalan informed the Committee that the Board of IFCI had constituted a Sub-Committee on 28 November, 2006 for selecting and recommending a suitable name for the post of CEO & MD. He further informed that the Sub-Committee had received five nominations and, after reviewing the candidature of all five candidates, decided to recommend unanimously the name of Shri Atul Kumar Rai for the post of CEO & MD; and the Board passed a resolution to this effect on 7 March, 2007. The Committee is surprised to find that all these events were happening while Shri Atul Kumar Rai was a Director nominee in the IFCI Board. The Sub-Committee of the Board received five nominations for the post of CEO & MD, which obviously included the name of Shri Rai. The Committee is not at all convinced with Shri Rai’s statement that he did not formally apply for the post. Though the details about the advertisement for the post, the manner in which Shri Rai applied/submitted his nomination for the post and the authority in his Department who forwarded his nomination to the Sub-Committee of Directors of IFCI, etc. are still unknown, whatever facts that were available in this regard, as per Committee’s expectations, should have been revealed to it by Shri Rai rather than by the Secretary, Department of Financial Services. Shri Rai, however, preferred to give evasive replies and intended to create an impression as if the post of CEO/MD of IFCI came to him out of the blue, when he submitted before the Committee that since his appointment was made by the Board of IFCI, the Board at that time would be in a better position to answer that question. The Committee is, therefore, constrained to observe that Shri Rai suppressed factual information pertaining to his appointment as CEO/MD of IFCI.”**

(vii) ‘When the Committee asked Shri Rai whether he, before taking up employment in IFCI, obtained prior permission of the competent authority by submitting the mandatory declaration in Form 25 in accordance with Rule 10 of CCS (Pension) Rules, 1972, Shri Rai replied, in no uncertain terms, that he complied with all the rules, regulations and formalities required and that he neither suppressed nor misrepresented any fact in this regard. The Committee note the comments of Department of Financial Services and also the oral evidence of the Secretary of the Department on this particular issue. The Committee observes that Shri Rai gave the said declaration on a plain piece of paper, without any accompanying undertaking in the form of an affidavit to the effect (as per the DoPT guidelines *vide* Office Memorandum dated 5 December, 2006) that factors mentioned in clauses (b) to (f) of the amended sub-rule (3) of Rule 10 of CCS (Pension) Rules did not come in the way of considering his application. **The Committee is at a loss to accept Shri Rai’s assertion that he complied with all rules, regulation and formalities while submitting his application. The Committee is amazed to note that even as an officer at a senior level in the Ministry, Shri Rai was ignorant about the basic service rules. The Committee, therefore, has reasons to doubt whether there was an element of deliberateness on the part of Shri Rai in not complying with the necessary formalities and, at the same time, holds the view that Shri Rai not only kept his Department in the dark but also misrepresented facts on this count before the Committee.**”

(viii) “So far, the Committee has discussed two aspects of the behaviour of Shri Atul Kumar Rai. One aspect pertains to his misbehaviour with Shri Rajiv Pratap Rudy, Member, Rajya Sabha, which is the core issue and basis of this report. The other aspect pertains to his misbehaviour and misconduct before the Committee. **In the first issue, the Committee concludes that Shri Rai misbehaved with Shri Rudy. However, from the stand point of Parliamentary privileges, the Committee would like to observe, as it has held in earlier such cases that, in interpreting privileges, regard must be given 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. They apply to individual Members only insofar as they are necessary in order that the House may freely perform its functions. In other words, privileges are necessary for the proper exercise of the functions entrusted to Parliament by the Constitution. As in the instant case, Shri Rudy had gone to meet Shri Rai in connection with the rehabilitation of a sick Sugar Mill, he cannot, therefore, be said to have been performing any parliamentary function. The Committee, therefore, while strongly disapproving the behaviour of Shri Rai with Shri Rudy, cannot invoke the privilege jurisdiction of the House and, accordingly, holds that there is no breach of privilege involved in this case.**”

(ix) “So far as the aspect of behaviour of Shri Rai before the Committee is concerned, the Committee concludes that Shri Rai not only misbehaved with the Committee but also misled the Committee on certain issues by misrepresenting the facts. **This amounts to his misconduct before the Committee. These findings certainly hold Shri Rai of committing breach of privilege and Contempt of the House and, therefore, tend to invoke the privilege jurisdiction of the House. However, as all these misbehaviour/misconduct of Shri Rai arose on the issues not exactly concerned with the core issue under examination and investigation of the Committee,**

the Committee would, while deploring the conduct of Shri Rai in unequivocal terms, like to consult its own dignity and leave it to the Government to take appropriate legal action on all the misdemeanours of Shri Rai while seeking voluntary retirement and taking up commercial employment in IFCI.”

(x) “On the ancillary issues that arose during the examination of the instant case, the Committee expresses its serious concern over the fact that despite a huge bailout financial package running into crores of rupees to IFCI, the Ministry of Finance does not have any control over the functioning of IFCI. The Committee further notes that the Repeal Act of 1993, which empowers the Government to conduct financial audit of the accounts of IFCI, establishes beyond any doubt that the Government has substantial interest in IFCI. From the evidence tendered before it by the officials of the Department of Financial Services, the Committee is constrained to observe that there is complete lack of interest in the Ministry to monitor the functioning of IFCI and to exercise its supervisory control over it to the extent mandated under the Repeal Act of 1993.”

(xi) “In so far as the question of voluntary retirement of and permission to take up commercial employment in IFCI by Shri Rai is concerned, the Committee is of the view that while dealing with both the issues, there were gross irregularities, by way of wrong interpretation of rules to give undue favour to Shri Rai and that his applications were not examined in the light of the relevant service rules. The Committee is surprised to learn that contrary to the official guidelines, Shri Rai’s application for seeking permission to take up the job of CEO/MD of IFCI was entertained when he was still in service. **The Committee notes that Shri Rai had given personal and family grounds to seek voluntary retirement. He sought permission to take a commercial employment when he was still not relieved/retired. In Committee’s opinion, at this stage, his request for seeking voluntary retirement on personal and family grounds should have been reviewed and the veracity of facts examined by the Senior officers in the Department, in the light of his subsequent request for taking up the job of CEO/MD of IFCI. The Committee is of the view that to seek voluntary retirement from service and to take up the lucrative offer of CEO/MD, IFCI was a calculated move of Shri Rai which got ample support from his superiors in the Department of Financial Services.’**

(xii) “The Committee observes that while seeking permission to take up commercial employment in IFCI, Shri Rai did not submit the mandatory declaration in Form 25. He also did not submit an undertaking in the form of affidavit as required under the relevant rules. **Despite these infirmities, he was permitted to take up the said employment and his voluntary retirement was also notified. The Committee has seen the personal file of Shri Rai which was produced before it by the Department of Financial Services. From a perusal of the relevant file notings, particularly by the then Joint Secretary and Secretary, Department of Financial Services, the Committee is constrained to believe that in a collusive effort, undue favour was given to Shri Rai by wrongly interpreting the Civil service rules and by ignoring the necessary formalities to be fulfilled by Shri Rai.”**

(xiii) “The Committee, from a perusal of the personal file of Shri Rai, and also from the evidence tendered before it by the Secretary, Department of Financial Services, is quite amazed to see the swiftness with which the file

moved among the ‘higherups’ in the Department. All the vital decisions, including the views of the Secretary of the other Department and approval of the then Finance Minister, were taken between 30 May and 1 June, 2007. This swiftness, in view of the Committee, underscores the weightage given by concerned officials to the matter of Shri Rai. This view of the Committee is based on the fact that everybody in the Department of Financial Services, including the then Joint Secretary and the then Secretary, knew very well that Shri Rai was a serving officer of the Department when he applied for permission to take up commercial employment and that he was a nominee director in IFCI Board when the Board altered him the job of Whole Time Director. Further, his application was processed by wrongly interpreting the relevant rules, silence of the Director nominees in the Board meetings of IFCI despite knowing fully well that Shri Rai could not be offered the job of Whole Time Director, approval of his voluntary retirement, granting him permission to take up the said commercial employment within 24 hours despite the Finance Minister’s specific query, all these facts point towards a definite collusive effort on the part of the Joint Secretary and Secretary to accord undue favour to Shri Rai. **The Committee, therefore, feels that a separate probe needs to be carried out to investigate the role played by these two senior officers in the Department in the whole matter.”**

(xiv) “At the end, the Committee notes that perhaps due to the continued pursuance by the Committee, even though belatedly, the Department of Financial Services is seized of the matter of gross irregularities and violation of rules in the voluntary retirement and subsequent commercial employment of Shri Atul Kumar Rai. Due to repeated questioning by the Committee, the Department has assured to conduct an inquiry in order to fix the responsibility in the whole issue. The Committee feels that if the persons heading the public financial institutions like IFCI happen to get their appointments by giving false declarations misleading facts and suppressing vital information before taking up such employment, this will only give a helping hand to the increasing corruption in the country. It will not only reflect badly on the integrity of the person heading the organization but would also encourage those indulging in corruption in the organization. **The Committee, therefore, recommends that its observations pertaining to the whole issue mentioned in the preceding paras be given serious consideration and properly examined for a CBI probe in the whole matter by the Government to find out the facts and fix responsibility at the higher level in the then hierarchy of officers in the Department of Financial Services pertaining to the irregularities mentioned in this report within a time frame.”**

Action Taken by the House

8. Report was presented to the House on 31.11.2011 and was adopted by the House. In pursuance of the recommendations, a copy of the Report was forwarded to the Ministry of Finance for necessary action at their end.

(31) MANIPUR LEGISLATIVE ASSEMBLY (2011)**Point of Privilege**

Alleged manhandling of and physical assault on three employees of *Manipur Legislative Assembly* by *Manipur Police personnel*.

Facts of the case and reference to the Committee of Privileges

On 11 March, 2011, during the sitting of the House, Shri O. Joy Singh, Member, Legislative Assembly, raised a point of order in respect of news reports published in the news-daily "POKNAPHAM" and "SANGAI EXPRESS" in connection with manhandling and physical assault on three employees of State Legislative Assembly on 9 March, 2011. The Member stated that as reported in the Press, these employees were travelling in an official vehicle in connection with official business concerned with the ongoing Budget Session. The three employees of the Secretariat were assigned the duty to deliver an official letter to the Joint Director, M.P.S.C. On their return Journey at around 2.00 pm, they were stopped, manhandled and assaulted by three/four Police personnel at Khoyathong Traffic Point, even after they showed their identity cards and explained the urgent nature of work assigned to them. One employee of the Secretariat was seriously injured in this incident. In this regard, a representation dated 10 March, 2011 requesting for action against the Police Personnel was also submitted to the Secretary of Legislative Assembly Secretariat by the Secretary, Manipur Legislative Assembly Secretariat Employees' Association.

2. The Speaker taking cognizance of the point of order, admitted the same and referred the matter to the Committee of Privileges and Ethics for examination and report to the House within a week.

Findings, Conclusions and Recommendations of the Committee

3. The Committee of Privileges and Ethics, after going through the complaint, the representation of the Employees Union, written statement of DGP, Manipur and after examination of three employees of the Legislative Assembly Secretariat and the Police personnel, in their Thirtieth Report, presented to the House on 18th March, 2011, reported *inter alia* as follows :—

(i) "The Committee considered the written statement furnished by the DGP, Manipur and noted that the DGP had alleged that the employees of the Assembly driving the auto-rickshaw drove the auto straight towards the Police constable with a clear intention of running over him. The Constable jumped away from the road and path of the vehicle and saved himself."

(ii) "The Committee also heard Shri N. Ingocha Singh, Inspector, who, during his in evidence, stated that the auto-rickshaw driver driving the vehicle towards the Police constable (Shri W. Sitaljit Singh) had applied the brakes to stop the vehicle. The Committee enquired from him whether he was aware about the written statement furnished by DGP, Manipur in the matter. The Inspector stated that he had been given a copy of the same at the office of Senior S.P., Imphal (West) while he was coming to the Assembly to appear before the Committee. He further made a prayer before the Committee seeking pardon for the Police personnel involved in the incident and gave an assurance of not repeating such mistake in future."

(iii) "The Committee also examined the Police constable (Shri W. Sitaljit Singh) who in his evidence stated that in order to stop the auto-rickshaw, he gave a blow on the back of the driver with his stick (lathi)."

(iv) “The Committee found contradictions in the explanation of the DGP, Manipur vis-a-vis oral statements given before the Committee by the Police personnel. Further, the Committee found that the statement furnished by the DGP has been prepared without taking recording the statements of the Police personnel involved in the incident. Why a Government employee on official duty would ever have an intention to run over a uniformed Police personnel on duty, was beyond the comprehension of the Committee?”

(v) “The Committee expressed unhappiness about the misreporting in the written statement of DGP which was bereft of decent language and did not tender any regret or apology on behalf of the police personnel involved in the incident of assault. Instead the written statement levelled false allegations against the three employees of the Legislative Assembly Secretariat. The Committee, accordingly, rejected the written statement furnished by the DGP, Manipur.”

(vi) “The Committee are of unanimous view that the freedom from arrest and molestation in coming to, staying in and returning from the House also extends to the officer of the House or any other person employed by the House or entrusted, with execution of the orders of the House, while in execution of their duty. Hence, it is a clear breach of privilege and contempt of the House to obstruct and physically assault the employees of the Assembly Secretariat while in execution of their duty in relation with the sitting of the House. Such contemptuous act on the part of the Police personnel involved in obstruction and physical assault of the employees of the Assembly Secretariat while on their duty in relation to the sitting of the House is seriously viewed by the Committee.”

(vii) “The Committee, however, in view of unqualified apology tendered by Shri N. Ingocha Singh, Inspector, on behalf of the Police personnel, involved in the incident and his assurance that such contemptuous act will not be repeated in future, decided it proper to pardon the police personnel with a stern warning not to repeat such acts in future.”

(viii) “The Committee, therefore, recommend that no further action be taken against the said Police personnel by the House and the matter may be treated as closed.”

Action Taken by the House

4. No further action was taken by the House in the matter.
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(32) TAMIL NADU LEGISLATIVE ASSEMBLY (2011) :**Point of Privilege**

Alleged irresponsible conduct of an MLA lowering prestige and dignity of the Legislature.

Facts of the case and reference to the Committee Privileges

On 5 September, 2011, a discussion under the device of Special Mention on the subject, 'encroachment of Government land under lease to Corporation of Chennai by powerful persons' was taking place in the Assembly. During the discussion, some of the Members belonging to the DMK Legislature Party who had not given any prior notice on the above subject, tried to intervene in the debate and during the process created disturbance in the conduct of proceedings of the House. This commotion in the House was videographed on a mobile phone by Shri T.R.B. Rajaa, a member of D.M.K. Party. This act and conduct of the member was against the rules and procedures of the House and was brought to the notice of the speaker by some members.

2. The Speaker taking cognizance of this alleged act committed by Shri T.R.B. Rajaa, MLA *suo motu* referred the matter under Rule 226 of the Tamil Nadu Legislative Assembly Rules to the Committee of Privileges for examination and report.

Findings, Conclusions and Recommendations of Committee

3. The Committee of Privileges after going through the entire video clipping and the explanation Shri T.R.B. Rajaa, MLA in their First Report presented to the House on 31 January, 2012 reported *inter alia* as follows :—

(i) "The Committee viewed the entire video-clipping which was of a duration of 41 seconds and decided to call for an explanation from the MLA."

(ii) The Committee perused the explanation submitted by the member which stated that he was using his mobile to download certain information received by e-mail which pertained to his constituency. The Member further stated that he has a 24 hours helpline service in his constituency *inter alia* to help the people to remain in touch with the Member."

(iii) "The Committee were of the view that the explanation of the member is contrary to the evidence on hand. The Committee concluded that the act of the member amounted to a breach of privilege of the House. The Committee however, considering the fact that the member was elected for the first time decided to recommend a lesser punishment to him."

(iv) "The Committee, therefore, recommend to suspend the member from the service of the House continuously for a period of 10 days from current session to the next session. The Committee also recommend that during the period of his suspension the member would not be entitled for any monetary benefits like salary, facilities and privileges that the members of the Tamil Nadu Legislative Assembly are entitled to."

Action Taken by the House

4. The Report of the Committee was presented to the House on 31 January, 2012 and was adopted by the House. Pursuant thereto Shri T.R.B. Rajaa, MLA was suspended for a continuous period of 10 days from the service of the House. During the suspension period all the entitlements and benefits, that he was entitled to as a Member of the House were denied to him.

(33) TAMIL NADU LEGISLATIVE ASSEMBLY (2012)**Point of Privilege**

Alleged unruly conduct exhibited by the Leader of Opposition thereby lowering the prestige and dignity of the House.

Facts of the case and reference to the Committee of Privileges

On 1 February, 2012, during the discussion on the Motion of Thanks to the Governor's Address, the Leader of the House was offering explanation to some points raised by Shri V. C. Chandirakumar, the whip of the D.M.D.K. Party (the main Opposition Party). At this stage, the Leader of Opposition, Shri Vijaykant intervened and tried to put forth forcefully certain views leading to commotion and at one stage the Leader of Opposition raised his hand and pointed fingers towards the Ruling Party Members, rolled his tongue and tried to threaten them thus creating a surcharged atmosphere in the House. Further, by shouting vociferously the DMDK members tried to obstruct the proceedings of the House. Even after repeated warnings by the Speaker to maintain decorum in the House, the Leader of the Opposition and the DMDK party members continued to obstruct the proceedings and thus made the situation volatile. In order to maintain order, the Speaker evicted the Leader of the Opposition, and other Members belonging to his party from the floor of the House after giving them warnings.

2. Taking into consideration the disorderly behaviour of the Leader of the Opposition and the Member of DMDK Party, the Speaker ruled that there was a '*prima facie*' breach of privilege of the House and referred the matter *suo motu* to the Committee of Privileges for examination and report.

Findings, Conclusions and Recommendations of the Committee

3. The Committee of Privileges after deliberating upon the facts, material evidence and documents including video recordings and photographs, in its Report presented to the House on 2 February, 2012 reported, *inter alia* as follows :—

(i) "The Committee gave an opportunity to the Leader of the Opposition to explain his viewpoint but he opted for a written submission stating that due to the instigation and use of unparliamentary language by the ruling party members, he just tried to reply to their allegations and he was not given an opportunity by the Speaker to express his views before the House."

(ii) "The Committee after its deliberations concluded that Shri Vijaykant's action inside the House amounted to gross breach of Privilege of the House."

(iii) "The Committee decided that in order to safeguard the traditions of Legislative Assembly, to uphold its Privileges, to prevent violation of the Rules, to prevent the members of the House from behaving in a manner which would affect the dignity of the House, a punishment be imposed upon the Leader of Opposition."

(iv) "The Committee accordingly recommend that Shri Vijaykant, Leader of Opposition be suspended for a continuous period of 10 days from the service of the House from the current session to the next Session."

(v) "The Committee further direct that necessary action be initiated, to debar the Leader of Opposition from receiving any benefit, salary, facility and privileges entitled to him as a member of the House during the suspension period."

(vi) “The Committee also considered the conduct of other DMDK members who behaved in a disorderly manner in the House on that day. The Committee concluded that all the members, Reporters and visitors who were present on 1 February, 2012 knew how the DMDK members behaved on that day. Similarly, people of Tamil Nadu are also aware of their action through visual and printed media. They purposely came to the House to disturb the proceedings of the House, shouted and created ruckus to obstruct the order of the House. They persistently disobeyed the orders of the Speaker who is responsible to uphold the dignity, sovereignty and decorum of the House and continued to disturb the smooth Functioning and order of the House. If such acts are not curbed, people may lose their faith in the Legislative Bodies which is an important pillar in the democracy.”

(vii) “The Committee, therefore, recommend that though it may be right decision to award punishment to the members of the DMDK who disturbed the proceedings of the House taking into consideration that for the first time these members have acted in such a manner, they may be pardoned, subject to the conditions that they shall not misuse their membership and privileges and uphold the dignity and decorum of the House in future.”

(viii) “The Committee further direct to caution them about their behaviour and concluded that any repetition of such behaviour would invite stringent punishment.”

(ix) “The Committee accordingly decide to drop further action in the matter.”

Action Taken by the House

The Report of the Committee was presented and adopted by the House on 2 February, 2012. Based on the recommendations of the Committee Shri Vijaykant, Leader of Opposition was suspended continuously for period of 10 days from the session extending to the next session from the service of the House. During the suspension period all the benefits, salary, facilities, privileges to which he was entitled to in the capacity as Leader of Opposition and as Member of the Tamil Nadu Legislative Assembly were denied.

The privilege issues against the other members of the DMDK were dropped without further action.

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