A STUDY OF THE POWERS AND PRIVILEGES OF THE MEMBERS OF PARLIAMENT IN INDIA

ABSTRACT

THESIS

SUBMITTED FOR THE AWARD OF THE DEGREE OF

Doctor of Philosophy in
Political Science

BY

PARVEEN QAMAR

UNDER THE SUPERVISION OF

PROF. M. MURTAZA KHAN

DEPARTMENT OF POLITICAL SCIENCE
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"The labour of writing is reduced, if the thought is in condensed form"

C.C. Crawford
ABSTRACT

Parliamentary privileges are indispensable to the effective discharge of the functions and duties of Parliamentarians. Being representatives of people, they are expected to hold fair and free deliberations within the House which are guaranteed to a large extent by these privileges. They not only ensure a congenial atmosphere in the House but also help in upholding the sanctify of the sovereign institution. The present thesis is a modest attempt to analyse these privileges, their effective use, abuse and misuse.

Thesis is divided into five Chapters with an introduction, conclusion, bibliography and few charts showing the background of the parliamentarians, their behavior in the House etc.

The Introduction tries to analyse the meaning, content and extent of privileges in retrospect. Laws and rules are essential for governing any country, Parliament is the institution which is primarily associated with law-making. Its Members and Committees have therefore been provided with certain privileges which enable them to function without any hindrance or obstacle, fear or favour for or favor. These are the special rights and liberties, provided to the Members individually and to
the House collectively for the effective performance of their duties as representatives of the people. In the initial years these powers and privileges were not the same as what we have today, rather it is a result of hard and bitter struggle of many centuries. Petitioners were very humble and could not make constitutional claim to share parliamentary functions. With the passage of time, a gradual and steady change came in their way. During eleventh century only high ranking clergy were entitled to advice the king. But king John, in the thirteenth century, initiated the process of calling elected knights for important meetings of the Great Council. The Charter Act of 1716 further enhanced the House of Commons. The Charter Act of 1853 established the Legislature. The Morley Minto Reforms Act, 1909, Govt. Of India Act, 1919 and 1935 further contributed towards the development of parliamentary institutions. Prior to independence, almost all the efforts had been made to codify the privileges in order to get equal status with that of the House of Commons. The Constitution of India under Article 105 specify the privilege of freedom of speech while made others same as those of the House of Commons. Apart from the Constitution, certain privileges are specified in the statutes while others in the Rules of procedure. Members enjoy certain consequential powers also in order to safeguard their privileges.
The second chapter highlights the significance of privileges. Very often a question is posed as to why the House or its Members need privileges when they themselves are the representatives of the people. Further it is said that no Member of Parliament has higher privileges than those enjoyed by an ordinary citizen as regards the application of law. No doubt this is true but the functions entrusted to Parliament are so enormous and that without these immunities and privileges they can not be accomplished with greater efficiency. As a microcosm of the nation, Parliament has consistently reflected the feelings, hopes, aspirations and even weaknesses and frustrations of the people. It has clearly emerged as the most crucial political institution on whose working depends the future of the nation because the success of any nation depends on how much its policies are effective and implemented in the real life of a citizen. This can be possible only when the representatives are granted somewhat wider powers than others. The Bill of Rights, 1688, laid down that the freedom of speech, debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out side the Parliament. Article 122 of the Constitution of India categorically states that the validity of the proceedings in Parliament can not be called in question in a court of law on the ground of any alleged irregularity of the procedure.¹

¹ AIR, 1959, SC. 395.
Each House reserves to itself the power to suspend any rule of procedure in its application to a particular business before it. To make their movements free and observe secret sittings other privileges are also bestowed to them. Thus, on the basis of this, it can be said that powers, privileges and immunities act as shield against the high handedness and onslaughts of the party in power. The Constitution of India has not listed the privileges because any codification might have put a premium on them. However, if a specific privilege undermines the dignity of the House or tends to obstruct the House as a whole or individual Member, in the discharge of their constitutional functions, is considered breach of privileges or contempt of the House because the very aim of providing privileges is to enable the House and Members in upholding its sanctity and defend itself against disrespect and affrontation which can not be brought or could be brought only by implication under any accepted specific privilege. According to Halsbury's, any act or omission which obstructs or impedes any Member or Officer of the House in the discharge of their duties, or which has a tendency to produce such a result would constitute 'contempt of legislature'.

The third Chapter analyses one of their major privileges i.e. freedom of speech which is an essential attribute of any legislature. This privilege enables the Members to hold free and frank discussion on any matter and provide immunity to Members from any action against them
for any thing said or from casting vote on the floor of the House. Its original purpose was to protect the Members against the King and was first confirmed by practice of selecting the speaker in 1376 to carry out their agreed reply to the King. The first express claim for liberty of speech was made in the Commons in 1455 when Thomas Younge, one of the knights for the shire brought a petition into the Commons, complaining about his arrest and imprisonment in the Tower five years back. Thomas More (1523) was the first speaker to be asked from the royal indulgence for any untoward expressions by individuals in debate. Same petition was moved by speaker Moyle in 1542 and was allowed by Henry. In case of Duncan Sandys, 1938, the House of Commons resolved that it was a breach of privilege to attempt to require a Member of Parliament to divulge to a court of inquiry, set up by the Army Council, the source of his information concerning the anti aircraft defence of London which he had used for the purpose of framing a question in the House. It is also said that this privilege is necessary for wise and beneficial legislation and can never be secured if Members function under restraints imposed by the law of slander and libel upon private character.

In India this privilege is embodied under Article 105 (1) and (2) and was granted to Indian legislators for the first time under the Montague Chelmsford Reforms Act and given statutory recognition. It was argued that the immunity granted under Article 105 (2) is related to what was
relevant to the business of Parliament and not to some thing which was utterly irrelevant. But the argument was rejected by the Supreme Court. The Chief Justice of India once observed "having conferred freedom of speech on the legislators cl (2) emphasizes the fact that the said freedom is intended to be absolute and unfettered". For speeches and actions in Parliament Member is subjected only to the discipline of the House. The High Court under Article 226 can not take cognizance of the dispute.

Molestation or bringing legal proceedings against any person for giving evidence in relation to any proceeding in the House is considered breach of privilege. The freedom is guaranteed almost to all Parliaments but the duration of immunity varies from country to country. To observe freedom of speech it is necessary on the part of the House to secure privacy.

The House has the power to exclude strangers from the House. Parliamentary Papers Act, 1840, made the publication of any report, papers, votes or proceedings, of the Houses of Parliament, completely privileged but can take action against immature publication or publication of expunged proceedings as it is considered breach of privileges and contempt of the House. The Houses are the sole judges of

2) **AIR, 1965, SC. 745**

3) **AIR, 1902, J & K 23.**
their own privileges. No action can be taken in one House for any thing that is said in another House.

The fourth Chapter is an attempt to analyse freedom from arrest. It is considered a breach of privilege if a Member is arrested in civil cases during the session and forty days before and forty days after the session. Only under criminal charges, Preventive Detention Act or Defence of India Act or in the interest of Public safety the arrest can be made. A brief account of the history of this privilege has been given. In India this exemption from arrest was conferred on the members of legislative body by the Legislative Members Exemption Act, 1925, which has been continued in a slightly modified form after independence.

Members can not be served with a legal notice within the precinct unless in case of urgency where the matter can not be delayed. Whenever an arrest is made, even in criminal cases, the House requires immediate intimation of arrest, detention and conviction or even release of the Member together with reasons and place of arrest or detention. The senior most person who causes the arrest is required to furnish the information. In custody, the Members are supposed to be treated with utmost dignity and their correspondence addressed to the chairman or speaker of the House or Committee can not be withheld. A part from this filthy and abusive language, ill treatment, assault or any obstruction caused by the outsiders is also considered breach of privilege. The
chapter also examines the judicial response in safeguarding this privilege.

The fifth Chapter highlights the relative importance of the two esteemed institutions – legislature and judiciary. The troika, legislature, judiciary and executive are three different but important parts of the Constitution, their powers are different but still marked by some sort of interrelationships, specially between the judiciary and legislature. A greatest reservoir for supplying power to judiciary to invalidate the statute is provided by the fundamental rights mainly under Article 14 and 19 of the Constitution but attempts has been made by the Parliament to weaken this reservoir. Both authorities are supreme in their own sphere neither of which can challenge the authority of the other. In England on the contrary, both Houses claimed to be the sole judges where as the court maintained that privileges are the law of the land and therefore the court is bound to decide questions coming before it in any case within their jurisdiction even if the privileges are involved. Till early eighteenth century the position was quite in favour of the court as in case of *Stockdale. V. Hansard*, the majority opinion of the court did not admit the superiority of the High court of the House of Parliament over other law court as the judicial matter cannot be decided inside the House, only the matter coming out from its internal proceedings would be the jurisdiction of the House. But over the years the Parliament in
England has established its supremacy vis a vis the judiciary and its acts can not be nullified by the court on any ground whereas in USA, the Supreme Court is in a more advantageous position as far as judicial review is concerned. In India we have adopted a via media between the American system of judicial paramountcy and English principle of parliamentary supremacy.

After prolonged contradiction and conflicts in a number of cases an understanding has been emerged between the two on the lines that; courts will recognise those privileges which have the sanction of common law; new privileges can be created for the House only by a law passed by the Parliament and not merely by the resolution of one House; whether a particular privilege ‘exists or not’ is a question to be decided by the courts etc.

In ordinary cases, the courts have accorded the privileges to the speaker of the House but where they are in conflict with the fundamental rights and the doctrine of judicial review it is not easier to claim and there is a possibility of a confrontation between the judiciary and Legislature. It is advisable that the area or sphere of privileges be determined by the courts in context of the rights of the citizen, Judiciary is thought to be the guardian of the rights of man and protects these rights from all possibilities of individual and public encroachments and if there is no adequate provision for the administration of justice, the
liberty of the people is jeopardized, for there is no definite means which should ascertain and decide rights, punish crimes, and protect the innocent from injury and usurpation. The courts themselves show great reluctance to interfere with the working of the legislature, only in case of malafide or perversity they go into the matter otherwise the power of the House is so wide that it can enforce its own decision.

An overview of the problem has been given in the conclusion. The importance of the privileges has been focused as without them the task of the Parliament can not be achieved. They are essential for the functioning of effective democratic legislature. But on the other hand every organ of government in a democratic set up is equally important thus, a proper harmony among them is an imperative. Further, it is also true that today, the greatest threat to their privileges is not from out side but from their own acts and attitudes. Making irresponsible statements within the privileged precincts of Parliament have the effect of unjustly injuring the reputation of individual citizen or a group. The privileges should not be used as a cover to indulge in character assassination or political vandalism. Fine Vandekh. Shouting slogans, organising dharnas, reaching and demonstrating at the podium of the House, tearing of papers and throwing articles are now not unusual in the House, which cast a heavy cloud on Parliament and its institutions. The situation can be averted only if proper attention is paid. The need is to
restore the priestine past of these institutions so as to enable them to work for the establishment of an egalitarian society where there is equality, justice and freedom. Describing the importance of parliamentary system, R. Venkataraman, President of India, on his inaugural address to the 37th Commonwealth Parliamentary Conference, at New Delhi, on Sept. 23, 1991, rightly said as "superior" to all other systems that human ingenuity has to far been able to devise. If it works properly and honestly, there is perhaps no better substitute than the representative parliamentary democracy.
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Certificate

This is to certify that Ms. Parveen Qamar has completed her thesis entitled "A Study of the Powers and Privileges of the Members of Parliament in India" under my supervision and is, in my opinion, suitable for the submission for the award of the degree of Doctor of Philosophy in Political Science of the Aligarh Muslim University, Aligarh.

Prof. M. Murtaza Khan
Supervisor
DEDICATED

To those who have sacrificed for me a lot,
I would sacrifice to them a little.

"My Parents"
"Assemblies can be no less tyrannical and no less unscrupulous than individuals. But I am not unduly alarmed, because I think there are very real and substantial safeguards.................In the long run, was with other great organs of the states so with Parliament, power must be entrusted to if and in the last resort the only safeguard against abuse lies in the commonsense and responsibility of its members. On the whole, we have been fortunate in this respect and I see no reason why our good fortune should change.

Viscount Kilmuir

(Lord High Chancellor of Great Britain)
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A full acknowledgement of all that one owes to ones benefactors is an impossible task. However, few words would be in order.

It will be presumptuous on my part to try to find words expressing my feelings and sentiments towards my revered teacher and supervisor, Prof. Mohammad Murtaza Khan, whose scholarly and methodological perspectivism crucially contributed to the formulation of this research work. His Humane approach has been even more inspiring and encouraging. In such a situation silence rather than eloquence is a more appropriate response. I am beholden to him from the depth of my heart.

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I shall be failing in my duty if I do not name my father Mr. Qamar Uddin Khan and my mother Hajra Begum who have provided me moral and spiritual support and constantly showered their affection on me throughout my academic pursuits. I am also grateful to my brothers and sisters for the kind of help they have provided me all the while directly or indirectly.

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At last, I firmly believe that whatever I have achieved is the result of God's blessings.

While revising this modest attempt of mine I have come to realise the gaps in my scholarship. I accept the responsibility for the flows and errors.

PARVEEN QAMAR
Powers and privileges of MPs and MLAs have always been a problematic issue before the concerned persons. During the British empire very few privileges and powers were vested with Indian legislators and that too just for the namesake as the then Govt. was of the opinion that if equal power would be awarded to Indian legislators as those given to the House of Commons, they could misuse them. But their non satisfaction lead them to do hard struggle as a result of which the Govt. of India Act, 1919, and 1935, came into existence which empowered them a little but not fully as punitive powers were still not rendered to them which were conferred on the Members of the House of Commons. Similarly the functions and powers of the presiding officers too were very limited, mostly for preserving their orders and regulating the business of the House. After independence the position changed entirely. The functions of the Dominion were handed over to the Constituent Assembly by the India Independence Act, 1947.

The Constitution of India under Article 105 and 194 equated their rights with those of the House of Commons of
British Parliament. Article 105(3) reads as the powers, privileges and immunities of each House of Parliament and of the Members and 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 (44th Amendment) Act, 1978.

The Presiding officer is also vested with sufficient power in the capacity of guardian of rights and privileges of the Members of the House. To strengthen his capacity, punitive powers have also been vested with him.

Privileges when asked for the first time were very few in number. They were mainly for freedom of speech and discussion, freedom from arrest, access to the royals and power to regulate their own constitution. But now apart from these, the Members have enjoyed two in broad, a lot more as they are uncodified. Prior to Independence more efforts were made to get them codified as it could enable them to acquire equal position with those of the Members of the British House of Common in order to enhance their active participation and contribution in the legislative functioning. But after Independence almost all the
efforts have been put to save them from codification since there
is a belief that codification can restrict the strength of privileges.
But the noncodification too poses a problem because it is due to
the noncodification unrestricted debates abusive language
undemocratic scenes and low standard in deliberation is quite
common. Further, unlike Britain we have a written Constitution
underlying a chapter on ‘Fundamental Rights’ which are
justiciable in the Court of Law. Thus, any act which violates the
right of an ordinary citizen of the country which is provided
under Fundamental Rights can be challenged in the Court. We
have a “Judicial Review” system empowering each and every man
to knock the judiciary if the acts of the legislators do not have
any consistency with that of the citizen. Courts have the power
to held them guilty. Our Parliament is not as much sovereign as
that Britain.

Because of the clear and detailed provision, the people and
the press both are very much conscious of their rights. They do
not even hesitate to challenge the acts of Parliamentarians and
Parliament in court of law. They demand from them more
accountability for their omissions and commissions which in any
way is not found in England, Parliament is Supreme there and
can do every thing which is physically not impossible because of its unwritten character, thus, making it the High Court of Parliament there but not in India.

In this connection I have divided the whole study under five chapters.

Chapter I deals with the background of powers and privilege. How did they come to exist. A comparative look of past and present have been highlighted. Chapter IIInd focuses the importance of powers and privilege as why they had been needed the most, their consequences on the function of legislators. Chapter IIIrd high lights the “Freedom of Speech” to the Members of Parliament and State Legislatures under Article 105 and 194 respectively. Its effects on Fundamental Rights which guaranteed the freedom of speech and expression to ordinary citizen & Press.

In Chapter IVth an attempt has been made to discuss another crucial privilege i.e. Freedom from Arrest.

Chapter Vth focuses the relationship between Parliament and Judiciary which highlights the importance of privileges but not so easy to claim them in the presence of doctrine of Judicial
Review and Fundamental Rights.

Concluding part shows their importance and the consequences which now days are faced by the common man because today the threat is not to the legislators from out side rather their own acts and activities as legislators pose a major problem to themselves and to the common man, and the nation is the victim of their degrading standard of deliberations.

Broadly speaking every chapter is divided in three parts, which deals the nature, position in England, and position in India.

Material collection have been done and information gathered from Library, Newspapers and Journals. Constitutional and Legislative Assembly Debates, Debates of Parliaments, Lok Sabha, and Rajya Sabha have been an important source consulted extensively. Reports of privilege committees of Lok Sabha and Rajya Sabha constituted another important source, utilized most for the study.
CHAPTER-I

INTRODUCTION

Laws and rules are imperative for the governance of a state or Kingdom. Parliament is the body which is primarily engaged in law making. It is not a new body rather its history goes back to many years but in the initial years its powers and privilege were limited. It was in the 11th century when the kings began consulting great men on state matters. Gradually it took the shape of a committee to which the King assigned specific duties which later on became an assembly court. However, the decision of the assembly court was not final, the King had the final veto. The Royal courts were held thrice a year on the occasions of Christmas, Easter, and Whitsun when the king wore his crown. All the greatmen of England such as archbishops, bishops, abbots, earls, thegns and knights used to grace the occasion. A special writ of summons sent to each tenant in chief and penalties were imposed if they did not attend it. Hundred years later, in 1176, Henry II held his Christmas Court at Nottingham and immediately after wards held a Great Council with bishops,

earls and barons of the Kingdom to discuss various issues. In the middle of the next century i.e. 1258, the barons at Oxford demanded three Parliaments a year. During this period the King relied upon a small number of personal advisers who belonged to the royal families. These were mainly drawn from the baronage group but with the growing complexity of administration men from non baronial groups with professional expertise were also included to fill some most important offices of the Chancellor, Treasurers and those of Justices. Thus, on the one hand there was a general assembly of the tenant-in-chiefs wherein the whole nation was conceived to be present and met at intervals to advice the King on the major issues and on the other side there was a small body of personal advisors to assist him in the actual day to day business of the government. Parliament is the successor of occasional national assemblies and therefore still retains its essential character of advisory body.

With the passage of time the importance of advisers got enhanced however, they never governed. The King and his Private Council constituted the government i.e. the ministry and civil servants or the legislature and the executive. This is the basic concept of Parliamentary government. The moot point is as to

what converted the feudal great council into Parliament and why?

The word came into use to describe assemblies consisting only of Kings, his personal advisers, and the prelates, earls and barons. The word ‘Parliament’ as Parliment was first came into being in the 11th century to hold discussions between two persons. In 12th century Italian cities were called Parlamenti, describing such meeting in which Harold took his Oath to William. At the meeting of barons King John gave the great charter as a “Parliament” and was applied first to its great councils of the English Kings emphasizing their deliberative functions. First time Parliament was justified by 1258. In June of the same years barons at Oxford demanded a reform for three Parliaments a year to treat the King and Kingdom's business. In 1261 Henry III issued writs to the sherifs in which he said that barons had called three knights from each county to meet (at st. Albans) and discuss the common affairs of the kingdom. In 1264 Simon De Montford (ruler of England) in the name of King declared to send four most legal and discrete knights from each county to the Parliament at Oxford to discuss the King’s and Kingdom’s business with prelates and magnate. In June, 1265,

3. Ibid., p.12.
4. Adam, op cit., P.177.
he summoned his second famous Parliament at West Minister calling only five earls (Leicester, Gloucester, Norfolk, Oxford, and Derby) and eighteen barons. The middle class was represented by two knights from each shire. The special features of this Parliament was the innovation of two citizens from each city and two burgesses from each borough as representatives. To make the participation more direct writs were not summoned to them through sherifs of the county as the customs was but sent directly. The Parliament of Simon De Montford contained all the constituting elements of Historical English Parliament like lords, burgesses, knights and sherifs, thus provide an opportunity not to tender individual advices but to discuss and petition their local liberties apart from more financial matter. Making the strict feudal ideas disappearing, the burgesses were rapidly increasing the power and means of making their power rapidly felt. What was more in 1275 the commons were included in more genuenly national assembly when the Edward I held his first general Parliament summoning knights, citizens and burgesses to discuss with magnate the affairs of Kingdom which were more than the mere financial matter. But despite the fact of getting recognition in Parliament they were summoned to attend just four or five

Parliaments out of thirty Parliaments in twenty five years of his regime.

A remarkable change noticed in 1295. The Parliament of 1295 was called as model Parliament because of it's complete embodiment of all the elements of Parliament. There were bishops, abbots, earls and barons, knights and burgesses and even more crucial the representation of lower clergy but the lower clergy representation was not a permanent feature, the king even did not insist their presence rather arose a distinction between the majors and minors, the idea behind their representation was just to have the nation's support behind him and make them ready to bear heavy expenses necessary in urgency. With the passage of time, the process tended to become even more selective and some great men also used to receive summons years after years. The presence of Commons which seems so natural today is novel indeed in that age, thus brought about a structural change in composition contributing the formation of House of Commons. In February, 1305, writs were issued to summon Parliament to enable persons or groups seeking favours on the redress of grievances to present their petition. The

statute of 1322 did not include the lower clergy among the estates whose consent is necessary in matters touching the King and the realm which was insisted in 1321. The withdrawal of inferior clergy helped to make possible the formation of the Commons into one body. In 1339 and 1340 they took the burden of supply and internal peace and became an active part. In time, the habit of separate debate began in the form of petitioning and to bring the petition of the Commons into being as unique Parliamentary function, exercised without the magnates (though after some times consultation with them) and in 1343 Common's deliberations found record in special section of the role under the heading "Petitions of the Commons and the responses to them." In 1348 their petitions were still more clearly marked as being delivered to the cleark of Parliament. While the individual petitions continued to be handed to the chancellor. In 1351 some thirty nine petitions were sponsored by the commons some of which were favoured by the King, some became statute while others were considered unreasonable and refused. It was the time when their legislative functions sought dominance, the grant of supply became conditional upon the redress of their grievances


11. Ibid.
and said that the redress of the grievance should actually precede the grant of supply. In 1376 the practice of electing a speaker to carry their agreed reply to the King also started and in the same year the process of "Impeachment" though not in perfect form was used for the first time against Edward and in 1386 against Richard's ministers.

Impeachment was the sign of the growth of Parliament and powers of its' Members. It was considered a transforming feature in the development of modern Parliament. The King was bound to enlarge the law making body which was stated in the Magna Carta, after this the feudalism was no longer existed. Thus, fourteenth was the century with more advancement of Parliament in powers. This advancement in reality was not that of both Houses of Parliament equally but that of the House of Commons. The House of Lords was considered to be relatively less important at the end of the century. The House of Commons evidently had in that age, admirable leadership, high degree of self confidence and a feeling of equality with lords and royal ministers.

In the fifteenth century (1407) the King declared the Commons lawful in discussing the financial matters of the state.

13. Kenneth Mackenzie, op. cit., p.34.
14. Ibid.
This was the Golden age for the Commons so far as liberties were concerned. A number of privileges were demanded during this period, though the claim for freedom of discussion and immunities was first raised unsuccessfully in the beginning of the 12th century. In 1455 the first express claim for liberty of speech in the Commons was made. Sir Thomas young, one of the knights for the Shire and town brought a petition into the Commons complaining his arrest and imprisonment in Tower. Freedom of speech and expression was thought convenient and desirable without any restrictions to allow the House to discharge its duties effectively. This was considered unique in the Middle Ages, and it is true that political circumstances of the moment happened to be favourable to Young. Thomas More was the first speaker (1523) to beg the royal indulgence for any untoward expressions by individuals in debates. In his speech before the King he pointed out:

"among so many wise men neither is every man wise a like and pleaded the King as" to give to all your commons here. Assembled, your most gracious licence and pardon feely without doubt of your dread full displeasure, every man to discharge his conscience, and boldly in every thing incident among, declare his advice and what soever happened any man to say, it may like your noble Majesty of your inesteemable goodness to talk all in good part, interpreting every man's words, how uncunningly soever
they may be couched, to proceed yet of a good zeal towards the
profit of your Realm and honour of your Royal person."

In 1542 a similar petition was moved by speaker Moyle which
was allowed by Henry with great humility and was followed
regularly in Elizabeth's reign and by 1565 it had become
sufficiently usual to be included in Sir Thomas Smith's
parliamentary procedure.

Though the discussions to English Parliament were free and
unrestricted and the Crown had no power to limit their debates
or to control the votes of the Member but each higher authority
in his reign had his own method of controlling the Commons.
During the reign of Elizabeth Commons were warned not to
discuss certain subjects particularly related to religion, trade and
the succession.

The claim to freedom of speech was not finally substantiated
in practice until the constitutional struggle of the sixteenth
century had been won by Parliament. In Charles VI reign the
struggle for freedom of speech was merged in the greater conflict
between the King and Parliament. It received statutory
confirmation after the revolution of 1688. The Bill of Rights
declared that the freedom of speech and debates in proceedings

15. Ibid., p.35.
in Parliament ought not to be impeached or questioned in any
court or place out of parliament\textsuperscript{16} thus, the freedom of speech
finally established.

The privilege of the Member of Parliament to freedom from
arrest had also existed from the days of the Saxom Assembly but
it was formally recognised by Henry IV in 1403 and regulated
and extended by statute under Henry VI which provided that
persons should not be hindered by arrest from coming or going
to parliament. In the early fifteenth century the Commons began
to claim freedom from arrest except for treason, felony or breach
of the peace. In sixteenth century the right to determine all
questions relating to the election of Members was also claimed by
the Commons. Previously these questions had been determined by
the King-in-Council. The Commons had also appointed a
committee to enquire the matter. In 1586 the Commons in
opposition to the Queen, insisted that it is for them to inquire
into the circumstances of a disputed election. So far as their
control over taxation is concerned their position as the exclusive
originators was conclusively affirmed in 1660s and refused the
Lord's first reading on bills seeking to impose taxes. In 1667 they

\textsuperscript{16} Hood Philips, \textit{Constitutional \& Administrative Law}, Sweet \& Maxwell,
resolved that in all aids given to the King by the Commons, the rate or tax, ought not to be altered by the Lords and by 1678 all aids and supplies and aids to His Majesty in Parliament are the sole gift of Commons and all the bills for granting such aids and supplies began with the Commons and Lords were not allowed to reject Money bills.

During the early stuart period, the conflict between the King and Parliament developed into a civil war but at last he was made to sign the "Petition of Right" in 1628 and when denide, put on trial, condemned and executed. After the execution of Charles. I the governmental changes came in quick succession. The Kingship and the House of Lords were abolished. The Parliament of 1640-41 which lasted for ten months, (Nov. 3, 1949-Sept. 14) passed the first Act to secure regular meetings of Parliament. It provided for a meeting at least once in three years. It was also provided that no Parliament should be dissolved or prorogued within 50 days of its meeting without its own consent but the life of Parliament was limited to three years. This was an act changing the constitution as it had come down from the past, and it was in principle, permanent though not in the enacted form. A little later Parliament went a step farther in the same direction by a still more revolutionary enactment that existing
Parliament should not be dissolved or prorogued without its own consent, asking the king to surrender more than the previous bill required, and deprived him of all his usual weapons against Parliament. In 1649 Parliament proclaimed England a "commonwealth," without either King or the House of Lords, ordinances now became Acts. The significant thing of the Stuart period in the constitutional development was the parliamentary supremacy and an attempt to compromise it with strong monarchy, taking away the King's constitutional power. The collection of tunage and poundage without the authority of Parliament was made illegal; ship money was abolished, abuse of forest were done away with and the royal right of purveyance limited. G.B. Adams stated "the result of 1660 was a compromise, not less truly a compromise because it was expressed in facts rather than in words. The question which had arisen at the beginning of the reign of James I as 'whether it would be possible to make the strong monarchy of the sixteenth century and the strong parliamentary control of the fifteenth' work together in practice? What boundary line could be found between the King and the Constitution had been answered by the discovery of a compromise but it was a compromise of peculiar type. It meant that forms and appearance remained with the
King, the reality with the Parliament. The King in theory is sovereign but his sovereignty can be declared and exercised only in Parliament. The King gave up the power to determine by his individual will, the policy of the state but the surrender was disguised by an appearance of power and for a long time by the exercise of very substantial power and permanent possession of important rights and influence. It was more than a hundred years before all that the compromise implied was clearly recognized and the balance established at its present level. But it was really made in 1660."17

The outline of English Constitution was practically completed by 1688-89 during the Hanover period, Britain had become a limited monarchy, Parliament had established her supremacy over the royal prerogative. It was for the first time during this period that the Commons considered the army, navy, and ordinance estimates and the accounts of expenditure and loans for these services. In 1691, they appointed a number of their members as commissioners of public accounts and rejecting the claim of the lords to participate in this work. The other significant features of this period included the decline of the actual powers of the

Kings, the growth of the cabinet system, the democratization of the House of Commons, the rise of the House of Commons to a position of superiority over the House of Lords and the growth of the party system.

Though the Bill of Rights had established the principle of parliamentary supremacy but the King still constituted the pivot. For nearly two decades King continued to exercise the right of veto. Thus, the Parliament though supreme in principle, was subjected to limitations in practice. It was during 1714 that some important changes took place as far as the relative importance of the two Houses of the Parliament are concerned. Before Glorious Revolution the House of Lords used to exercise unquestioned supremacy and was the dominating chamber for all purposes. But gradually the House of lords began to lose its powers and the House of Commons succeeded first in attaining equal footing with the House of Lords and later supremacy over the Lords. Various factors contributed to this changed position one of them was the fact that during the reign of the first two Georges the dominating figure in the government was Walpole who was the Member of the House of Commons, using his personal qualities and outstanding abilities in management managed the Commons and made it the centre of legislature and political leadership. And the
important principle “that the support of the House of Commons is necessary for the Kings' ministry in Parliament, was first recognised in his time and maintained it steadily. Though the democratisation of the House of Commons was brought during nineteenth century but their victory was finally confirmed in 1919.

The “Septennial Act” of 1716 also contributed to the strength of the House of Commons as it extended the life of the House from three years to seven years. It was however, the Act of 1911 which sharply curtailed the powers of the Lords and definitely settled the ultimate supremacy of the Commons other wise from its earliest days the House of Commons had consisted of men who could hardly claim themselves to be the representatives of the peoples inhabiting the several counties and boroughs. County member were elected by the rural peoples and borough members by the borough residents. Many seats had fallen under the control of land lords and magnates and many were openly sold and bought. Under these conditions the House of Common could hardly be called a democratic and was more representative to the House of Lords than to the nation. In words of Munro, “The House of Commons at the end of the eighteenth century was a representative body in form but a very unrepresentative in fact.18

It was in 1832 the process of democratising the House of Commons was set when the Reform Act of 1832 widened suffrage. It also enhanced its prestige and increased its strength. The successive Reform Acts further extended the suffrage and regulated the conditions under which campaign were to be carried on. These reforms culminated in the epochal representation of the People Act 1919 and in 1928 which brought the House of Commons to a point where it can easily be counted amongst the most democratic parliamentary bodies in the world.

**Position in India:**

In India the Charter Act of 1853 established the Legislature. The Act provided for an establishment of a twelve members legislative Council including the Governor General, four members of the Executive council and Chief justice and other judges of the Supreme Court. By the Act of 1861 council was reinforced by additional members usually not more than twelve, nominated by the Governor General for two years.

With a view to reach more near to the people's aspiration for more purposeful representation in the legislative process, the Indian Council Act of 1892 was enacted, introducing a method of election for filling up some of the new official seats in the Indian
Legislative council. Further it gave the Legislative Council the right of asking questions and discussing certain financial matters. Since these measures did not satisfy the Indians they continued to press further for more representative and responsible government. Thus, the Act of 1909, also called Morely Minto Reforms Act, was enacted to enlarge the Indian Legislative Council so as to include a greater variety of Indian opinion and interest than had been included ever before. Another advancement in the democratisation of the Legislature reached under the Government of India Act, 1919, which provided the Indian Legislature to consist the Governor General and two chambers i.e. Council of States and the Legislative Assembly. Each Chamber having the majority of of elected members and headed by a president, appointed by the Governor General in case of Council of States and elected for the Legislative Council. Though the Assembly constituted under the Government of India Act 1919, did not possess the same powers as enjoyed by the legislatures of other independent countries. The then presiding officer Patel wanted the Assembly to function with maximum independence and tried to discharge his duties not as a mere presiding officer but also as the custodian of the rights and privileges of the Members individually and of the House collectively and also to uphold the
dignity of the House. The legislature as a representative body of the peoples and trustee of their sovereignty used to watch their interest and did all to ensure that the executive government must act within and according to the authority given to it by the legislature. To utilize their rights and discharge their responsibilities without fear or favour, the Members of the legislature demanded the liberty of criticizing all aspects of administration and bring them to the public scrutiny. To function effectively with competent manner and independent of the control of the executive government they also needed a secretarial assistance, the independence of which is essential for the parliamentary democracy and interest of the people. This demand was made in 1921 and constituted in 1929. Govt. of India Act, 1935, contains provisions of the privileges for Federal and Provincial Legislature. Section 28(3) and 71(31) expressly denied to those legislature any penal jurisdiction of the House of Commons whereas section 28(4) and 71(4) obliged the said Legislature to approach the court for punishing persons who refused to give evidence or produce documents before its committees. Since it's coming into force the question 'whether the section 28 and 71 of the Act should be amended so that the privileges of the Indian Legislature where made the same as those enjoyed by the British
House of Commons’ rose. The Indian Independence Act, 1947, contained provisions and powers for framing a new Constitution as well as for adapting the Govt. of India Act, 1935, in the changed situation. Till the new Constitution was framed it was this Act (1947) by which the functions of the Dominions were handed over to the Constituent Assembly of India.

So far as their privileges and power are concerned on no aspect of the life of Parliament has India since her independence, modelled her ways more carefully on those of Britain than in regard to the privileges of the House and their Members. The Constitution itself prefers not to attempt to describe those powers, privileges and immunities but instead, says simply that until they are defined by law they “shall be those of the House of Commons of the Parliament of the United Kingdom.” These have been described 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.” Some are available against the Crown, some against the House of Lords, “and others against the citizens, they are much more important. The Privileges are

commonly divided into two classes, namely those specifically claimed by the speaker at the opening of a new Parliament and those not so claimed. Though the fact of a privilege being claimed by the speaker carries with it no superior force Indeed, some of those specifically claimed by the speaker, have been confirmed or limited by the statute. The privileges formally claimed by the speaker since very early are; freedom of speech in debate and freedom from arrest during session. And those which were not so claimed by the speaker are; the right of the House to regulate its own composition in the right to take exclusive cognisance of matters arising within the House; the right to punish members and strangers for breach of privilege and contempt; and the right of impeachment.

The status of Indian legislative bodies from the view point of privileges and immunities had been a matter of concern to Indian legislators and in particular to Indian presiding officers almost from the inception of the 1921's Assemblies. Upto 1935, the Assemblies tried to pretend that they had privileges analogous to those of the House of Commons and persuade others to respect them as if they were supported in law, but whenever actual cases arose it was only too clear that privileges were neither part of the law of the land nor had it been statutorily conferred, even if
newspapers offended against supposed privileges there could be no question calling the editors to the Bar of the House'. In 1933 during the consideration of reforms for India in the Joint Parliamentary committee, a memorandum was sent by the presiding officers of Indian legislative bodies urging that since they were helpless to deal, for instance, with press abuse, they should have conferred upon them the powers, privileges and immunities of the Commons. The Act of 1935 protected the freedom of speech in legislature and empowered the legislature to make laws whereby the courts would be able to punish person refusing to give evidence before legislative committees. It did empower legislatures to attempt the definition of their privileges by law but it expressly forbade the conferring on any legislature the status of a court or any punitive or disciplinary power other than a power to remove or exclude persons infringing the rules.

Codification of Privileges:

The privileges of the House and its Members are neither defined in England nor in India. In United Kingdom no attempt so far has been made to codify the entire law of privilege. The privileges of the Parliament are based "partly upon customs and precedents which are to be found in the Rolls of Parliament and the journals of the two Houses and partly upon certain statutes
which have been passed from time to time for the purpose of making clear particular matter wherein the privileges claimed by either House of Parliament have come in contact either with the prorogatives of the Crown or with the rights of individual."21 The subject had engaged the attention of the Presiding officer since 1938. At the conference in 1939 it was agreed that there should be a definition of privileges. According to the section 28 of the Government of India Act which was amended by an adaptation order on 31st March, 1948, said that the "Privileges of the Members of the Dominion Legislature shall be such as may from time to time be defined by Act of Dominion Legislature and until so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by the Members of the House of Commons of the Parliament of the United Kingdom."22 In September, 1949, the Chairman, (speaker Mavalankar) in conference of speakers of Legislative Assembly, expressed his views as:

"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 present moment is that wherever 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 privilege 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."

the terms of the Constitution of India laid down that "the status equivalent to that of the House of Commons." In 1954 the Press commission pleaded for the codification of privileges, to which the speaker G.V. Mavalankar in the Conference of Presiding Officers at Rajkot on 3rd of January, 1955, replied as:

"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 privileges; and only such privileges are recognised as have existed by long time custom. No codification, therefore, appears to be necessary."

therefore, it was decided unanimously as "in the present circumstances codification is neither necessary nor desirable."

Article 105(3) of the Indian Constitution also provides that "the powers, privileges and immunities of each House shall be such as may, from time to time be defined by Parliament by Law and untill so defined, 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 on 26th January, 1950." Since than no comprehensive law has been passed by the Parliament under this Article and hence, in the absence, the powers, privileges and immunities of the House and of its Members and Committees thereof continues to remain the same as those of the British House of Commons. On the 23rd March, 1967, when the speaker made an announce in Lok Sabha regarding a Writ Petition filed in the Supreme Court against the Speaker and Members of the Committee of privileges, questions were raised in the House, whether legislation should be undertaken to define the privileges of the House. The then Minister of law, P. Govinda Menon, stated that if the view of the House was that legislation should be undertaken on the subject defining the privileges of Parliament, that would be a welcome step and he would be happy to have steps taken in that
direction." He further replied to a question on 21st of June, that the question of defining Privileges was under consideration. In this connection M. Hidayatulla, ex-chief Justice of the Supreme Court, observed:

"If there is mutual trust and respect between Parliament and Courts there is hardly any need to codify the law on the subject of privileges. With a codified law more advantage will flow to persons bent on vilifying Parliament, its Members and Committees and the Courts will be called upon more and more to intervene. At the moment, given a proper understanding on both sides, parliamentary right to punish for breach of its privileges and contempt would rather receive the support of Courts than otherwise. A written law will make it difficult for Parliament as well as Courts to maintain that dignity which rightly belongs to Parliament and which the Courts will always uphold as zealously as they uphold their own."

The amended Constitution (forty second amendment act, 1976) did not presuppose any law to be passed by Parliament in the matter of defining the powers, privileges and immunities of each House, it's Members and Committees but are sought to be evolved by each House of Parliament from time to time. Some of the Privileges of Parliament and of it's Members and Committees are specified in the Constitution, certain Statutes and the Rules of Procedure of the House, while a large number of them are

continued to be based on precedents of the British House of Commons and on conventions which have grown in India also.

A. **Privilege which are specified in the Constitution are:**

- Freedom of speech in Parliament.27

- Immunity to a Member from any proceedings in any Court in respect of any thing said or any vote given by Member in Parliament or any Committee thereof. The given Article also said that no person shall be liable to any proceedings in any Court "in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings."28

- Prohibition on the Courts to inquire into the proceedings of Parliament.29

B. **Privileges which are specified in Statutes are:**

- Freedom from arrest of Members in civil cases during the continuance of the session of the House and forty days before and forty days after its commencement.30

- Immunity to a person from any proceedings civil or criminal,

27. Constitution of India, Art. 105(1)
28. Ibid., (2)
29. Ibid., Article 22.
in any court in respect of the publication in newspapers of a substantially true report of any proceeding of either House of Parliament unless the publication is proved to have been made with malice.\textsuperscript{31}

\textbf{C. Privileges which are specified in the Rules of Procedure:}

- Right of the House to receive immediate information of arrest, detention, conviction, imprisonment and release of a Member.\textsuperscript{32}

- Exemption of Member from service of legal process and arrest within the precincts of the House.\textsuperscript{33}

- Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.\textsuperscript{34}

\textbf{D. Privileges which are based upon precedents:}

- Members or Officers of the House can not be compelled to give evidence or to produce documents in Courts of law related to the proceedings of the House without the permission of the House.

- Members or officers of the House can not be compelled to

\textsuperscript{31} Parliamentary proceeding (Protection of Publication) Act, 1979, S. 53.
\textsuperscript{32} Procedure of the Business of the House, Rule, 229 & 230.
\textsuperscript{33} Ibid., 232 & 230.
\textsuperscript{34} Ibid., 252.
attend as witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and without the consent of the Member whose attendance is required.\textsuperscript{35}

Apart from these privileges and immunities each House enjoys certain consequential powers also which are necessary for the protection of its privileges and immunities. These powers are:

- To commit persons, whether they are Members or not, for breach of privileges or contempt of the House.

To compell the attendance of witnesses and to send for papers and records.\textsuperscript{36}

- To regulate its procedure and the conduct of business.\textsuperscript{37}

- To prohibit the publication of its debates and proceedings and to exclude strangers.\textsuperscript{38}

**Position in some other Commonwealth Countries:**

In the United Kingdom privileges of the Parliament as said, have not been codified so far. They are largely based upon

\textsuperscript{35} 6th R(CPR-2LS).
\textsuperscript{36} *op. cit.*, Rule 269 & 270.
\textsuperscript{37} *op. cit.*, Article 118(1)
\textsuperscript{38} *op. cit.*, Rule 387.
customs and presidents. However, there are certain statutes which have been passed from time to time for the purpose of making particular matters clear wherein the privileges claimed by the Houses of Parliament have come in contact either with the prerogatives of the Crown or with the rights of the individuals. The Select Committees of the House of Commons, U. K., on the Official Secret Acts, in their report in 1939, Observed:

"The privileges of Parliament, like many other institutions of the British Constitution, are indefinite in their nature and stated in general and sometimes vague terms. The elasticity thus secured has made it possible to apply existing privileges in new circumstances from time to time. Any attempt to translate them into precise rules must deprive them of the very quality which renders them adaptable to new and varying conditions, and new or unusual combinations of circumstances, and indeed, might have the effect of restricting rather than safeguarding Member's privileges, since it would imply that, save in the circumstances specified, a Member Could be prosecuted without any infringement of the privileges of the House. The dignity and independence of the two-House, says Sire William Blackstone with great force, 'are in great measure preserved by keeping their privileges indefinite'. If all the privileges of Parliament were set down and ascertained and no privileges to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privileges, and under pretence thereof to harass any refractory Member and violate the freedom of Parliament."

In some other countries e.g. Australia and Canada, Parliament has been empowered under the Constitution to define by law its powers, privileges and immunities however, no such legislation has so far been enacted. In Australia, the powers, privileges and immunities of Parliament are governed by section 49 of the Commonwealth of Australia Constitution Act, 1900, which is much similar to Article 105(3) of the Constitution of India. In Canada, Section 18 of the British North America Act, 1867, substituted by the Parliament of Canada Act, 1875, empowers the Parliament of Canada to define from time to time, by Act, the privileges, powers and immunities of each House of Parliament and of the Members thereof thus the powers, privileges and immunities of the House of Parliament of Canada are potentially those of the British House of Commons. In South Australia, Section 35 of the Constitution Act, 1855-56, empowered Parliament to define powers, privileges and immunities of the two Houses and its Members, provided they did not exceed the privileges, immunities and powers of the British House of Commons as at the time of passing the Act. In pursuance of this Authority Parliament of South Australia in 1858 enacted Parliamentary Privileges Act which set out in comprehensive detail the privileges of the legislature. But this Act was repealed in 1872 since great difficulties were experienced in
its exercise. While speaking on the second reading of the same bill, James P. Boucaut, the Attorney General, quoted lord cairns as saying:

"Parliament's most important privilege is not to define their Privileges. A privilege to commit which is dependent upon the chance or some other body to whom a narrative shall be given of that which was done before their own eyes, being of the same opinion as you are as to whether it was a contempt or not, is no privilege at all." 40

Thus the Act of 1872 declared the powers, privileges and immunities of the two Houses and its Members same as those of the House of Commons at the time of passing of the South Australian Constitution Act, 1856.

**Contempt of the House/Breach of Privilege:**

The power of legislature to punish for contempt is very important. This power has been firmly established by the Speaker of the House of Commons, and he may issue a warrant on these grounds without further specifying the nature of the breach committed. 41 In India, so long as privileges remain those of the House of Commons, the Supreme Court would probably uphold this power and protect it against restriction even by the

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Fundamental Rights. However, if they get codified or set out in an Act of Parliament the Court would certainly be entitled to enquire into the Matter. It is of recent Origin in India. Breach of privilege is considered contempt of the High Court of Parliament, and the power to punish the commission of it rests, as in the case of the Courts, upon the inherent power of an authority to do all that is necessary to maintain its own dignity and efficiency. The courts do not check each other in committing for contempt, and on the whole the accepted doctrine is that they do not interfere with the action of either House in this matter. Some of its examples which were given by May has been Summarised by Anson as:42

a) disrespect to any Member of the House, as such, by a non-member eg. An attempt to threaten or intimidate Members for their action in the House have been declared ‘breach of privilege’ by the House and offenders have been punished in numerous ways as reprimand, imprisonment etc. The offering of a bribe to a Member is a breach of privilege, and the acceptance of bribe by a Member has been punished. Even the acceptance offers by Members for professional services

connected with any proceeding in Parliament is prohibited as "contrary to the usage and dignity of the House."

b) disrespect to the House collectively, whether committed by a Member or any other. This is the original and fundamental form of breach of privilege, and almost all breaches can be reduced to it. Any misconduct in the presence of the House or a committee thereof, whether by Members of Parliament or by members of the public who have been admitted to the galleries of the House or to sittings of committees as witnesses will constitute contempt of the House. Such misconduct may be defined as disorderly, contumacious, disrespectful or contemptuous behaviour in the presence of the House e.g. Interrupting or disturbing the proceedings of the House or of Committees thereof; Impersonating as a Member of the House and taking the Oath; Serving or executing a civil or criminal process within the precincts of the House while the House or a committee there of, is sitting without obtaining the leave of the House; Refusal by a witness to make an oath or affirmation before a committee; Refusal by a witness to answer questions put by a committee and refusal to produce documents in his possession; Prevaricating, giving false evidence, or wilfully suppressing truth
or persistently misleading a committee; Trifling with a committee resulting insulting answers to a committee, or appearing in a state of intoxication before a committee.

c) disobedience to the orders of the House, or interference with its procedure, with its officers in the execution of their duty or with witnesses in respect of evidence given before the House or Committees. Among this class placed the breach of privilege as publication of debates which was frequently published when complaint is made of misrepresentation in the report of a speech. The Motion censuring the printer is a breach of privilege. Publishing of evidence taken by a Committee before it has been reported to the House is considered a breach of privilege. Misconduct of witness before the House or a Committee and for doing of signature to a petitions are other examples. This power of the House to punish for contempt or breach of privilege has been described as 'the Key Stone' of Parliamentary privilege and considered necessary to enable the House to discharge its functions and safe guards its authority and privileges. It owes its origin to the powers possessed by the Courts of law to punish for contempt and without such a power the House would sink and loose its efficiency. But the matter raised certain serious
questions about the area of jurisdiction between the Courts and Legislature and has led to conflict between them. The Act of 1919 which conferred certain privilege on Indian legislators did not give them the power to punish for contempt or breach of privilege.\textsuperscript{43} Even the Government of India Act, 1935, which widened the scope of privileges, expressly stated that nothing in that Act or any other Indian Act should be constructed as conferring or empowering the Federal Legislature to confer, on either chamber or on both chambers sitting together, or on any committee or office of the legislature, the status of a court or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. It was again with the commencement of the Constitution, this power to punish for contempt or breach of privilege and to commit the offender to custody or prison was conferred on the Houses of Parliament and the State Legislatures and was upheld by the Bombay High Court in 1957. The then Chief Justice (Coyajee) observed:

\textit{... the framers of the Constitution intended the House alone to be the sole judge on a question of admitted privilege. To my}

\textsuperscript{43} \textit{Govt. of India Act, 1935, S.677 (Set out in the 9th Schedule).}
mind, it is quite clear, therefore, that under Article 194(3), when it prescribed that the privileges shall be those of the House of Commons of the Parliament of United Kingdom, the power to punish for contempt is expressly conferred on the House in clear and unequivocal terms and therefore it must follow that the exercise of that power is identical with that of the House of Commons."**

Because of the unwilled importance a large number of privileges are recognised by the Courts.

Privilege which are claimed by the House for its Members and recognised the courts are:

1. Freedom of Speech
2. Freedom from Arrest in Civil Cases.

Privileges which are claimed by the House for itself and are recognised by the Courts they are many:

1. The right of each House to be the sole judge of the lawfulness of its own proceeding.
2. Power to frame Rules for procedure under Article 118 and 208 of the Constitution.
3. Right to punish for parliamentary misbehaviour
4. Right to call witnesses before its Committee
5. Right to exclude strangers.
6. Right to punish outsiders for breach of its privileges.

7. Right of the House to publish debates and proceedings.

8. Publication of proceedings under the authority of the House.

There are certain privileges also which although, are claimed by the House but still not recognised by the Courts. Such as:

1. Houses claim that power to punish for contempt is not subject to judicial review.

2. Right for its proper constitution.

Thus, it can be said that the present position is the result of continuous development of English Constitution through many centuries. The first distinctive period in the History of Constitution extends from the time of the settlement and rule of the Anglo-Saxons through Norman dynasties to 1485, this period is called the one in which the foundations of the Constitution were laid. The second period begins from the establishment of the Tudor dynasty through the early and later stuart period including the Puritan Revolution and Commonwealth coming to end with the Glorious Revolution (1485-1688). The third period extends from the Revolution of 1688 to 1919 while the fourth one extends from 1919 to the present day. The age-long struggle between the ruler and the ruled went for centuries till it became a central thread in the constitutional development of England and ended only when the English people had made themselves their own masters.
In this great struggle the leading role on behalf of the nation was played by a great institution- ‘Parliament’ which was essentially an extension of the Royal Council and came in the present form only after a long transformation. It's present form is the result of Great Revolution of 1688 which immensely contributed to the growth of Parliamentary System of Government. The Revolution and the Bill of Rights mark a culminating point. By the close of the seventeenth century the frame work of the English governmental system was almost completed in its larger aspects. It sounded the death knell of the Devine Right of King which meant that the King ceased to posses or at least to exercise once for all many powers which had been disputed. Since this great revolution, the Parliament acquire more and more powers making the King restricted to only some areas. This is the important change of shifting the power from the King or the House of Lords to the House of Commons along with it's democratisation.

India has followed more or less same pattern suitable to the conditions prevailing in India. Powers and privileges of the Members of the Houses are same as those of Britain. They are not defined or codified any where in the Constitution rather Article 105 says that they should be similar as those of the House of Commons in the United Kingdom. Thus, Members have
full autonomy to utilize all those powers, privileges and immunities which are available to them in their deliberations within the precinct of the House. The executive government, under the Constitution, is responsible to the House of the People. Therefore, supremacy and independence of Parliament and the independence of its Members are vital and essential because without this supremacy and independence the Houses of Parliament and the Members thereof can not be expected to give effect to the will of that power which in our Constitution like all other democratic states, is the true political sovereign. This independence & supremacy of the Houses are needed today more than ever before. The modern state is a hydraheaded political organisation whose multifarious activities touch and concern the citizen at every point of his life. By slow and painful stages, the police state has transformed itself into the welfare state as the most potent instrument devised by men for attacking the five giants of poverty, disease ignorance, squalor and idleness. The executive government in the modern state is, therefore, endowed with vast and enormous powers. It is very necessary in these circumstances that Parliament should have constant watch over the activities of the Executive Government and in order that this can be properly done. It is absolutely necessary that neither the
executive government nor any body else, whether it be any member of the public, should be able to criticise or otherwise interfere with the functions of the Houses or their Members and their principal functions. All these privileges appertain equally to both Houses, Privileges are declared and breaches therefore, are punishable by each House. In such legislature neither House by itself can create a new privilege rather each one has exclusive jurisdiction to enforce its privileges. Approval of both the Houses is necessary in creating a new privilege. In U. K. and Thailand, the privileges and immunities have to be confirmed after every election by the Sovereign or Head of the State. The Speaker of the House of Commons, by customs, on his election asks still for the confirmation of the privileges of the Commons.

Collective privileges of Parliament and immunities of Members have, besides being derived from the Constitution and law, grown from the decision and practice of Parliament and decision of courts. There are potential areas of conflict between the Courts and the Legislature where courts have jurisdiction implied or explicit, as in U. K. and Canada and to some extent in India. But in India so long as privileges remain those of the House of commons, the Supreme Court would probably uphold this power
and protect it against restriction even by the Fundamental Rights. If the privileges were codified, set out and defined in an Act of Parliament the court would then at once, feel entitled to enquire into the constitutionality of such privileges.
CHAPTER-II

IMPORTANCE

Parliament is generally a name given to that institution of state which is primarily responsible for the task of making laws of the country. It is one of the most three important institutions of the government namely, the Executive, Judiciary and the legislature having occupying the superior position among all. To enable the Members to discharge their functions independently the Constitution provides certain powers and privileges, individually to each Member and collectively to the house. Privileges are considered to be an important part of the law and custom of Parliament. They tend to preserve the relationship between Parliament and the courts as well as the public. Except so far as it has been made statutory, a privilege is part of the common law.¹ In totalitarian regimes, Parliament either does not exist or where it exists its role is hardly significant. But in a democratic country like India it is the Parliament that carry out the affairs of the state and attend to the grievances of the people. The role of Parliament is more significant in a developing country like India, where the people look to it to meet their growing aspirations.

It is a popular fallacy that the procedures and practices of the Indian Parliament are the exact replica of the West Minister model. What we have today is the result of centuries of struggle by the English from twelfth century when the Commoners were not giving the same status as that of the Lords and Abbots. They did not have a say in the affairs of the state and were considered the followers of what was conveyed to them by the King and his Council. They had the status of mere petitioners.

No doubt the British Parliament has provided the inspiration and set a model for the legislature in India as well as in other Common Wealth countries as far as basic features and fundamental principles are concerned. But over the years, the institution itself has gone through tremendous changes to accommodate new challenges and problems posed by fluid political scenario. After independence, framing a Constitution best suited to its basic needs occupied the top priority with the Constituent Assembly in India. It heavily relied on the British Model primarily because they also used to the British Political Culture but in the process the conditions peculiar to India, its traditions were never ignored. The new Constitution tried to incorporate the best from the British and Indian traditions and conventions.
Parliament in India however, is not as sovereign as the British Parliament which enjoys unlimited law-making powers and its sovereignty is unquestionable. Parliament in India on the contrary has to function within the parameters of the Constitution and its amending power is limited by the basic structure. Its legislative authority is also constrained by the federal distribution of powers between the union and the states and Fundamental Rights which are justiciable. Judicial review has also affected its hegemony. Inspite of these limitations Parliament enjoys immense authority as a law-making body. After Independence one of the very important task that had to be undertaken was to enable Parliament to fulfil its obligations as the sovereign legislature of an independent nation. Because of its tremendous responsibility it is supposed to have an edge over other organs of the government. It enjoys the legislative, financial and administrative matters. It is precisely because of this that it enjoys certain privileges and uphold its dignity and ensuring smooth functioning.

**Why Privileges Are Needed?**

Very often a question is posed as to why the House or its Members need privileges or power above the citizens when they themselves are the representatives of the peoples and further it is
said that no Member of Parliament has higher privileges than those enjoyed by ordinary citizens as regards the application of laws. In other words, the privileges do not exalt the member above the ordinary restraints of law which apply to his fellow citizens.

This is no doubt true but the House is associated with such important functions that needs certain freedom and power to carry out the business effectively thus, it was needed to grant certain powers and immunities to the House as a whole and its Members and Committees. The tasks entrusted to Parliament assumes so much importance that without immunities and privileges it is difficult to carry out its functions and maintain the dignity of the House. Further in order to maintain the highest tradition in Parliamentary life, Members are expected to observe certain standards to enhance the dignity of Parliament as well as their own dignity. Nothing should be contrary to the usage or derogatory to the dignity of the House or in any way inconsistent with the standards which Parliament is entitled to expect.

**Functions of the House:**

It is one of the top three organs of the government occupying unique position. It enjoys the highest power in legislative, financial and executive fields. The functions it is called
upon to perform are many which can be categorised as

1. Law making
2. Financial
3. Control over Executive
4. Control over administration
5. Power to amend Constitution
6. Control over public corporations

Law making is its primary function. The power to enact laws rests with it. Laws are enacted after a thorough debate by the Members of the House and assented to by the head of the state.² Article 107(2) says "a bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as agreed to by both Houses. Previously it was in the form of petition but now it is a full fledged legislative body which has developed a procedure of law making, having unwielded authority to make, confirm, enlarge, restrain, abrogate, repeal, revive and expound laws."³ It has the right to legislate on each and every topic and no other body may legislate except with the authority of Parliament.⁴

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3. I.D. Sharma, Modern Constitution at work, Lucknow, 1950, pp.32.
Control over finance: enactment of the budget is yet other important function of Parliament so far as the financial matters are concerned. It wields greater authority which has developed the lower House to a position of like the House of commons. It controls the purse of the nation and closely monitors the expenditure. This system of Parliamentary control over public finance had its origin in England which was gradually accepted and adopted by other countries all over the world. Article 149 empowers the Parliament to lay down the duties and powers of the Auditor General. He functions as an agent of the Parliament and keeps vigil over public finance. Besides the Standing Committees of Parliament, the public account committee and the estimate committee are also associated closely with public accounts and expenditure. Many a times these committees have brought to the notice of Parliament the financial irregularities, notable among them was the Jeep scandal. It is largely through these committees the financial accountability of the Council of Ministers to Parliament is ensured and enforced.

No less important is the control of the executive by the Parliament. The executive is responsible to the Parliament, both individually and the Council collectively. Article 75(3) says that Council of Ministers shall be collectively responsible to the House
of the people. The Council of Ministers can remain in office so long as it enjoys the confidence of the House and it must resign whenever the policy of the government proves fundamentally unacceptable to the House. Control over the executive is exercised through Parliamentary questions, debates and discussions, adjournment motions and no confidence motions. It is also empowered to impeach the President and Judges of the Supreme Court and High Courts. It is actually the Parliament that makes and unmakes the Executive and always keeps it on its toes.

Article 368 empowers Parliament to amend by way of abolition, variation or repeal any provision of the Constitution. There is no separate constituent body for the purpose of amendment of the Constitution. Parliament’s power to amend the Constitution is, however, limited by the doctrine of basic structure propounded by the Supreme Court in the case of Keshvananda Bharti vs Union of India and the Minerva Mills. In the name of amendment Parliament can not amend or repeal or destroy the basic structure (which is yet to be spelled out by the Supreme Court) of the Constitution. It’s amending power, is therefore, limited.

It also exercises control over public corporations mainly through the committee on public undertakings. Being the
custodian of public interest it is bound to maintain highest standards of integrity and efficiency more so in commercial and industrial enterprises, which are financed out of public funds. Parliament's control over public corporation is manifest in their creation, discussion on their Annual Reports and approval of their budgets. Parliament is not only a law making body but also a debating assembly. It criticizes the administration and policies of the government, highlights the administrative lapses and financial irregularities and keeps the administration on tender hooks. The fear of Parliamentary questions often acts as a deterrence to the administration.

It is because of these important functions and enormous responsibilities that it requires certain amount of freedom to carry out these tasks effectively and fearlessly. The law making process in itself is long and cumbersome involving prolonged debates and discussions. For the effective enforcement of this task it is essential that Members of Parliament should be given freedom to present their views without fear or favour. These freedom owe their origin to the exalted position of the House, considered indispensable for its effective functioning and hence, their importance can not be under emphasized. Pyme rightly observe that "Parliament without Parliamentary liberties are but a fair
plausible way into bandage." In the words of May "the distinctive mark of the privileges is its ancillary character. They are enjoyed by individual Members because the House can not perform its functions without the unimpeded use of the service of its Members and by each House for the protection of its Members and the vindication of its own authority and dignity." The principal reason of such privileges is that 'unless Parliament can not keep its membership intact from outside interference, whether or not the interference was the motive of embarrassing its section it could not be confident of any accomplishment.' Thus each House of Parliament collectively, and its members individually, enjoy certain privileges i.e. certain rights and immunities without which the House and its Members can not discharge the functions entrusted to them by the Constitution. They safeguard the authority and dignity of the House, its Committees and Members and where there is any question of an alleged breach of privileges the matter is examined by the House, but generally by the committees.

The Speaker of the House nominates the committee. In constituting the committee, the speaker takes into consideration

6. Ibid., p.7.
7. Ibid.
the claims, interests and the strength of various parties and groups in the House so that the committee is fully representative. The first committee for the purpose was appointed by the Speaker in April, 1950, consisting of ten members which has now been raised to fifteen. The most important function of this committee is to examine every question of privilege referred to it in the light of facts and circumstances leading to it, making the recommendations which deems fit." Some times it has also been required by the House to consider questions of procedure relating to the privileges of the House. Apart from the standing Committee of Privileges which inquires the matter of privileges of the House and its Members, adhoc committees are also appointed from time to time to consider and investigate the conduct of the Members of the House and to find out whether such conduct was derogatory to the dignity of the House and inconsistent with the standard expected of the Members. One such committee was appointed in 1951 to consider the Mudgal case and again in 1963 and 1971.

Being a sovereign body, subject to the constraints of the Constitution, the House has an inherent right to conduct its affairs without any interference whatsoever.

It is the most important function of the Parliament to receive petitions from people since it is the Parliament to which people look to ventilate their grievances. This is not a new practice but has been in vogue since time immemorial when the petition was demanded by the kings or rulers of the state. In early Parliaments position was entirely different, the representative elements were humble and precarious. For most of the reign of Edward II they could not make constitutional claim in sharing parliamentary functions. Those functions were supposed to be exercised by the council only but even then the Commons became conscious, they made their grants of supply conditional (made supply only when provided a chance to share in legislation and counsel on policy matter). But they could not become the judges in the High court of Parliament therefore, not possesed the power to perform in the same manner as their peers did as counsellors of the King.

The relationship of the Commons with legislation was in the capacity of petitioners, at first as individuals and soon as a body. The statute of York, 1322, laid down a principle that laws of general application should be made in Parliament and secondly, the Common's assent is necessary. These principles had never been definitely laid down ever before. To so succeed in enforcing
the general observance of these principles, the Commons had a long struggle. This struggle was conducted on two main fronts. First, the King's power to make laws outside the Parliament had to be restricted. This was done by appropriating the name of "statute to Parliamentary legislation," and leaving the name of ordinance for conciliar legislation. Secondly, by restricting the sphere of ordinances.

At the beginning of a new Parliament in sixteenth century the speaker, when went up to the House of Lords to receive the royal approbation of this election, laid claim by humble petition to "the ancient and undoubted rights and privileges" of the commons, particularly to four; freedom from arrest, liberty of speech, access to the royal person and a favourable construction of all their proceeding.

The lord chancellor responded that "Her Majesty most readily confirm all the rights and privileges which have been granted to or conferred upon commons by her majesty or any of her royal predecessor." The matter was of such an importance that it finds its place in the Indian Constitution. In United Kingdom, this right has been regarded as a fundamental principle of the Constitution.

The right to present, and for the house to receive, petitions is clearly laid down by the House of Commons in 1669 as "that it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons to revive the same". It is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how they are fit and unfit to be received. In India it owes its origin to a resolution moved in the preindependence era in the then council of states by a Member (Sir Manekji Byramjee Dadabhoy) on 15th September, 1921, which sought to empower the council, if necessary, by statute interaction to receive public petition on all matters relating to public wrongs, grievances or disability to any acts of public servants or to public policy.\textsuperscript{10}

Thus the process of development was slow but steady. The Parliament began acquiring more and more power and the role of the King was restricted to few areas. The Great Revolution of 1688 particularly marked this development. The closing years of the period notable since they contributed immensely to the growth of Parliamentary system of government in England. The Revolution and the Bill of Rights marked a culminating point to the development. All that exists today is nothing more than a detailed

application of principles established in the seventeenth century. None of the principles postulates like the sovereignty of the nation, supremacy of law, and omnipotence of Parliament were seriously challenged again.

Parliament in India has played a pioneer role in working towards the goals of national reconstruction and nurturing the values of freedom, secularism and democracy. Its pivotal position in India's democratic polity is not only a matter of fundamental principle in constitutional theory but it is also a well established fact in our political life. As a microcosm of the nation Parliament has consistently reflected the feelings, hopes, aspirations and even weakness and frustrations of the peoples of India. It was clearly emerged as the most crucial political institution of India the future of which depends on the working of that key institution since the success of any nation depends on how much are its policies effective and implemented in the real life of public to encourage and enhance their development. This can be resulted only if the Members devote themselves whole heartedly and also with a great degree of freedom so as to come out with their hidden ideas and express suitable proposals. This is possible only when they are given certain privileges over others. These privileges and immunities must be attached to each House.
collectively, and to the Members thereof individually, enabling the Parliament to act and discharge its functions without any interference or obstruction from any quarter. Thus, for the effective and efficient deliberation the Members have been given some what wider personal liberty and freedom over an ordinary citizen to ensure their uninterrupted services. These are necessary to vindicate its authority, prestige and power and protect its Members from any obstruction in the performance of their Parliamentary functions.

According to Article 88 and 105 (4), the privileges are not only available to the members of the House but also to those who under Constitution, entitled to speak and take part in the proceedings of the House or any of its committees e.g., Attorney General, hence, to make the Members able to express their ideas and to ensure their movements freely during the business of the House a large number of privileges are thus granted to them.

**Area Sphere of Privileges:**

The privileges constitute an important part of Parliamentary life Article 105 (1) and (2) provides for freedom of speech in Parliament which falls outside the purview of the judiciary. Jaspat Roy Kapoor suggested that a nonmember of Parliament who had
a right to speak in Parliament should also be granted immunity from any proceedings in a court of law not only in respect of what he might say on the floor of the House but also in respect of what he might say before a committee of Parliament and his suggestion was accepted. The ideas behind these immunities is not only to protect the person from any proceeding anywhere but also to enable them to speak freely and come out with their free and frank ideas. Otherwise no express ideas can be emerged and proper information can not be sought. Parliament is the Store House of information and ideas, and this is made possible only when the Members participate freely without any hesitation. To get information from the government of what is happening in various fields, Members ask for information. Even to criticize government's policy they move different motions and put the government on their toe to act according to the prescribed line. The Right to put questions for seeking further information from the government was first provided in 1892, and in 1909 and right to ask supplementary questions was also conceded. The Act of 1909 provided that any Member who had asked a question could put a supplementary question for the purpose of elucidating further information and for this nothing said in the House is

justiciable thus, Members are protected for what they observe and speak in the House.

Under section 67(7) of the Government of India Act, 1919, the Members of the legislature for the first time enjoyed, in express terms, the right to freedom of speech and vote inside the legislative chamber. They are also not liable to any proceeding in any court for their speech or vote in either House for any thing said in official reports.12 This also applies to the publication of any proceeding or paper under the authority of the House. In England, the House of Commons has the right to Prohibit the publication of its reports, debates or other proceedings. In search light case, the question was whether the publication, by a newspaper, of those parts of the speech of Member in the House which were ordered to be expunged by the speaker constitute breach of privilege of the House. The Supreme Court held that the publication of expunged portion of speech constituted a breach of the privilege of the House.

Generally there is a decline in the functioning of most of the institutions during the last few decades and it should surprise no one if one finds this erosion in standards affecting the performance of our Parliament. It is of main concern that the

12. Ibid.
House of the Parliament constitute the acme of our democratic polity. Their proceedings are an open book, constantly watched by the people through newspaper, reports and T.V. coverage, any such lowering in the quality of its functioning or deviation from the requisite norms become much more perceptible and pronounced. Parliament being the supreme forum for deliberating over national issues and matters of public importance is expected to set the tone and provide pattern of discussion and deliberations for other forms to follow and also set norms of behaviour for others to emulate.

Our founding fathers had chosen in the Parliamentary System over the Presidential Form of Government. This was not incidentally but was deliberately chosen as its secures greater accountability. Though the presidential form provides more stability but accountability over stability was preferred as it constitutes the essence of democracy and Rule of Law. It would not be out of contest to mentions that in 1642 Charles I enter into the Parliament with army men to arrest some Members, the king said to the speaker “Mr. Speaker, I am not able to identify the Members whom I want to arrest. You please identify them and hand them over to me”\textsuperscript{13} the speaker told him in a fearless voice

\textsuperscript{13} \textit{Journal of Constitutional & Parliamentary Studies}, Institute of Constitutial and Parliamentary Studies, New Delhi, 1993, p.41.
that he had no eyes and ear of his own but see with the eyes of the House and hear with their ears while functioning as speaker of the House. He further said that he could not oblige His Majesty. And when the King was leaving with his army men the Members of the House shouted at him* Your Majesty, Breach of Privilege, Breach of Privilege. This only establishes the supremancy and its ability to assert even against the King.

The essence of Parliament democracy lies in free, frank and fearless discussions. This enables Members to express themselves freely in the House. Freedom of speech and debate in Parliament in England dates back to 17th century in the famous case of Sir John Eliot who was convicted by the Court of King's Bench for seditious speeches made in the House of Commons. The House of Lords reversed this decision on the ground that “the words spoken in Parliament should only be judged there in.”14 The Bill of Rights, 1688, laid down that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out side the Parliament. A Member may thus say whatever he thinks proper within the House and no action can be brought against him in any court for this. The validity of proceedings within a House also can not

be called in question in a court even if the House does not strictly follow its own rules of procedure. It is an exclusive right of the Parliament to regulate its own internal proceedings and to adjudicate, The courts will not interfere with what takes place inside the House. As in Bradlaugh V. Gossaf case. Bradlaugh was prevented from entering the House by the order of the House of Commons. The plaintiff asked the court to declare the order of the House as invalid. But the court held that the House of Commons was not subject to the control of the court in matters relating to its own internal proceedings, The House of Commons has exclusive right of being the exclusive judge of the legality of its own proceedings, no court of law can interfere with the rights of the House to regulate its internal affairs.

In India, Article 122 categorically states that the validity of the proceeding in Parliament can not be called in question in a court of law on the ground of any alleged irregularity of procedure. In M.S.M. Sharma V. Sri Krishna Sinha, Supreme Court held that "the validity of the proceedings inside the legislature of a state cannot be called in question on the allegation that procedure laid down by the law has not been strictly followed." Each House reserves to itself the power to

suspend any rules of procedure in its application to a particular business before it. The courts do not interfere with the functioning of the speaker inside the House in the matter of regulating the conduct of business of the House by virtue of powers vested in him. The High Court would not issue prohibition to restrain the Committee on Privileges appointed by the House to consider a privilege matter.\(^{16}\) It is an exclusive right of the members to regulate the internal proceeding of the House and to adjudicate upon matters arising there in within the precinct of the House. As May apply obscenes, it 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 exceeds those possessed by other bodies or individual."\(^{17}\) Redlich considers the privileges of the Commons as the sum of fundamental rights of the House and of its individual Member as against the prerogatives of the Crown, the authority of the ordinary courts of land and the special rights of the House of Lords."

\(^{16}\) T.F. May *Parliamentary Privileges*, Butter Worth and Co. Ltd., London, 1974, p.82.

Other privileges are extended to make their movements free while the House is in session. Members cannot be arrested in a civil proceeding within a period of forty days before and forty days after a session to ensure the safe arrival and attendance for their parliamentary duties which are so important that they cannot be ignored or overlooked at any cost. The same privilege is extended to the state legislators. In K. Ananda Nambiar v. Chief Secretary Government of Madras case, the petitioner who was a Member of Parliament, detained under the Defense of India Rules, 1952, he challenged the order of detention on the ground that a legislator cannot be detained and prevented from exercising his constitutional rights as legislator while the legislative chamber to which he belongs is in session. The privilege are extended not to endanger the security and efficiency of the nation rather to the good and prompt services of the country. The privilege is extended not only to the civil cases but in criminal cases too, the House has the right to receive immediate information about the arrest and if the House is not being informed about the detention the act amounts to breach of privilege, The detenue is authorized to correspond with the legislature and make correspondence with the speaker and the chairman of the committee of privileges, the executive authority has no right to withhold such
Rule Making power is yet another privilege. The business of the House is so technical in nature that the House is authorized by the Constitution to frame their own rules and procedures for smooth conduct of business. Whenever circumstances change and new situations arise, the rules need to be changed accordingly which is done by the House itself.

**Impact of Privileges:**

The word immunity is used simultaneously with privilege. It implies immunity against any action outside the House for any thing said by its Members or vote cast in the discharge of his parliamentary duties. It also implies freedom form legal process in connection with the proceedings in Parliaments freedom from arrest in civil cases, immunity from law of slander for words spoken in Parliament, exemption from obeying subpoenas and exemption from serving on juries and attendance as witness in a court during a session of Parliament. It is an essential thing for the proper exercise of their parliamentary functions. The privileges, powers and immunities of the Houses of Parliament and their members, therefore, act as a shield and, to some extent, as a

19. Ibid., p.58.
sword where by the Houses and their members are not only protected but also assert their right to "talk" with dignity and independence, without any fear or favour. Thus, the Parliament and its Members today are not guarded against the challenges to its freedom, from the executive and judicial branches of government but also in greater degree from the fourth state, namely a power full free press and from the citizens themselves, who individually and collectively are endowed by the Constitutions with several fundamental freedom of which the most important one is the freedom of speech and expression. They enjoy the complete freedom therein by virtue of power vested in them.

The Constitution does not exhaustively enumerate all the privileges of the Parliament, it simgly lays down under Article 105 (3) that other powers and privileges of the House, and its Members and committees would be the same as those of the House of Commons in England on the date of commencement of the Constitution. On this basis the Houses enjoyed enormous privileges in the discharge of their work.

Apart from privileges of freedom of speech and freedom from arrest and rule making, other privileges enjoyed by the House and its Members are to elicit information and knowledge about administration and its working. The Members are free to ask
questions to keep themselves well informed. Members or committees have the right to ask for necessary information, date of events or other material from the government needed for the performance of their functions by tabling questions, moving resolutions or raising discussions on matters of public importance, Ministers too have the right to claim privilege to maintain secrecy in sensitive matters. Executive Members though, are not bound to supply information on such matters to a Members in his individual capacity but the committee or House as a whole can ask for access to records, papers and persons and the government is obliged to supply such information. The matter is so important that the very first hour of every sitting is utilised in asking questions on a wide range of subjects. Deliberately providing wrong information to the House amount breach of discipline. Privileges also exempt Members from jury services. They may decline to give evidence and appearance as a witness in a court of law when Parliament is in session. The House also has the right to exclude any stranger from the House during discussion on issues of national security to maintain secrecy. The speaker or chairman has the power to order the withdrawal of strangers from the premises of the House.
The High Court would not issue a writ under Article 226 to a House of Parliament or Speaker or any of its officer to restrain the House from enacting any legislation even if it may be ultravires. The court would not interfere with the legislative process in a House either in the formative stages of law making or with the presentation of the bill as passed by the House of Parliament to the President for his assent. A member of the House cannot be restrained from presenting any bill or moving a resolution in the House. It is only when a bill becomes a law, the courts would adjudicate upon its constitutional validity, Neither House can compel the attendance of a Member of the other House. If the attendance of a Member of one House to give evidence before the other House or a Committee thereof is desired, it is necessary not only to obtain the leave of the House to which such Member belongs but also the consent of that Member. Member of one House is not bound to attend the other House or its committees to give evidence.

A specific privilege yet undermines the dignity or authority of the House or tends to obstruct the House or an individual Member thereof in the discharge of the constitutional functions is considered breach of privilege. The very aim of the term breach of

Privileges is to enable the House to uphold its dignity, defend itself against disrespect and affronts which could not be brought, or could be brought only by implication under any accepted specific privileges.

**Power of the House To Deal with Contempt of the House/Breach of Privilege:**

According to Halsburys, any act or omission which obstructs or impedes any Member or Officer of the House in the discharge of their duties, or which has a tendency to produce such a result would constitute contempt of legislature. Viewed in this light, the House needs to safeguard its authority and its dignity. For the sake of the work of the House as a collective body, each Member has duties and privileges; the House will safeguard the later for its sake. For this it has the power to punished any Member or any one else, interfering with a Member for contempt of its rulings. The punishment can extend to imprisonment or exclusion from the House which is non-justiciable. A committal for contempt or for breach of privilege is within the exclusive jurisdiction of each house and is not subject to appeal to any outside authority or to judicial review. But in case of Thamarikani, M.L.A., Madras Legislative Assembly were the
petitioner challenged the decision of the speaker of the House following fifteen days imprisonment for him and suspension from the House for the whole budget session, the Madras High Court directed to realise him on the bail which the speaker had accepted. Though earlier he (speaker) order to 'rearrest' him in difference to the High Court order but later he had accepted in order to avoid confrontation between the Legislature and Judiciary. Otherwise If the conduct is derogatory to the dignity of the House and its Members and inconsistent with the standards which the House expects from its Members, the House is authorized to award punishment to the recalcitrant Members and outsiders ranging from imprisonment, fine, admonition, reprimand to suspension and expulsion from the House. Eriskon May said that the penal jurisdiction of the House to punish person for committing breach of privilege, within or outside the House is judicial in nature and is derived from the pristine concept that Parliament is primarily a court of justice. In India when the speaker of Lok Sabha while reprimanding the Editor in the Blitz case, (1961) described the Lok Sabha as High court of Parliament.

The scope of the phrase 'contempt of the House and breach of privilege is very broad and covers a variety of situations where the House can take action. Generally the case of contempt of the House and Breach of privilege arises if any act or omission obstructs or impedes it in the performance of its functions or which obstructs or impedes any Member or officer of the House in the discharge of his duties or which has a tendency directly or indirectly to produce such results.

The matter of breach of privilege is such an important aspect that whenever any complaint is received the matter should be raised as soon as possible just after it has occurred. If it has occurred before the sitting of the House, it is raised before the commencement of usual business and if it arises out of the proceedings then it is taken at the earliest possible time. And whenever it is raised in the House by a Member, the committee either hears the question of privilege or permit him to explain his case in a written statement or hear any other Member of the House who may desire to place his views before the committee. In the light of its reports the House takes decision and action is taken on it.

The right of the House to punish for its contempt is analogous to the right of a superior court to punish for its
contempt, and infact was justified in early days in England by a reference to the mediaeval concept of Parliament being the highest court in England. The principal reason behind the contempt of the House or Breach of Privilege is that "unless Parliament can not keep its membership intact from outside interference, whether or not the interference was the motive of embarrassing its section it could not be confident of any accomplishment. Thus, each House of Parliament collectively, and its Members individually, enjoy these privileges i.e. certain rights and immunities without which the House and its Members can not discharge the functions entrusted to them by the Constitution. The very basic aim of these privileges is to safeguard the freedom, the authority and the dignity of the House, its Committees and Members and where there is any question of an alleged breach of a privilege the matter is examined by the House and committee. The Member need not to go in court for any thing said or vote given in the House even he can refuse to attend as witness in any court on any important issue rather, the House is based on the principle that attendance of a Member in the House takes precedence over all other obligations and that the House has the paramount right and prior claim to the attendance and services of its Members and even the court also
sees, if it is possible, to arrange for the attendance of the Member after the session is over. But no Member is entitled to give evidence in relation to any debate or proceeding in the House except by its leave. Each House of the Parliament has the power to secure the attendance of persons of privileges and to punish for breach of privilege and commit the offender to custody or prison. This power of the House to punish for contempt or breach of privilege has been described as “Key Stone of Parliamentary privilege” and is considered necessary to enables the Members and the House to discharge their function safely. Without such power the House would sink into utter contempt and inefficiency. This power of the House to punish any person who commits a contempt of the House or a breach of any privileges is the most important right, actually it is this power that gives reality to the privileges of Parliament and emphasizes its sovereign character so far as the protection of its rights and the maintenance of its dignity is concerned.

**Its Effects:**

It is doubtless that the Parliament is engaged in most important functions chiefly statute or law making. All Members of Parliament enjoyed important personal privilege ensuring them the freedom to concentrate on their unparalleled work without any
hindrance or obstacle. They possess the power to punish all those who interfere in their deliberation or impede it. The House is thus made supreme in awarding punishment to the accused and no appeal is made in any other place or law court outside Parliament. This maintains the supremacy and dignity of the House as well as its personnel.

The sphere of the breach of privilege is very wide empowering the House and its members to take action against those which seems derogatory to its dignity. The matter is so important that whenever it is raised it gains prime importance, committee hears it without any delay and gathers the facts for preparing its report. The House relies on its report and action is taken in the light of the report. The jurisdiction of the House to punish for its contempt and breach of privilege is so exclusive that most of the time the Parliament is called the highest court as in England. This has made the Members immune from any proceeding in any court related to any matter of the House even the Members can refuse to appear witness in any court howsoever important the matter is and no action is taken against them, this has made the privilege a key stone.
CHAPTER-III

FREEDOM OF SPEECH

Freedom of Speech and debate is an essential attribute of every free legislature and may be regarded as inherent in the constitution of Parliament.

The privilege of speech enables the Members to hold free and frank discussion on any matter and provide an immunity to the members from any action against them for any thing said or vote given on the floor of the House. Its original purpose was to protect Members against the King and is thus connected with precautions taken by the House against the publication of debates and its control over the admission of strangers. This was first confirmed by the practice of selecting a speaker in 1376 to carry out their agreed reply to the King when the King usually through his chancellor used to declare the cause of summons to the entire assembled Parliament and ordered the magnates and the commons to withdraw to different chambers to discuss the business laid before them and provide atleast the possibility of free discussion by the commons in the unofficial atmosphere of a private meeting.
At the instigation of Richard II, the Lords in 1379 convicted Thomas Haxey of treason for introducing, in the Commons, a bill of reforms obnoxious to the King. But in Henry IV's first Parliament the Commons asked to reverse the judgement on the ground that it was 'against the rights and liberties and the course which had been usual in Parliament in violation of the customs of the Commons.' This also let to Henry IV's recognition of the right to parliamentary freedom of speech. He said that it was his wish that Commons should treat all matters amongst themselves in order to bring them to the best conclusion and that he would hear no person before such matters were brought before him by the consent of the Commons.

In 1401 when Sir Thomas Savage elected as speaker, informed the King of such matters, before the same had been determined and discussed and agreed upon among the Commons, by which the King might be incensed against them or some of them, to please the King and to advance themselves. But the King said that it was his wish that Commons should deliberate and treat all matters amongst themselves. In 1407 a more formal declaration was made by the King that it shall be lawful for the

Lords to commune among themselves in this present Parliament and in every other in times to come, in the absence of the King of the state of realm and of the remedy necessary for the same and in the like manner. In 1407 the same principal was reaffirmed for the financial discussion when the king declared that "it shall be lawful for the Commons on the part, to commune together of the state and remedy aforsaid." These declarations established the theoretical principle as the basis of the privilege, that "the King does not know what is said in debate", and it remained the constitutional form of principle until 1512.

In 1455 the first express claim for liberty of speech was made in the commons when Sir Thomas Younge, one of the knights for the shire brought a petition into the Commons complaining about his arrest and imprisonment in the Tower five years back, on the matters showed by him in the House. In 1512 under Henry VIII when Strode, a member of the Commons House was imprisoned by the Stannary Court for having proposed certain bills in parliament to regulate the privilege of the tin miners, a statute was passed declaring in a general way that "any proceeding against any Member of the present Parliament or of any future Parliament for any speaking in Parliament should

be utterly void and of non effect." This was the statutory recognition of the freedom of debate. Since then it had become the custom almost from the very inception of the office of the speaker, upon his election, to ask the King to take no notice of any thing which he, as speaker, might report derogatory to the Crown and to believe that the Commons desired only that 'the rights of the Crown should be maintained'. This was more of a request than the claim for freedom of speech.

Thomas More (1523) was the first speaker to beg the royal indulgence for any untoward expression by individuals in debate. In his speech before the King he pointed out that "in such an assembly, as the Commons, among so many wise men neither is every man wise a like" and asked the King to give to all your Commons here assembled your most gracious license and pardon freely, without doubt of your dreadful displeasure, every man to discharge his conscience, and boldly in everything incident among, declare his advice, and what soever, happened any man to say, it may like your noble Majesty of your inestimable goodness to take all in good part, interpreting every man's words, how uncunningly soever they may be couched, to proceed yet a good zeal towards the profit of four Realms and honour of your Royal person......

5. Kenneth Mackenzie; op cit., P.35.
In 1541, for the first time, the speaker at the beginning of the session included freedom of speech as among the ancient and undoubted rights and privileges which the commons claimed of the King and thence onward, it became the regular practice that the speaker should demand this privilege. It is during the reign of Elizabeth that this privilege became a matter of contention. Freedom of speech has been regularly claimed as a right. Elizabeth however, punished Members for the words used in the Parliament and Members were warned in Parliament not to be free with their language. The same petition was moved by the speaker Moyle in 1542 and was allowed by Henry with the greatest humanity. The precedent was regularly followed during Elizabeth's reign and in 1565 it had become sufficiently usual to be included in Sir Thomas Smith account of Parliamentary Procedure. Henry VIII did pretend to the Pope that the discussions in the English Parliament were free and unrestricted and that the crown had no power to limit their debates or to control the votes of the Members but Elizabeth warned the Commons off the discussion on certain subjects like religion, trade and the succession. In 1571 when Stricland, who introduced some ecclesiastical bills, was called before the council and ordered
not to appear again. But in Parliament, the Queen gave way again. In 1576 when Peter Wentworth, a member of tregony, made his trenchant speech about freedom of debate, the Commons became against him and themselves committed him to the tower. He was released after a month at the instance of the Queen and after apology and reprimand from the Speaker.

In 1621 James I wrote to the speaker, commanding him “to make known in our name unto the House, that none therein shall presume hence forth to meddle with any thing concerning our government or deep matters of state.” In response the Commons made the famous protestation of 18 December, 1621, that “the privileges of Parliament are the ancient and undoubted birthright of the subjects of England and the Commons may handle any subject and enjoy a complete freedom of speech.” But this was afterward torn out from of the journal by the King and disrobes the Parliament dissolved. Few days after the dissolution of Parliament in 1629, Eliot and some other Members were arrested and committed to the tower. The Attorney-General brought criminal charges against three of them, against Eliot for words spoken in the House, against Holles and Valentine for a

7. Ibid., p.321.
tumult on the last day of the session. The prisoners pleaded that as alleged offences were supposed to be committed in Parliament they ought not to answer for them in another Court. They relied much on Strobes case and the Act of 1512. The judges held that it only applied to suits against Members of Parliament prosecuted in the Stannary Courts, and arguing that the King's Bench had the power to punish crimes wherever committed, sentenced the prisoners and to remain in prison till the King's pleasure. But when the Parliament met again the Commons protested against this as a breach of privilege, and in 1641 and 1667 the Houses passed the resolution against this judgement. In 1667 both Houses agreed in declaring the Stordes act as a general act declaratory of the ancient and necessary rights and privileges of parliament and that the judgement against Eliot, Holles and Valintine was illegal. It was said that an ordinary crime such as theft committed by the Members in the House might be punished in the ordinary courts in the ordinary way but since restoration, there had not been any attempt, made by any court of law, to punish a Member for words spoken in the House.

Though the struggle to the freedom of speech started very early but this claim was not finally substantiated in practice.

8. Ibid.
untill the constitutional struggle of sixteenth century had been won by the Parliament. It was by the Revolution of 1688 the freedom of speech received statutory confirmation. The Bill of Rights 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. No action would lie against a Member of Parliament for words spoken by him in the course of parliamentary proceedings and similarly no action will lie for any publication among Members of Parliament by order of the House or in the ordinary course of parliamentary business". It was held in Lake V. King (1667), 1 Saunders 131, that an action would not lie for defamatory matter contained in a petition printed and delivered to Members. Since then, no legal proceedings under taken by the Crown against Members for words uttered in the House.

Present Position:

Now a days it is more important to hold this freedom of speech good, not only against the Crown but also against private individuals. A Member speaking in either House is quite outside the law of slander. He may accuse any person of the basest

crimes, may do so knowing that his words are false, and yet that person will have no action against him. In case if he uttered the same words else where he might have had to answer for them in a Court of law, but for what he says on the floor of the House he cannot be sued any where.

In case of Duncan Sandys 1938, the House resolved that it was a breach of privilege to attempt to require a Member of Parliament to divulge to a court of inquiry, set up by the Army Council, the source of his information concerning the anti aircraft defences of London which he had used for the purpose of framing a question in the House. A select committee then advised that although Members are privileged from prosecution under the official secret Acts for disclosures made in the House, they should used their immunity with discretion. The government also should show discretion in exercising their powers under these Acts so as not to impede Members in the discharge of their parliamentary duties. Whatever a person thinks fit in debate he is entitled to use his expression. No action is taken against him for libel in any court of law. Sir Erskine May said that “it is this privilege essential to every free Council of Legislature, the fullest and most complete ventilation of every plan, object and purpose.” It is also said that this privilege is necessary for wise and beneficial
legislation. This could never be secured if the Members should have been under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate and frequently something more, is now reported to the public, but the danger to the general welfare from its curtailment is far greater than to individuals from its exercise.\textsuperscript{10}

\textbf{Position in India:}

In India this privilege is embodied in Article 105 cl(3) and (2) as: Subject to the provision of this constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament [cl(1)]. Cl(2) says, No Member of Parliament shall be liable to any proceedings in any Court in respect of any thing 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, papers, votes or proceedings. This privilege was expressly granted for the first time to the Indian Legislators under the Montague-Chelmsford Reforms and given statutory recognition.\textsuperscript{11} According to this, a Member has the


\textsuperscript{11} \textit{Government of India Act}, 1935, S. 67(1)
immunity from any proceeding in any court in respect of his speech or vote "in either chamber of Indian legislature." It was argued that the immunity granted by Article 105(2) related to what was relevant to the business of Parliament and not to some thing which was utterly irrelevant. The Supreme Court rejected the argument as in case of Keshav Singh V. State of U.P. Cl (2) of Article 105 of the Constitution was dealt with by their Lordships of the S.C. in Special Reference No.1 of 1964. Gajendragadkar, C.J., speaking for the majority observed:

"Having conferred freedom of speech on the legislator cl(2) emphasizes the fact that the said freedom is intended to be absolute and unfettered. It is plain that the constitution makers attached so much importance to the necessity of absolute freedom in debates within the Legislative Chambers in the wide terms prescribed by cl(2). Thus cl(1) confers freedom of speech on the legislators within the Legislative Chamber and cl(2) makes it plain that the freedom is literally absolute and unfettered."

In Tej Kiran Jain V. Sanjiva Reddy Case, Hidayatullah, C. J., observed:

"The Article, confers immunity in respect of 'anything said in Parliament, the word 'anything' is of the widest importance and is equivalent to 'everything'. The only limitation arises from the word 'in Parliament'. Once it was proved that Parliament was sitting and its

12. Ibid., S. 28.
business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is the essence of parliamentary system of govt. that peoples representatives should be free to express themselves without fear of legal consequences, what they say is only subject to the discipline of the rules of Parliament, the good sense of Members and the control of proceeding by the speaker. The courts have no say in the matter and should really have none."\textsuperscript{14}

The full bench of Supreme Court in this case held that the clause (1) of Article 105 confers freedom of speech on the legislator within the Legislative Chamber and cl(2) makes it plain that the freedom is literally absolute and unfettered. The protection given by above clause is to "any thing said" are of the widest amplitude and it is not permissible to read any limitation therein. The object of the provision obviously was to secure absolute freedom of discussion in Parliament and to allay any apprehension of legal proceedings in a court of Law in respect of anything said in Parliament by a Member there of."\textsuperscript{15}

In case of \textit{Mian Bashir Ahmad V. State}, Mufti Bahauddin, C. J., Observed:

\textit{Where the Act of the legislature impinges on the freedom of speech in the Legislature, the High Court under Article 226 can not take cognizance of the dispute and grant relief to the Member of the}

\textsuperscript{14} \textit{A.I.R.} 1970, S.C. 1573.

\textsuperscript{15} \textit{Ibid.} 1971.
Legislature against his parent institution. For, if the Legislature
denies itself and its Members any available privilege, the court
cannot step in and tell the Legislature why it has done so. This is a
domestic matter between the Member and his parent House. The
court cannot adjudicate upon the validity of such action at the
instance of a Member of the Legislature and tell the Legislature that
it had committed an illegality in what it had done. His remedy lies
elsewhere. He has no locus standi to approach the court for relief
in this regard, more so, when has been a party to the decision
approving the measure on the floor of the House.\textsuperscript{16}

The provision of Article 105 cl(4) is also applied to persons who
by virtue of the Constitution, have the right to speak in and
otherwise to take part in the proceedings of either House or any
committee thereof as they apply in relation to Members of
Parliament.

For speeches and action in Parliament, Members are
subjected only to the discipline of the House and not to the civil
or criminal proceeding against them in any court.\textsuperscript{17} In case of

\textit{Suresh Chandra Banerji V. Punit Goala}, Harries, C.J. observed:

"Absolute privilege has been given in respect of any thing said in a
House of the Legislature. It was thought in England and in India
that unless such absolute privilege was granted Member of Legislative
Assembly might be afraid to speak out their minds and freely to
express their views."

\textsuperscript{17} \textit{A.I.R.}, 1951, Calcutta, 176.
Members are completely protected from any proceeding in a court of law even if the words spoken by them are false and malicious to their knowledge. Debrata Mookerjee, J., observed in case of Jatish Chandra Ghosh V. Hari Sadhan Mukerjee as:

"Article 194 (counterpart of Article 105, in states), of the Constitution makes it clear that the immunity from liability to prosecution extends only what is said within the walls of the legislature. In a democratic setup this freedom of speech is quite conceivably an essential condition which guaranties the proper functioning of the Constitution. It helps to secure a free frank and fearless discussion in the Legislature.

In 1968 a police man made an enquiry in connection with the investigation of a case of alleged theft of the original document, the photo state copy of which Bhupesh Gupta, a Member of the House, mentioned in the House on 26th of March, 1968. The matter was referred to the committee of privileges which observed:

"In Article 105 the word 'proceeding in Parliament' includes everything said or done by a member in 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. This secure the immunity from civil or criminal cases on account of any thing said or done by them in their capacity as a Member and is necessary corollary to the privilege of freedom of speech and debate or proceeding in Parliament."

18. Ibid.
It is commonly said that the essence of parliamentary democracy is a free, frank and fearless discussion in Parliament. It is therefore, necessary to immunize the Member from any fear they can be penalised for anything said by them within the House so that they can express freely in the House.

Members are not only given the right to freedom of speech within the walls of the House but their witnesses and petitions are also protected under Article 105(3) from suits and molestation in respect of what they say in the House or in committee thereof. It ensure the Member's freedom in House without interference from out side. Any molestation or threats against persons who have given evidence before the House or any committee thereof on account of what they have said in their evidence, is treated by the House as a breach of privilege. Molestation to any petitioner or counsel for having preferred a petition to the House or his conduct while discharging his professional duties as a counsel is considered contempt of the House too.21 Brining legal proceedings against any person for giving evidence in relation to any proceeding in the House or in committee thereof is also treated as a breach of privilege by the House.

Based on the recommendations of the Reforms Enquiry

Committee headed by Muddiman, under the Legislative Members
Exemption Act, 1925, Members are exempted from appearance as
jurors or assessors, Also, no person is liable to arrest or
detention in civil case if:

1. he is a Member of a Legislative body constituted under the
   Govt. of India Act, 1919, during the continuance of any
   meeting of such a body;

2. he is a Member of any committee of such body, during the
   continuance of any meeting of such a committee; and

3. he is a Member of either chamber of the Indian Legislature
   during the continuance of a joint sitting of the Houses or of
   a Joint Committee etc. of which he is a member and during
   the fourteen days before and after such meeting or sitting.22

The right to freedom of speech was always claimed by the House
as their ancient rights but frequently violated under the Tudors
and Stuarts by an undue extension of the Crown's prerogatives.
However, by the enactment of Bill of Rights, 1688, the Crown
had been occasionally endeavored to control Parliament by
depriving Members of some post or office for acting in opposition
to its wishes.

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New Delhi, 1994, p.162.
Position in Other Countries:

Freedom of speech and voting is guaranteed in almost all Parliaments. In most countries the constitution contains detailed provisions while in others they are supplemented by other legal provisions. Like U.K. India, U.S.A., Germany, Lebanon, Italy and in many other countries it is granted by the Constitution or Basic Law or statute and Parliamentary Rules. In Canada and Australia this freedom in both Houses is guaranteed by law. Pakistan too is the country where this provision is contained in the Constitution and the Rule of Procedure of Parliament. No Member of Parliament can be questioned in any court of law or is liable for any proceedings in any court for any thing said or vote given by him in Parliament or for publications by or under the authority of Parliament of any report, papers, votes, or proceedings. In such countries no legal proceedings has been taken against Member for anything said or any vote given by him. It is the duty of each Member also to refrain from any course of action prejudicial to the privilege of freedom of speech which he enjoys. It was declared by the House of Commons by a resolution on 15th July, 1947 as:

"It is inconsistent with the dignity of the House, with the duty of a Member to his constituents and with the maintenance of the

privilege of freedom of speech of any Member of this House to enter into any contracted 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.24

**Duration of Immunity:**

There is considerable variation amongst Parliaments so far as their duration is concerned. In U.K. this immunity operates from the date of the first meeting of Parliament after an election, or an individual Member’s first arrival and lasts indefinitely. In India the immunity in respect of any thing said or vote given in Parliament by a Member during his membership operates from the date of his election as a Member, it does not operate if any thing said or vote given in Parliament is repeated or disclosed outside the Parliament unless the publication of proceedings is by or under the authority of Parliament. Here no Member has ever been prosecuted for defamation or libel for any thing said in the Parliament.

**Privacy of Debates:**

To observe the freedom of speech in the House it is necessary on the part of the House to secure privacy of debates

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and to publish its debates and proceedings outside the Parliament. By resolution of March 3, 1762, any publication of speeches made by Members is a breach of privilege. Until the eighteenth century the House resented and prevented any publication on accounts of its proceedings, but since the famous conflict between the House of Commons and John Wilkes, the privilege has not been insisted upon. The House, however, may at any time resolve that publication is a breach of privilege.

**Power of the House to Exclude Strangers:**

Each House of Parliament has been given the right to exclude strangers and to debate in closed doors. This is an important corollary to the freedom of speech. At the time of war and secrecy privacy of debate is necessary. This power vary greatly from country to country, from situation to situation. Countries like Australia and Canada, the power is available to withdrawal of strangers but not to ensure freedom of speech. Several secret meetings when held, as during war time, this power is always applied. In U.K., Pakistan and India, Parliament has the power to exclude strangers from the House in order to secure complete freedom of speech and debate. The Supreme observed\(^\text{25}\) in case *M. S. M. Sharma V. Shri Krishna Sinha* as:

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

Parliament is empowered to withdraw license wherever it feels to do so and exclude them therefore, during the secret sitting of the House no stranger is permitted to enter on the floor or lobby and galleries except those who are the Members of the House and those who are authorised by the Speaker e.g. on February 27th, 1942, to discuss the war situation a secret sitting was held, the speaker announced to clear all galleries except the gallery for the council of state and directed that the proceedings of the secret sitting will not be taken down, recorded or published. In this pursuance, all lobbies and galleries were cleared from strangers and all doors to various galleries were closed and locked. The official gallery and Governor General's Box were also cleared and locked except the door to the council of state's gallery which was not locked but closed, and watch and ward staff was posted

outside the door to admit the Members of that chamber only. After that only the Member moved the motion. No record thus, prepared or published of that sitting. The only report, for the purpose of record, printed under the orders of the speaker of Legislative Assembly and read as:

"The remainder of the sitting was in secret session and the Assembly discussed the following motion moved by the honourable Mr. M. S. Anney; that the war situation be taken into consideration'. And the procedure in all other respects in connection with a secret sitting is in accordance with such directions as the speaker may give."

This right is supposed to exist for two reasons. First, that no stranger may be present and take part in division. Secondly, in order to prevent outside influence through the speeches and resolutions of Members being reported to the outside world. If any Member who is dissatisfied with the presence of stranger and taken notice of the same, the Speaker or the Chairman is bound by the resolution of the House, passed in 1875, to forth with put the question that stranger be ordered to withdraw, or the speaker or chairman may order their withdrawal at any time on its own initiative.  

Disclosure of proceedings or decision of a secret sitting by

any person in any manner is treated as a gross breach of privilege of the House under Rule 252. Therefore, apart from the Member of the Houses, Secretary, Deputy Secretary and the Assistant Secretary and Marshal every stranger is ordered to vacate the House or even gallery.

**Parliamentary Privileges and the Press:**

The duty of the press is to report faithfully and not to distort the events of the Parliament. Further, the Press must observe decorum and do nothing that is derogatory to the dignity of the House or its Members. Parliamentary Papers Act, 1840, had made the publication of any report, papers, votes or proceedings of the House of Parliament ordered by the House, completely privileged whether the publication was only for the use of Members of Parliament or for a wider circulation. In India too, under Article 105(2), no person is liable to any proceedings in any court in respect of the publication of any report, papers, votes or proceedings by or under the authority of the House of Parliament. Thus, all persons connected with the proceedings of the House are protected if the same is made under the authority of the House itself. But the said Article does not protect publication made without the authority of the House. In England
somewhat wider privilege is available. In Case of *Wason V. Walter*, in the course of a debate in the House of Lords, allegations disparaging the character of plaintiff were spoken. A faithful report of the debate was published in the "Time", the plaintiff asked the Times for libel. But the court dismissed the action, Chief Justice Cook Burn observed:

"That it was of paramount public and national importance that parliamentary proceedings should be communicated to the public which has the deepest interest in knowing what passes in Parliament'. Practically speaking, therefore, it is idle to say that the publication of Parliamentary proceeding is prohibited by Parliament."

May summarised it as:

"So long as the debates are correctly and faithfully reported, the order which prohibit their publication are not enforced; but when they are reported mala fide, the publishers of newspapers are liable to punishment."

In *Wason - Walter* case, the Court dismissed the action saying that:

"The advantage to the community from publication of the proceedings of the House is so great that the occasional inconvenience to an individual arising from it must yield to the general good."

Therefore, a faithful and fair report of the proceeding of the House is not actionable in England. But Publication of a garbled

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or partial report or of detached parts of proceedings with intent to injure an individual is however not entitled to protection.

In India Article 361 A says that no person shall be liable to any proceedings civil or criminal, in any court in respect of the publication in newspaper of a substantially true report of any proceeding of either House of Parliament unless the publication is proved to have been made with malice. This immunity does not however, apply to the publication of any report of the proceeding of a secret sitting of any House of Parliament. Both Houses have declared, by resolution, that the publication of debates constitutes a breach of privilege. This privilege was enforced by the commons down to 1771, and in such accounts of debates as did appear, members were represented under fictitious names. In 1717, the House sent a messenger to arrest Miller, a printer of Parliamentary debate. The printer however, gave the messenger in custody for assault and the Lord Mayor and two aldermen committed him for trial and allowing him bail. Upon this, the House caused the entry to be erased from the book of recognizance and committed the Lord Mayor and two aldermen to the Tower. The House has, since then, waived the right to restrain publication of its debates which are however, still permitted upon sufferance only and in case of willful
misrepresentation the House would still exercise the right to punish the offender.

A departure from the right path may constitute breach of the privileges of the Parliament and in serious cases may even amount to contempt of its authority. The conduct of the newspaper must, of course, relate either to the proceedings in Parliament or to the service, the Members render to Parliament when any breach of privilege or contempt is brought to the notice of Parliament the matter is considered either by the committee of privileges or in the appropriate House itself and offending newspaper is called to account. Responsible person is treated according to the gravity of the offence. In these matter the House wields powers analogous to that of the courts of records to punish contempts of themselves. In Case of Suresh Chandra Banerjee V. Prat Goala Haries C.J. observed:

"The rule to vicarious publication can not possibly apply to speeches made in the Assembly. Absolute privilege has been given in respect of any thing said in the House of the Legislature. It was thought in England and in India that unless such absolute privilege was granted, Members of Legislative Assemblies might be afraid to speak out their minds and freely to press their views."

Reports of the proceedings of a legislature in an Indian newspaper, unless such are expressly authorised by the House,

are not the subject matter of privilege and may found a complaint for defamation under S. 500 of the penal code.

In 1953, an issue was reased on the editorial comment in the ‘Time of India,’ Questions had been allowed and put in the House to the Minister of Finance for prohibition on the granting of liquor permits to Magistrate and judges. The questioner asked whether the govt. was ‘aware of the feeling in the public that granting of liquor permits to magistrates and judges is likely to influence judicial decisions in prohibition cases’ to which the reply was ‘No’. Supplementaries secured the names of the judges, who got permits. Two days later, an editorial comment followed under the heading ‘contemptible’. The questions asked were nothing short of degrading design to lower their Lordships in public esteem.... The singling out of magistrates and judges for public obloquy cannot be part of a deliberate pattern the questions should have been disallowed since they violate the conditions laid down for the admissibility of questions, and they were ‘mean and petty’ 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”. The committee of privileges, after hearing the editor and
his counsel, considered that the questions did not amount to any contravention of the Constitution which bans 'discussion' on the conduct of a Judge in the discharge of his duties; further that they were not contrary to the provisions of the rules regarding questions; finally, that the criticism in the editorial 'exceeds the bounds of decency, reason and fair comment' and 'is calculated to undermine the prestige and authority of the House'. The editor and the paper were then held guilty of contempt and therefore of breach of privilege of the House. The House thus, endorsed the findings and carried out the committee's recommendations to disapprove the conduct of the editor and, in the absence of a published unconditional apology, to withdraw the press facilities given to the paper.\(^\text{31}\) It was observed in the Search light case that:

"Parliament has the power or privilege of prohibiting the publication of even a true and faithful report of its proceedings."

It is obvious from the above that if the Legislature has the power to prohibit publication of its true and faithful proceedings then it must necessarily have the power and privilege to prohibit the publication of an inaccurate or garbled version of its debated discussion and proceedings. The publication of report of

proceedings of the House is subject to the control of the respective House which has this right to prohibit publication of its proceedings. Supreme Court observed in this regard as.\textsuperscript{32}

"Our constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privilege and immunities of the House, its Members and committees, they shall have all the powers, privilege and immunities of the House of Commons... and yet to deny them those powers, privileges and immunities after finding that the House of commons had them at relevant time, will be not to interpret the constitution but to remake it."

The object behind the statement is to protect the right to freedom of speech by ensuring privacy of debate whenever necessary and prevails over the general right of the individual to freedom of speech and expression guaranteed by the Constitution. Only the Secretary-General is authorised under the directions of the speaker to prepare and publish a full report of the proceeding. If a member publishes his own speech made in the House separately from the rest of the debate it becomes a separate publication unconnected with the proceedings in the House, and the member publishing it becomes responsible for any libelous matter contained there in under the ordinary law of the land. According to rule 251 and 225, disclosure of the proceeding or decision arrived at in a secret sitting of the House by any person

\textsuperscript{32} A.I.R., 1959, S.C. 395.
in any manner, until the ban of secrecy is lifted by the House, is treated as a gross breach of privileges.

**Premature Publication:**

Premature publication or publicity in the press to notices of questions, adjournment motions, resolutions, answers to questions and other matters related to the proceedings of the House is also considered improper according to the parliamentary practice, usage and conventions. Technically though, is not a breach of privilege or contempt of the House but the Speaker can express displeasure against person responsible for it. Other breach of conventions considered are:

1. Publication of question before they are admitted by the speaker and before their answers are given in the House or laid on the table.\(^{33}\)

2. Publication of answers to questions before they are given in the House or laid on the Table.\(^{34}\)

3. Publication of notice of adjournment motions or resolutions before they are admitted by the speaker or mentioned in the House. On 27th March, 1933, a Member of the House - *Lal Chand Navalrai*, wanted to move an adjournment motion,

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34. *Ibid.*, Rule
discussing the situation (serious and grove) in Sind. He gave notice of the motion at 20 minutes past 10 in the morning (the Members are entitled to give such notices before 11 O'clock) The chair drew the attention of the House to this as:

"Though the notice was handed over at 10:20 in the morning but the notice of this motion had already appeared in the press a day before, and it is a well established convention of the House of Commons that a Member who gives to the press, for publication of questions or resolutions before they are admitted by the chair, commits a serious breach of the privilege of the House. The House of Commons and its spokesman, the Speaker, have got ample powers to deal with Members who do not observe that convention. But unfortunately neither the House nor its spokesman have such powers. In the absence of such powers the chair can only appeal to Hon. Members that this well established convention which is observed in the House of Commons should also be observed as one of the conventions of this House."

Similarly on 10th December, 1952, a notice of adjournment motion was given to raise a matter on a news which was published in the issue of "Hindustan Times", 6th Dec.1952, that "Not six years have passed since India achieved her independence, and the man who is to swear allegiance at the coronation as India's representative is the man who has spent as many years in a British prison for his leading part in the struggle for that independence." Even before the motion, was admitted by the chair

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35. L.A.D. 27.3.1933, p. 2655.
there was a very flamboyant report of that adjournment motion in 'Delhi Express' as:

will Nehru swear allegiance to Queen?
Opposition M.Ps Protest Against Reported Move.
Adjournment Motion likely today.

UK. High Commission denies knowledge of plan.

The Deputy speaker observed in this regard as:

"It is a breach of convention. The mischief is done by publishing it before the consent of the Speaker is given, whenever hon. Members are not taken into confidence, when the consent of the speaker is withheld and the motions are not even read out in the House ... It is improper to be published as it would be read and the mischief might be done. In those circumstances when this matter is withheld, for the press to publish it can not be condemned in too strong words."

He ruled out to take action against the paper and called for explanation. This is considered the breach of convention and it is desirable that no question or motion find advance publicity in the press rather the question and answer should reach together to the public. Later on 12th December, 1952, a letter of apology was given by the Managing Editor of the paper and was accepted by the House.

4. Premature publicity of notice of motion of no-confidence against the speaker. On 14th of March, 1975, question of privilege was raised by some Members against the 'Indian

Express' against the UNI news which published the notice of no-confidence against speaker, given by Madhu Limaya, before it was not considered by the House. On this, the Speaker observed that:

"Rule 334 A, notice shall not be given publicity by any Member or other person until it has been admitted by the speaker and circulated to Members, provided that a notice of a question shall not be given any publicity until the day on which the question is answered in the House.

5. Publication of the report of the Committee or Commission, appointed by the govt. in pursuance of a resolution of the House or an under taking speech given in the House. On 5th Sept., 1955, Minister of Labour, Khandubhai Desai, brought in notice of the speaker- the leakage and publication of an extract from the Bank Award Commission Report in an Indian Newspaper before it was being placed on the Table of the House. The Speaker ruled as:

"It is equally the duty of the press to help observance of parliamentary convention; It is wrong practice to obtain information in the manner and give publicity to it before a particular matter is placed before the Parliament."

He then hoped the press to follow this Kind of convention and help the House in that direction.

Earlier on 6th March, 1940, F.E. James drew attention of the

chair on a news report from certain press agency alleging certain decisions which had been arrived at in the course of the Select Committee proceeding on the 'Excess Profit Tax Bill' published in a number of newspapers. The same message was broadcast even by the Govt. of India itself from the All India Radio Station, Delhi, few days before the presentation of report on the floor, where as the select Committee is supposed to be confidential and what transpired during the deliberation of the committee cannot be discussed even on the floor of the House before it has been presented to the House. As May stated "Both as a breach of the Commons privilege and pursuant to the resolution of the House forbidding the publication, no Member, or any other person, may publish any portion of the evidence taken by, or documents presented to Select Committee, which have not been reported to the House; and his rule extends equally to the report of a committee before it has been presented to the House. The chair observed in this connection that:"

"The privilege of the House covers the entire proceedings of a Select Committee and it is equally a breach of that privilege whether the proceedings or the report of a select committee are published verbatim or in detail or only a summary or selected portions of its proceedings or of its reports is published before it is presented to the House. It is not permissible to a member of the select committee

or to any one who has access to its proceedings to communicate directly or indirectly to the press any information regarding its proceedings including its report or any conclusion supposed to have been arrived at finally or tentatively before the report has been presented to the House. It is equally expected of the press to cooperate with the House in this matter and to obtain from publishing such information from whatever source it may have been received."

6. Making important policy announcements by ministers outside the House while the House is in session.

**Publication of Expunged Proceeding:**

Publication of any expunged part of proceedings of the House is considered breach of privilege and contempt of the House. Rule 380 and 381 empowers the speaker to order expunction of words from debates. What Supreme Court observed in this regard is:

"The effect in law of order of the Speaker to expunge a portion of the speech of a Member may be as if that portion had not been spoken. A report of the whole speech in such circumstance though factually correct may, in law, be regarded as perverted and unfaithful report of a speech i.e. including the expunged portion in derogation to the orders of the speaker passed in the House may, prime facie, be regarded as constituting a breach of privilege of the House arising out of the publication of the offending news - items."

The editor, publisher, printer or correspondent of a paper may tender an unconditional apology for the proceedings expunged by

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40. [A.I.R., 1959. SC.395](#)
the Speaker and if the House accepts it then only the matter is considered closed. The House requires the editor to publish the correction and apology in the next issue of the paper and report the fact to the House. On 21st Dec., 1959, matter was raised on the issue of ‘Free Press Journal’ of Bombay, which published certain expunged portion of the speech of 16th Dec., in the issue of 17th Dec., 1959. It was seemed intentional since at the end it was added that "this portion was later expunged by the speaker. The attention of the Speaker was drawn by the Member to take action against this breach of privilege as it is the tendency of the press to disregard the wishes of the House and also to defame the Member. The speaker then took the action, asked the Editor to give explanation about it otherwise the matter would be raised in the House. But the letter of unconditional apology from the Editor made the matter closed.

For escaping liability in damages regarding defamation made by news paper publication, of report of parliamentary proceedings, three tests are supposed to be satisfied; namely, accurate and faith full publication, general importance of it and absence of animus injurandi. If the expunged publication is proved to be malicious then person responsible for such publication can not

escape tortuous liability by claiming qualified privilege. However, experience has shown that Indian Parliament, like House of Commons, does not exercise these powers, except in gross cases. It fully appreciates the benefit of publicity and accords all necessary facilities to the reports and encourages the publication of its debates and proceedings.

**Exemption to Freedom of Speech in Parliament:**

Speech and action in Parliament is said to be unquestioned and free from external influence or interference but it does not mean unrestrained licence of speech within the House. The right to freedom of speech in the House is described by the constitutional provisions and the procedure for inviting attention to incorrect statements made by Ministers or Members is governed by Directions and Rules of the House. In countries like U.K this is a constitutional right granted by the Bill of Rights. However, under the domestic procedural rules of Parliament, critical reference to the Head of State, judges etc. are permissible in the House on substantive motions only, but any disrespectful personal imputation against a member of the royal family is unparliamentary and out of order. These are self-imposed restriction and are part of the internal rules and order. In

42. Ibid., Article, 194(4)
Canada, the rules provide that a Member may not speak disrespectfully of the Queen, the Governor-General; either House and, save on a substantive motion, of a Members of either House, the judiciary and the public servants. In Pakistan under the Constitution, discussion cannot take place in Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties. He is not permitted to use the President's name for influencing the debate, utter treasonable, seditions or defamatory words, use offensive or unparliamentary expressions or use his right of speech for obstructing the business of the House. In addition a Member can not reflect upon the conduct of a person in high authority except on a substantive motion, or make a personal charge against a member or refer to any matter of facts pending judicial decision in a court or use any offensive language against the conduct or proceedings of a House or the joint sitting or any other assembly.\(^43\)

**Position in India:**

In India the condition is more or less some as in U.K. and Pakistan. If any Member violates any of these restrictions the

\(^{43}\) Aslam Abduallh Khan, *op. cit.*, p.84.
speaker may direct him to discontinue his speech or order the defamatory, indecent, unparliamentary or undignified words used by the Member to be expunged from the proceedings of the House, or direct the Member to withdraw from the service of the House. During Lok Sabha debate on Sep. 17, 1959, the speaker ordered Elias, Member of the House to withdraw from the House when he continued to speak on the serious food situation in West-Bengal. The speaker ruled as:

"Because the Hon. Member is obstructing, I hereby direct that Shri Muhammad Elias will keep out of this House and withdraw from this House for the rest of the day."

And when he still continued, the speaker ordered him to withdraw otherwise, he would be forced to withdraw and the Marshal approached and requested him to withdraw from the House. The speaker further said that:

"It shall have to take more serious action against him for this contempt of the authority of the speaker."

Under ‘don’t’ imposed by Members on them selves through the Rules and Standing orders, they could not;

1. refer to any matter subjudice. If a Member insists inspite of the chair asking him not to do so, the chair may ask him to discontinue his speech forth with. This rule, however, does not apply to matters of privilege where disciplinary
jurisdiction of the House with respect to its own Member is concerned. In such cases the chair and the House consider each case on its merit e.g. as during the Lok Saba Debate on 2nd Dec., 1974, about an import licence case, it was complained that a Member allegedly received bribe for furthering the cause of some import licence applicants with the govt. and had also allegedly forged the signatures of some Members of Parliament. The member concerned, wrote to the speaker pleading that since the matter had become subjudice it should not be discussed in the House, the speaker gave his ruling that:

“In the present case the allegations of bribery and forgery, which had been prima facie established against the Member by CBI enquiry, were very serious and unbecoming of a Member of Parliament and the Member might be held guilty of lowering the dignity of the House. The House was therefore, free to discuss any motion relating to the conduct of the Member.”

2. make a personal allegation against another Member unless it has been established by the Court, or the House. The Speaker ruled out when Mudgal, in his speech referred the conduct of an hon. Member of the House which had not been established in the House as:

"It is not proper to refer to the conduct of any hon. Member, untill it had been established in a court of law or otherwise has been held as unjust by this House and similar action has been taken. It is not usual to attack any hon. Member by surprise or for the matter of that refer to the conduct of any hon. Member not present on the floor of the House, particularly the private conduct of any hon. Member. So long as it is not brought to the notice of the House in a proper and legitimate manner and so long as the court have not decided in their judicial capacity, no reference ought to be made to that kind of conduct because there is no basis on which we can proceed.... To the conduct of other, I will not allow any reference by way of misconduct or improper conduct of any other hon. Member here to be made an allegation. There for this kind of allegation is irrelevant."

3. make use of offensive language regarding the conduct of central or local legislatures. On May, 2, 1972, Hukum Singh Kachwai while raising a matter of quorum, uttered derogatory words which were supposed to be unparliamentary and retarding the dignity and prestige of the House. The chairman ordered him to withdraw their words otherwise, withdraw from the House. But neither he withdrew his words nor did he go out, saying that "I will not withdraw from the House. Then the chairman named him and ruled out his suspension from the service of the House for three days under rule 374 (2) as it affected the dignity of the chair.

4. reflect upon the conduct of his Majesty, the King/President,
Governor or any court of law. Neither House or its Members have jurisdiction over the other House or its Member. Therefore, neither House can punish any breach of privilege or contempt offered to it by a Member or officer of the other House. Proceedings of each House as well as all Legislatures are privileged and no action can be taken in one House for any thing that is said in another House. On March 26, 1959, a Member drew the attention of the House to a news appeared in Oriya daily “Samaj”, 18th March, 1959, about the alleged remarks casted by chief minister of Orissa against the Members of Parliament. He asked to call the chief minister and the editor to the bar to explain their conduct. But the speaker refused his consent as each House is ‘Supreme’ in its own proceedings and observed:

“If really the hon. Chief Minister has said what he is alleged to have said, it is regrettable... if it is really true, this ought not to be continued... no House will cast any aspersion and no Member will cast any aspersion on any Member of the other House.”

On March 30, 1970, during debate in Rajya Saba, Niren Ghosh, Member of Rajya Sabha made certain allegations against a Member of Lok Sabha. On this after some discussion, the speaker wrote to the chairman inviting his attention to the matter that:

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

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

**Right of the House to Punish Its Members for their Conduct:**

Under Article 105(3) Parliament has the power to punish its Members for disorderly conduct and other contempts committed in the House while it is sitting. In case of *Raj Narain Singh V. Atma Ram Gobind Kher*, High Court observed."

"A Legislative Assembly would not be able to discharge the high functions entrusted to it properly if it had no power to punish offenders against breaches of its privileges, to impose disciplinary regulations upon its Members or to enforce obedience to its commands."\(^{47}\)

In 1958, it was observed by the Orissa High Court in a case related to the speech delivered in Orissa Legislative Assembly that:

"Anything said or done in the House is a matter to be dealt with by the House itself and that the legislature or the speaker had the power ‘to take suitable action against the Member who, while exercising his freedom of speech under clause (1) of Art. 194 transgresses the limits laid down in that clause.’"

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By Rule 378, the speaker, who preserves order in the House, has all powers necessary for the purpose of enforcing his decision.' The disciplinary powers of the speaker and the House are partly embodied in the Rule 373 and 374 which provides for the withdrawal or suspension of any Member whose conduct is grossly disorderly or who disregards the authority of the chair or abuses the rules of the House by persistently and willfully obstructing its business.

When the things fall outside the ambit of this provision it becomes liable to be dealt by the Court in accordance with the law of the land.
CHATER-IV

FREEDOM FROM ARREST

The right to freedom from arrest is yet another major privilege enjoyed by the person as a Member of Parliament. Except on Criminal charges, under Preventive Detention Act or under Defence of India Act in the interest of public safety, it is considered breach of privilege or contempt of the House to arrest or to cause the arrest of a Member of Parliament in civil cases during its session or during forty days preceding and forty days following a session. It is supposed that “Members should not be prevented by trifling interruptions from their attendance on their Parliamentary work. The privilege of freedom from arrest evolves two things,

1. freedom from arrest under process of law, and
2. it is not actually a privilege but calculated to prevent a breach of privilege and to punish an infringement thereof.

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 now to the functioning of each House. L.D white said “In connection with most early amblies that were in any way identified with the King,
is to be found some idea of a royally sanctioned safe-conduct, the Kings peace was to abide in his assemblies and was to extend the Members in coming to it and returning from it. Naturally these royal sanctions applied to Parliament. But as the 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 actions, it could not be confident of any accomplishment.”

Hansel stated “Its is peculiarly essential to the court of Parliament, the first and the highest court in this Kingdom that the Members who compose it should be prevented by trifling interruptions from their attendance on this important duty but should be excused from obeying any other call, not so immediately necessary for the great services of the nations. 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 process to which other citizens

not instructed with his most valuable franchise are by law obliged to pay obidience."^{2} Today the privilege of freedom from arrest is not of great value as it applies to civil process only, where as the imprisonment in civil process has been practically abolished. But it is of great historical importance since it was in connection with it that the Commons first gained the right to determine and enforce matter of privilege. Before the Tudor period questions of privileges were decided by the King and the Lords.

**Retrospective Views:**

The immunity of freedom from arrest originated in the ancient protection afforded by the King to persons travelling to and from his court. When the Commons began to come to Parliament this protection was extended to them. It was provided that persons should not be hindered by arrest from coming to Parliament. In the fifteenth century the Commons began to claim freedom from arrest except for treason, felony or breach of peace. But King and Lords though willing to release a particular individual at the request of the Commons as a matter of grace, would not concede copy right.

In 1404 on the petition of the Commons for the punishment

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of the assailant of Richard Cheddar, 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 fines and ransom to the King. The same penalty was imposed by a general statute on assault on Members of either House coming to Parliament. A statute of Henry VI, C.11 in 1433 gave some sanctions to this privilege. It was he who assaulted a Member attending Parliament was to pay double damages.

The privilege of freedom from arrest was somewhat wider, not only the Member did claim that they were not only to be arrested for words spoken in the House but they claimed a general immunity from ordinary law as the situation was grave. Not only in criminal cases but in civil cases to a debtor against whom a judgement had been obtained could be imprisoned until he paid the debt, he could be taken into execution. A defendant in a civil action could generally be imprisoned as soon as the action was began unless he found bail for his appearance in court. However Lords used to enjoy a considerable immunity from arrest except on criminal charges. The representatives of the
Commons also claimed the similar liberty during the session of Parliament and for certain times before and after the session necessary for their coming and going. Exemption from arrest upon criminal charges at least in case of treason, felony or breach of the peace was not claimed. In 1453-54 Speaker Thomas when imprisoned for not paying a fine, the judges while recognizing the freedom from arrest, ruled that determination and knowledge of that privilege belonged to the Lords of the Parliament and not to the justices.\(^3\) Until the reign of Henry VIII, the Commons did not get the right to determine and enforce matters of privilege. However they had been obliged to petition for a writ out of chancery in order to obtain the release of an arrested Member.

In 1543, George Ferrors, Burgeses for plymoutth, was arrested for debt during the time of Parliament and the Commons took the matter upto the Lords. They, judging the contempt to be very great, referred the punishment thereof to the order of the House of Commons. The Commons proceeded to order their serjeant to require delivery of the burgess without any writ or warrant and when the Lords chancellor offered to grant a writ they refused. In 1573 he delivered Smalley a Member's servant arrested for debt. In 1585 orders were enlarged and set at liberty James Digg,

servant to the Archibishop of Canterbury, by virtue of the privilege of the court. In 1597 the servants of Lords and Archibishop of Canterbury, the officers who had arrested the prisoners were committed by the House. During seventies this privilege grew to huge dimensions and became almost impossible to get any justice out of a Member of Parliament. Sir Thomas Shirley who was arrested for debt in 1603 was released, resulting in the enactment of an act which gave statutory sanction to the existence of the privilege, yet made provisions for the benefit of the creditor. Since imprisonment in civil cases was very common, debtors were imprisoned by way of execution thus the privilege became an important matter and was carried to great length. The Members not only claimed it for themselves but for their servants too, and claimed that their property should be immune from execution. But statute of Anne and George III, 1770, carried that the servants and property of the Members were no longer be privileged, nothing was left but the freedom from arrest for Members themselves.

By the statute of James I, the freedom of Members from arrest in civil cases has become a legal right rather than a parliamentary privilege. The arrest of a Member in civil cases is therefore irregular as initio, and he may be discharged
immediately as in 1707 the serjeant was sent with the mace to the warden of the Fleet who obeyed its orders of the House and discharged Asgill - a Member then in execution. In 1831 the committee of privilege reported that the “privilege is not claimable for any indictable offence” the principle regarded by the House of Commons as being covering criminal contempt of Court therefore, in Long Wellesleys case, 1839, they did not ask for the release of a Member who had been committed by the Court of Chancery for taking out one of its words out of the jurisdiction.4

It was decided in Goudy V. Duncombe Case (1847) that the immunity lasted during a session of Parliament and forty days before and forty days after it. It applied equally when Parliament was dissolved or prorogued and it could be claimed by any one who was a Member of the old Parliament but had not been elected to the new.

History shows that its scope is very narrow as it was not protected from proceedings under the Bankruptcy Act, neither probably from arrest on a criminal charges for a non indictable offence nor from proceedings for contempt of court. There is no protection in cases of refusal to give surety to keep the peace or

security for good behaviour and all those cases which are not strictly of criminal nature but partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with Lord in 1641 that "privilege of Parliament is granted in regard to the service of the commonwealth and is not to be used to the danger of the commonwealth." In 1807 Mill who had been arrested on mesne process, afterward elected for legislature, the House determine that he was entitled to privilege and ordered him to be discharged out of the custody of the Marshall of the King bench. Similarly Christie Burton, 1819, who was elected from Beverly but being in custody on execution and unable to attend parliamentary proceedings, the House ordered his discharge from the custody since he was entitled to this privilege. By 1869, the imprisonment for debt was abolished but there were still some cases in which a person may be imprisoned as for not paying trust monies which he had been ordered to pay by the court of justice.\(^5\)

**Recent Trend:**

Presently too, the immunity is granted to civil cases only but its duration is extended. A Member of Parliament is exempted from arrest in civil cases for a period of forty days before and

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forty days after a meeting of Parliament in order to make them able to perform their duties in Parliament without let or hindrance. The old rule was that the persons of the peers are always sacred and inviolable further, Irish and Scottish peers who had no seats in the House of Lords enjoyed this privilege thus, it was rather a privilege of peerage than a privilege of Parliament. William Anson denied this and confined it within the usual times of privilege of Parliament.

The main objective of this privilege is "to secure safe arrival and regular attendance of Members on the scene of their parliamentary duties." It does not protect from arrest on a criminal charges for an indictable offence nor from preventive detention by order of the executive authority under statutory powers, e.g. regulations made under defence Act in times of war. However, the Parliament has a right of receiving immediate information of the imprisonment or detention of any Member, together with the reasons for his detention. Provisions are made that before a Member was committed or detained there must be obtained the consent of the House of which he was a Member.

When a Member of Parliament commits any crime he is

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arrested like an ordinary citizen and if he is convicted, the Judge notifies it to the speaker of the House. The Member is usually expelled from the House after being laying of the papers on the table at their request. If the arrest or molestation of a Member is made with mischievous and malicious intent and is protected from attending the proceedings of the Parliament or any State Legislature then the arrested person is entitled to compensation for the loss it has faced. In case of Bhim Singh, the court observed that:

"Article 21, 22(2) and 32 under Constitution of India, if a person is arrested with mischievous and malicious intent, the victim can be compensated by awarding suitable monetary compensation in appropriate cases. Arrest of Member of legislative Assembly while enroute to seat of Assembly and his deprivation of right to attend impending assembly constituted breach of privileges."

He was compensated with Rs. 50,000/- for the gross violation of right of not being produced before the magistrate within the requisite time.

Even if a person is arrested by an order of speaker of the House but not produced before the magistrate, which in normal cases is done as a part of the procedure, is also considered a breach of privilege as in case of Gunupati Keshavram Reddy, a petition under Article 32 alleged that "a was arrested in Bombay

on the 11th March, 1952, taken into custody to Lucknow to be produced before the speaker of the U.P. Legislative Assembly to answer a charge of breach of privilege. He was not produced before the magistrate within twenty four hrs. of his arrest and was in detention in the speaker's custody at Lucknow even at the time of petition." The chief Justice founded it a clear breach of provision of Article 22(2) of the Constitution of India which is quite peremptory in its terms:

"No such person shall be detained in custody beyond the said period without the authority of a Magistrate,"* making the said petitioner entitled to release.

**Period of Immunity:**

Members in the U.K. are exempted from arrest in civil cases for forty days on either side of the commencement and dissolution of Parliament and after a prorogation but no immunity is available for bankruptcy and insolvency. Similar position is applicable in India, A Member is liable to be arrested in criminal charges and under Preventive Detention Act. This immunity of freedom from arrest even under Preventive Detention Act is available in Pakistan for fourteen days before and fourteen days after a session except when preventive detention is for reasons of

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state connected with defense, external affairs, security of Pakistan or any part thereof. Same immunity is available in Israel. Members of Bundestage in the Federal Republic of Germany enjoy immunity from arrest in criminal cases along with civil cases. In Thailand too, the immunity is available in criminal cases and prosecution. No Member can, during a session, be arrested or detained or summoned by a warrant in a criminal case unless permission of the House of which he is a Member is obtained or he is arrested in flagrante delicto. But such arrest must be communicated to the President of the House concerned who may order the release of the arrested Member. In Lebanon and Italy Members enjoy immunity on criminal charge only. Immunity is also available to the Members of Italian senate from the arrest under preventive detention. The immunity is available in all the civil cases during membership only whether the case relates to the period before or after the election of a Member, but in execution of a sentence passed in a criminal case against a Member before or after his election is not suspended for the duration of his membership. In some other countries the position is different, for example in Egypt, if the sentence has began

before election it can not be suspended but if it has not commenced then Assembly’s permission is required for its execution. In the U.K. not even the warrants and civil process may be served on Members within the precinct of the House when the House is sitting. It is a contempt to cause or effect the arrest serve even on criminal charges on a Member of the House of Commons during and forty days before and forty days after the session. Usually a Member who is already in custody or pending trial is generally not entitled as a matter of privilege to attend sessions of Parliament and can not be released or have his trial suspended to enable him to attend session. However, it is possible to produce a Member imprisoned on a resolution of the House. The court can also, at its descretion, release a Member who is in custody to attend the session.10

**Position in India:**

Here, this exemption from arrest and detention under civil process was conferred in 1925 on the Members of Legislative body by the Legislative Members Exemption Act, 1925, Section 3, which inserted Section 135 A in the Code of Civil Procedure, 1908, which was subsequently adopted by the Adaptation of Law Order, 1950, issued under Article 372 (2) provides that a Member

of a Legislature is not liable to arrest or detention in prison under civil process during the continuance of any meeting of the House of the Legislature or its Committee thereof, of which he may be a member and during fourteen days before and fourteen days after such meeting. Legislature Members Exemption Act, 1925 is based on the recommendations of the Reforms Enquiry committee headed by Mudiman, provided that no person was liable to arrest or detention in a civil case" if:

1. he was a Member of a legislative body constituted under the Govt. of India Act, 1919, during the continuance of any meeting of such a body.

2. he was as Member of any committee of such body, during the continuance of any meeting of such a committee, and

3. he was a Member of either chamber of the Indian Legislature during the continuance of joint sitting of the Houses, or of a Joint Committee etc. of which he was a Member and during the fourteen days before and fourteen days after such meeting or sitting.

Before independence, cases of detention of political offenders were brought to the notice of the House in the shape of notice of

11. Legislative Assembly & Council Rule, Standing Order 28(2) and 29(2) by the decision of the Chair.
adjournment motion. In case of a Member of Legislature S.C. 
Mitra who was detained and prevented from attending the House, 
Nehru moved an adjournment motion which was adopted by 64 
votes against 46 votes as a protest against the violation of the 
Member's privilege. Similar motion was passed on 22nd January, 
1935, for protesting against preventing S.C. Bose from attending 
the Assembly session.

With the enforcement of the Constitution on 26 January, 
1950, the scope and duration of the privilege became the same 
as obtaining in U.K. i.e. forty days before and forty days after 
the session of the House and not merely for fourteen days which 
was provided in section 135 A of the Code of Procedure, 1908. 
The same view was also expressed on May 5th, 1952, by the 
Ministry of Home affairs, Govt. of India, in their letter no. 91/51 
Police 1, addressed to the Secretary govt. of the Erstwhile Madhya 
Bharat State. The Madras High Court in Case of Venkatesh held:

"there is immunity extending for a period of forty days prior to 
the meeting and forty days subsequent to the conclusion of the 
meeting for a Member of Parliament from being arrested for a civil 
debt; that is if there is a decree against him, or , if he is sought 
to be arrested before judgement, he can certainly claim the 
immunity and freedom from arrest. It is also clear that such

immunity can not extend or be contended to operate where the M.P. is charged with an indictable offence."14

If a person is arrested in civil cases during the parliamentary session he is entitled to his release since he is exempted from such arrest which otherwise, is considered a breach of law.

**Preventive Detention:**

This immunity is not extended to preventive detention cases. If a Member is charged and detained under the Act or for any criminal act he is not liable to be released or any permission to attend the proceeding of the House because the liberty is provided to the welfare of the state and not to endanger the state. In 1939, when captain Ram say - Member of Legislative Council was booked under preventive detention under Regulation 18B of the Defence Regulations, 1939, by which the Home secretary had the power to certify that he had reasonable cause to believe that a person had been recently concerned in acts prejudicial to public safety or the defence of the realm or in the preparation of such acts, and that by reasons thereof, it was necessary to exercise control over him. No Criminal charge was involved but committee viewed that Home secretary's action was not a breach of privilege, and captain Ram say was not released

untill 5 years later.\textsuperscript{15} In case of \textit{Ansumali Majumdar}, the Calcutta High Court observed:

"under such existing law persons returned as Members of State Legislative Assembly or the Council of State can not claim immunity from arrest for preventive detention and therefore they can be detained under the provisions of the Preventive Detention Act whilst their membership of the Assembly or the Council of State continues."\textsuperscript{16}

On May 27th, 1952, N.C. Chatterjee, a Member of the Lok Sabha, gave a notice of privilege motion on the arrest of a Member-\textit{Deshpande} as it constituted a breach of privilege of the House since the House was in session. The speaker recieved the information of the same from the District Magistrate, Delhi, that he has been arrested under section 3 of Preventive Detention Act of 1950 as he was among others who took part in organising and directing meetings and demonstration over the intended celebration of an inter-communal marriage which led to a breach of peace and therefore, it was considered necessary to detain him in the interest of maintenance of public order. The committee of privilege found that "the arrest of V.G. Deshpande under the Preventive Detention Act did not constitute a breach of privilege of the House." Therefore no more action was taken by the House.

\textsuperscript{15} Hood Philips, \textit{op. cit.} p.182.
\textsuperscript{16} \textit{A.I.R.} 1952 Madras, 117.
Similar views were observed by the committee in case of Dashratha Deb, Member of Parliament who was arrested on 12th June, 1952, that “when a Member is arrested in the course of administration of criminal justice, immediately released on bail, it is under the law and practice of privilege of the House, give necessary information to the speaker. It is being clear that such an arrest does not in itself constitute a breach of privilege of the House,” therefore no further action was taken by the House. Kunjan Nadar, a Member of legislative assembly, asked for writ of mandamus when arrested under preventive detention but the High court of Cochin observed as:

“When a Member of Legislative Assembly has been arrested and detained and his detention is legal and under due process of law, he cannot claim that his detention should be subordinated to his right to attend the proceedings of the Legislative Assembly. He cannot therefore pray for writ of Mandamus directing the state govt. to enable him to attend the session of the Legislative Assembly. there is no statutory provision granting such privilege or immunity”:

In the same way the Supreme Court rejected the petition of K. Ananda, Namblar, who was detained under Preventive Detention Act and observed:

“Under the Defence of India Rules, 1962. R 30 (1) (b) a Member can not claim any special status higher than that of an ordinary

citizen in so far as a valid order of detention is concerned and is as much liable to be arrested and detained under it as any other citizen.*18

Exemption From Arrest within the Precinct of the House:

Generally Members are quite safe within the precincts as no legal process is served on them while they are in. The Govt. Of India issued instructions on 7th Oct., 1958, by a letter no. 35/2/57 P.11, to all the concerned authorities of State Govt. and Administration that no person should be served by any legal process, civil or criminal, by court of law through the speaker or secretariat. Concerned Members should be served outside the precinct of Parliament directly at their residence or any other place. No help either from speaker or Lok Sabha secretariat or any agency thereof, the court sought to inform the Member about the issue of legal process or in the execution of legal process-civil or criminal against Members. The Govt. of India also directed the police and administration through the state govt. that arrest within the precincts even after the permission of speaker should not be made as a routine matter. Such arrest is made by obtaining speaker's permission only in case of emergency when the matter cannot be delayed. The request is supposed to be signed by not below the rank of Deputy Inspector. General of
police, spelling out the reasons for the immediate arrest. In case, the House is not in session even then the permission of speaker is required to execute warrant. In 1959, Punjab Vidhan Sabha held a policeman guilty of breach of privilege since he attempted to execute arrest warrant on the Member without obtaining the leave of the House. Who later on regretted and offered unqualified apology.

The employees of legislative secretariat are kept away from this privilege. The speaker of the Kerala Legislative Assembly observed that "the prohibition against making arrest without obtaining the permission of the speaker from the precinct of the House is applicable only to the Members of the Assembly. It is not desirable to extend this privilege to the staff of the secretariat since it would have the effect of putting unnecessary restrictions and impediments in the due process of law."

**Intimating the House About Arrest - And Its Nature:**

1. Though the Members of legislature are immune from arrest within the specified period but if they are arrested or detained, it is necessary on the part of the concerned authority to intimate the House about the arrest or detention. The information is supposed to be routed through the Ministry of Home affairs as:

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a. The House should be informed about the arrest, detention, imprisonment or even release. For instance, the then Deputy Superintendent of Police informed the House through speaker by telegrams on 29 February, 1960, regarding the arrest of Nath Pai in Belgaum as:

"Shri Nath Pai, Member-Lok Sabha, restrained under section 69 of the Police Act by Police Sub Inspector- Belgaum city Police station in Khade Bazar Police station limits today at 1140 hr. for refusing to conform the police station."21

b. The place and duration where detenue is kept should also be mentioned. On 3rd of March, 1960, the Sub Inspector of Police- Khanapur, informed the Speaker through a wireless message that:

"Shri Nath Pai, Member Lok Sabha, arrested on 3rd is remanded to seven days magisterial custody. Remanded and sent to central prison, Hindalga."

c. The reasons for the arrest should also be communicated. The House was informed on 4th May, 1974, through a telegram from the Superintendent of Police, Birbhum - West Bengal regarding the arrest of a Member as:

*In the early hrs. (at about 3hrs.) of May 3rd, 1974, the officer-incharge, Nethali Police Station, went to a place in Nethali Police Station area for arresting some prisoners under Section 151 Cr.

P.C., Seven persons found at the place. A few of these persons did not disclose their identity at the time therefore, all of them were brought to Nethali Police Station for interrogation and for establishing their identity. At Nethali Police Station it was discovered that one of the persons was Shri Gadadhar Saha Member, Lok Sabha, Shri Saha was released on personal recognition at 07.00 hrs. on 3rd May, 1974."

d. Like civil cases information should also be sent in preventive detention and criminal cases Suprintendent of Police, CBI:SPE: ACU VIII, New Delhi, communicated the information about the arrest of Shibu Soren on 5th Sept., 1996, as:

"I have the honour to inform you that in connection with the investigation of CBI case no. RC.5(A)/96-ACU VIII under Section 120-B IPC and Section 7, 12 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988, Shri Shibu Soren-Member of Lok Sabha, has been arrested by the Deputy Suprintendent of Police, CBI, ACU VIII and the investigation officer of this case today i.e. 5 Sept., 1996 at 1815 hrs. He will be produced before the competent court tomorrow in accordance with the provisions of law."

Failure on the part of the committing judge, magistrate, or executive authority amounts to breach of privilege and contempt of the House. The Hyderabad Legislative Assembly called a sub inspector of Police to the Bar of the House and held him guilty of the breach of privilege since he did not inform the speaker of the Assembly about the arrest of a Member. Since he was the

person concerned for the prevention of Member from attending the proceeding of Parliament or their committees and functioning as Member of the House. If the punishment awarding authority constitute a pannel then the responsibility lies with the senior most member.

II. The information is not only required when the person is arrested but also if he is detained for some time and kept under custody of Police. The concerned officer is required to inform the House as soon as possible. On April 5, 1967, the police detained *Swami Brahmanand* and kept in custody for about 2 hrs. for offering Satya Graha out side the Parliament but his detention was not intimated to the speaker by the concerned official." The committee held while undertaking the matter that "technically the breach of privilege had been committed by the concerned official."

Similar view was held when a Member of Lok Sabha, *Krishna Chandra Halder*, detained by the Police at Burdwan for participating in the demonstration inside the court compound and taken to Galsi on 14th November, 1973. The intimation was not delivered to the speaker thus, the committee of privileges observed that "Intimation regarding the restraint or detention of Shri Krishna Chandra Halder, M.P. on the occasion should have been
sent to the speaker, L.S., and failure to do this did constitute a breach of privilege.”

III. Not only the failure on the part of concerned authority about the arrest and detention is considered the breach of privilege but:

a. it is equally considered guilty when it is delayed. The Deputy Commissioner of Police Intimated the Speaker on 23rd of March, 1981, about the detention of Hukum Deo-Member of Rajya Sabha, while he was arrested on 1st of March, 1981. Committee regretting delay, found it a breach of privilege of the House and of individual Member of Parliament. Action was also taken by the State Govt. for the lapse on the part of the concerned authority and censure was awarded for delay on their part in sending the information.

b. it is imperative to communicate reasons for the delay in both civil and criminal cases. Like civil cases, reasons and grounds are required to be furnished in criminal cases also. In case of Jambuwant Dhote who was arrested on 25th April, 1973, intimated to the speaker about 21 hrs. late. The committee recommended that *when a Member of the Lok Sabha is arrested and
detained under the maintenance of Security Act, 1971, or under any other law providing for preventive detention, the concerned authority should, besides sending to the speaker immediate information regarding the arrest and detention of the Member together with the reasons for his arrest and detention, send a copy of the detailed grounds to the speaker Lok Sabha, simultaneously those grounds are supplied to the detenue under the relevant law providing for preventive detention."

IV. Immediate information is also required if a person is released and rearrested. Sharan Bhushan Singh, a Member, raised the issue on 23rd April, 1993, who was rearrested on 17th of April, was previously arrested on 8th of April and granted bail on 16th of April (not physically released) and released on 20th of April but not intimated to the House. The committee held "that a breach of privilege and contempt of the House had been committed in not sending intimation to the speaker Lok Sabha about the release of Bhushan, M.P., on 21st of April, 1993."24 It was only after unconditional apology tendered by Circle officer, Superintendent of Police, D.M., and Additional Chief Judicial Magistrate (Gonda), the matter was closed.

V. When any such information is received in the House under rule 231, it is the responsibility of the speaker to inform the same to the House as early as possible. If the House is in session he delivers the message received by the arrested in the House. He publishes the information in the Bulletin of the House if the House is not in session to inform the Members. On 3rd March 1960 the Speaker intimated the House as: "I have the honour to inform the House that I have received the following telegram dated the 2nd March, 1960, from Deputy Superintendent of Police, Bailhongal." Then read out the contents of the telegram as: "I have found it my duty in exercise of my power under section 54 criminal procedure code (Act V of 1898) to arrest Shri Nath Pai, Member of Lok Sabha in the limits of Indalhond village, Khanapur Taluka Police station today at 1130 hrs. for offences under sections 341 and 353 IPC registered at Khanapur Police Station." Similarly in 1996, Sept. the 9th, Deputy speaker informed the House about the arrest of Shibu Soren as:

"I have to inform the House that the following communication dated 5th Sept., 1996, was received on 6th Sept., 1996, from the Superintendent of Police, CBI: SPE: ACU VIII, New Delhi." and then read out the contents of the letter.

Though the speaker and the House require immediate information about the arrest, place of detention and transfer from one jail to another of its Member but no breach of privilege can be claimed if:

1. the concerned authority fails to intimate the speaker about the place of detention or transfer of Member from one jail to another. The Deputy Speaker observed on the arrest of Mahavir Tyagi, Member of Rajya Sabha as “Normally it takes some time for the Magistrate or whoever it is to prepare the warrant and other documents and to prepare the statement to be sent to the Parliament. Even allowing an hour or so for that I think the information should have reached us by now.”

2. the circumstances demand so. The committee on privileges held that “while it is well recognised that such intimation should be given promptly, it is not possible to lay down any hard and fast rule on the subject. Much would depend upon the surrounding circumstances of each case.”

3. a Member is arrested in the matter of administration of criminal justice and released immediately on bail then the

concerned magistrate is not required to intimate the House. The committee in *Dashratha Deb* Case observed, that "it is not on the part of the magistrate to inform the House as he was released immediately after he was produced before the magistrate" and viewed that such arrest in itself did not constitute a breach of privilege of the House.\(^\text{29}\)

The committee in its report presented in 1958, held that "no breach of privilege had been committed by the authorities in not sending intimation to the Speaker of the release of a Member on bail pending trial as it does not prevent the Member from attending the sitting of the House."\(^\text{30}\)

**Privileges in Custody:**

Beyond the said limit of forty days before and forty days after the commencement of the House, the Member can be arrested even in civil cases, but in all cases of arrest whether civil or criminal he is entitled for:

1. the "privilege of communication" with the House Speaker or of State Legislature or Chairman of Parliamentary Committee or Secretary General. Neither the "executive nor any other body has any right to with hold his correspondence addressed to

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the Speaker or Chairman of Committee or Secretary General.

With holding such correspondence by the concerned authority is breach of privilege. The Madras High Court held that:

"A Member of a Legislature, in detention, was entitled to the right of correspondence with the Legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence."^31

The committee on privileges in 1958 suggested in case of Kansari Lal Halder that "Provisions might be incorporated in Jail Codes, Security of Prisoners Rule etc of State Govt. and Administrations to the effect that all communications addressed by a Member of Parliament under arrest or detention or imprisonment for security or other reasons to the speaker of Lok Sabha or the Chairman of Rajya Sabha, as the case may be, or to the chairman of a Parliamentary Committee or of a Joint Committee of both Houses of Parliament should be immediately forwarded by the Superintendent of the Jail concerned to the Govt. so as to be dealt with by them in accordance with the rights and privileges of the prisoners as a Member of the House to which he belong."^32

The same provision was suggested for the State Legislatures. In 1959 all the state Govts. and Administrations were advised by the

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32. 4 R (CPR-2LS), 1958.
Ministry of Home affairs to make necessary provisions in the relevent rules. Since then most of the State Govts. amended their concerned rules in order to employ these provisions. However, the immunity is not extended in case of a letter by a Member in custody from jail to another Member and if govt. with holds such communicaions, no privilege can be claimed.

2. Under arrest, they are supposed to get courtesy which other citizens are not entitled for. In case of alleged arrest and ill treatment of Bhupindra Singh Mann, Member Rajya Sabha, on 7th July 1992, by police for carrying a trolley of wheat from Punjab to Haryana in Protest of 'Ban Order' on the carriage of wheat from Punjab to other states, the committee expressed displeasure over the arrest and ill treatment. The Chief Secretary of the Govt. of Punjab also instructed to all the District Magistrates and Senior Superintendent of Police in the state to extend utmost respect and courtesy to M.Ps and M.L.As. The message was conveyed right upto the lowest level functionaries of govt. that extreme caution and care should be exercised while dealing with M.Ps and M.L.As etc. So their privileges and prerogatives would be properly respected.

Molestation:

Molestation like arrest, of any Member of Legislature with a view to prevent a Member from attending the House is also constitutes a breach.

1. Ill treatment or harassment while one is on his way to attend Parliamentary business. Kumar Saha, Member Lok Sabha, raised a privilege issue about his harassment and ill treatment on 31st July, 1972, by certain Railway staff, Police and other officials while he was proceeding to attend a meeting of Parliamentary Committee. The Committee found that “the Railway official and police have committed breach of privilege and contempt of the House,” and recommended that “suitable departmental action be taken by the govt. against them and report to the House as early as possible.”

2. Filthy, abusive and insulting languages against a Member whether inside or out side the House is also a breach of privilege. On 22nd December, 1981, a matter was raised under rule 377, Satyanarayan Jha a Member of Lok Sabha, alleged assault and use of abusive remarks by the Police at Ujjain on 15th Dec., 1981. The committee urged “that the Ministry of Home affairs should take appropriate steps to
curb the growing tendency on the part of law enforcing authorities of assaulting and ill treating M.Ps and other elected representatives of the people and of using abusive language in respect of them." The committee also desired that the Ministry of Home Affairs be asked to issue necessary instruction to the authorities concerned to ensure that such incident may not reoccur and if an officer acts in that manner then serious actions should be taken against him."

3. On assaulting Members the committee emphasized that "M.Ps are entitled to the utmost consideration and respect at the hand of the public servants and as such the police or any other authority should not do any thing or act in a manner as it will hamper them in their functioning as public men. The authorities when dealing with M.Ps. should act with great restraints and circumspection and show all courtesy which is legitimately due to the representatives of the people."34 Similar matter was raised on 13th Sept. 1991 by Sukomal Sen - M.P., Rajya Sabha, as was allegedly assaulted when he was coming out of Parliament House Annexe to proceed to attend the sitting but because of unconditional apology tendered by the Deputy Commissioner of Police for misbehaviour by the

Police personnel under his charge and assured against the guilty. The committee then dropped the matter.\textsuperscript{35}

4. Breach of privilege also occurs if a Member is intimidated and obstruction is caused by an outsider in the discharge of his duties within the precinct of the House.\textsuperscript{36}

This privilege of immunity from assault is available only if person is obstructed in discharge of his duties as Member of Parliament or State Legislature. Members can not claim this immunity if they are not performing legislative duties. It also exempts the persons or officers of the House acting as witness and counsel, appearing before Parliament or its Committees. Their arrest within the precinct, without the permission of chair even in criminal cases or molestation, is considered guilty. Their obstruction whether direct or indirect in carrying out specific duties entrusted to him by Parliament constitute contempt of the House like Member of Legislature and for the same duration.s

\textsuperscript{35} "Privilege Issues," \textit{op. cit.}, 1993, p.468.

The troika Legislature, Judiciary and Executive, are the three different but important limbs of the Constitution which are complementary and supplementary to each other. The Constitution provides constraints on state's action since a sound government is the one which is based on checks and balances. This is the ethos of India's Constitution. Though, under the Constitution the powers of the two institutions, legislature and judiciary are separate yet they are marked by some sort if interrelationship in which the role of the judiciary is much more predominant. Its role in relation to Parliament assumes importance because of three factors:

a) the power of the judiciary to interpret parliamentary legislation and to give meaning to the words used in a statute, and to fill up the gaps.

b) The judicial power to declare a statute unconstitutional, and

c) The power to invalidate even a constitutional amendment. It
provides remedies to the petitioner under Article 32 and 226 of the Constitution in the form of writs.

The greatest reservoir for supplying power to the judiciary to invalidate a statute is provided by the fundamental rights mainly by Article 14 and 19, but almost since the inception of the constitution, an attempt has been made by the Parliament to weaken this reservoir, further it is thought that the Acts passed by the legislature are supposed to be superior as compared to the judges because the former are the representatives of the peoples and thus, there is the necessity of the judicial self restraint. Court too proceeds with the assumption that the legislature is the best judge of what is good for the community by whose suffrage it has come into existence, but the ultimate responsibility of determining the reasonableness of the restraints from the point of view of public interest rests with the court and the court can not shirk this solemn duty casted on it by the Constitution. In practice it is very difficult to draw a boundary between the competence of the court and the exclusive jurisdiction of each House, and thus provided many puzzling cases. Conflicts between the two is not a new phenomena to be settled. No doubt much have been focused to understand the
relationship between the judiciary and the legislature but still questions cloud their relationships.

It was common ground between the Houses and the courts that privileges depend on the known laws and customs of Parliament, and not on the *ipse dixit* of either House. The question whether a matter of privilege should be judged solely by the House to which it is concerned even when the rights of the third party were involved or whether it might in certain cases be decided in the courts and if so, in what sort of cases. Granted that it could be decided in courts, were the judges are bound to act 'Ministerially', i.e. accept and apply the parliamentary interpretation of the law, or were they free to form their own view of the law of Parliament?

Both the constitutional authorities were supreme in their own fields neither of which could compel the submission of the other. The House of commons and the House of Lords in England claimed to be the sole judges of there own privilege while on the other side the court maintained that privileges were the part of the law of the land and thus, the court is bound to decide questions coming before it in any case within their jurisdiction even when privileges were involved.
Version of the Legislature:

The Houses claimed to be the exclusive judge of their own privileges especially the House of Commons, as actually it was the House of Commons that entered into dispute with courts. They were that time, engaged in establishing and maintaining their privileges therefore, could not admit the authority of any other body to decide what its privilege should be.

Version of the Judiciary:

At the end of 17th century almost after the establishment of superiority of Parliament and rights of the House of Commons the court started to draw a distinction between the constitutional position of the High Court of Parliament and of each House of Parliament alone, claiming that Parliamentary privileges were but a branch of the law of the land which they were bound to administer. The phrase that 'neither House could create a new privilege' proved the limits of the privileges and immunities. The court further argued that their refusal to adjudicate whether parliamentary privileges were involved would in many cases result in a failure of justice since the House of Commons could not give remedies or award damages or decides litigation between
Reconciling the Two Views:

The conflict was ultimately resolved by conceding to the courts the right in principle, to decide all questions of privileges arising in litigation before them with few large exceptions in favour of parliamentary jurisdiction, which include exclusive jurisdiction of each House over its internal proceedings and right of both Houses to commit/punish for contempts. C.J. Fortescue in Thropes Case in 1452, observed that "they ought not to answer to that question, for it hath not been used afortyme, that justices should in any way determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that is law it may make no law; and the determination and knowledge of that privilege belongth to the Lords of Parliament, and not to the justices." Generally the court agrees with the decision of the House as judge of its own privileges," but despite that conflicts still prevail.

The judiciary-parliament acrimony is not new. It has been in vogue since last many centuries when the members of the

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House of common started to claim certain privileges and powers and struggled for their rights and immunities to be recognized against the King and his Lords. Since then the judges who used to give their judgement were not accepted by the House of Commons simply because they were the Members of the King and his Council and not willing to delegate much power to the House of Commons, but later the supremacy of Parliament was established and the British constitution al law recognized the supremacy of Parliament which can do almost every thing which is not naturally impossible and its Acts can not be nullified by courts on any grounds. Its errors are corrected only by itself that is why the English Judges do not sit as a court of appeal against Parliament. The position is different in U.S.A. where the constitutional frame work is quite and its Constitution is what the supreme court say it is.

In India though the Constitution is based on the Westminster model but yet not a true replica of it, rather it has adopted a via media between the American system of judicial paramountcy and the English principle of parliamentary supremacy. Here the judiciary is vested with the power to declare a law unconstitutional in case if it is beyond the purview of
legislature or contradictory to the Fundamental Rights or violates the Constitutional provision.

In 1704 in England, it was said by Holts in *Paty’s* case as “I will suppose that the bringing of such actions was declared by the House of Commons to be a breach of their privileges but that declaration will not make that a breach of privileges that was not before. But if they have any such privilege they ought to show precedent of it. The privileges of the House of Commons are well known and are founded upon the law of the land and are nothing but the law. As we all know they have no privileges in cases of breach of the peace. And if they declare themselves to have privilege which they have no legal claim to, the people of England will not be stopped by that declaration. This privilege of theirs concerns the liberty of the people in a high degree, by subjecting them to imprisonment for the infringement of them which is what the people can not be subjected to without an Act of Parliament”. But a contradictory view was shown in *Stockdale v Hansard* where a report was printed with the permission of the House of Commons, of the inspectors of prisons in one of which a book published by Stockdale, was described in a libelous manner. He brought an action against M/S Hansard who pleaded the general issue, and proved that the report had
been printed with the permission of the House of Commons, since the order held no sufficient defence to the action therefore, C.J. Denman pronounced the judgement adverse to the privileges of the House, directing that "the fact of the House of Commons having directed M/S Hansard to publish all their parliamentary reports is no justification for them, or for any book seller who publishes parliamentary report containing a libel against any man." A committee was appointed to ascertain the law and practice of Parliament regarding the publication by orders of the House. On its recommendation the House passed a resolution declaring the publication of parliamentary reports, votes and proceeding an essential incident to the constitutional functions of Parliament; that the House had a sole and exclusive jurisdiction to determine upon the existence and extent of its privileges; that to dispute those privileges by legal proceeding was a breach of privilege; and that the court can not adjudicate on matters of privileges o Parliament.² The House directed M/S Hansard to plead when Stockdale commenced another action, and the Attorney General to defend them rather than to act upon its resolution. Denman, C. J., and other judges after hearing the case decided against the claim of privilege. A claim was also

². Ibid. p.144.
made by the Attorney General that courts had no jurisdiction in matters pertaining to privilege as the High Court of Parliament was a superior court and the law of parliament is 'a separate law'. It was argued that the declaration by either House on Parliamentary privileges was the judgement of a court with exclusive jurisdiction, therefore binding on other courts as they are supposed to be inferior to the House of Commons. But Denman in his judgement insisted that it is the court which is vested with the power to decide whether a particular claim of privilege fall within the jurisdiction of the House of Commons and denied the law of Parliament as a separate law but he did not deny that both the Houses possessed certain privileges which are essential to the discharge of their functions. He held the House of Commons as court superior to any court of law, and none of whose proceedings are to be questioned in any way. Further it was observed that ... It is a claim for an arbitrary power... The supremacy of Parliament, the foundation of which the claim is made to rest, appear to me to completely over turn it, because the House of Commons is not the Parliament, but only a co-ordinate and component part of parliament. The sovereign power can make or unmake the law, but the concurrence of the three legislative estates is necessary. The
resolution of any one of them can not alter the law or place any one beyond its control”. Another judge Coleridge observed that “this and all other courts of law are inferior in dignity to the House of Commons, and therefore it is impossible for us to review its decision. As a court of law we know no superior but those courts which may revise our judgement for errors, and in this respect there is no common terms of comparison between this court and the House... the House is not a court of law at all... neither originally, nor by appeal, can it decide a matter in litigation between two parties, It has no means of doing so, it claims no such powers, power of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party in the case of contempts. The third judge Patteson said, “in making this resolution, the House of Commons was not acting as a court either legislature, judicial or inquisitorial, or any other description. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question.3

From the views of the three judges, it is no doubt clear that they did not submit the superiority of the High Court of House of Parliament over the other law court as the judicial matter can not be decided inside the House. It was admitted that

only the matter which is coming out of its internal proceedings is
the only jurisdiction of the House but this jurisdiction is
exclusive and sole. Almost a century before i.e. in early 18th
century the position was quite in favour of the court. It is clear
from the Holts decision in paty's case who observed that "I will
suppose, that the bringing of such actions declared by the
Houses of Commons to be a breach of their privileges but that
declaration will not make that breach of privilege that was not
before. But if they have any such privilege, they ought to show
precedent of it. The privileges of the House of Commons are well
known, and are founded upon the law of the land, and are
nothing but the law. As we all know they declare themselves to
have privileges for which they have no legal claim to, the people
of England will not be estopped by that declaration. This privilege
of theirs concern the liberty of the people in a high degree, by
subjecting them to imprisonment for the infringement of them,
which is what the people can not be subjected to without an act
of Parliament." Later in many cases contradictory views were
expressed accepting the Members of each House of Parliament as
the sole judges whether their privileges have been violated and
whether thereby any person has been guilty of contempt of their
authority, and that they must adjudicate on the extent of their

privileges. This was established in case of Sheriff of Middlesex.

Regarding the contempt of the House and breach of privilege, if the House mentions specific grounds for holding a person guilty of its contempt or breach of privilege, and the warrant ordering imprisonment is a speaking warrant then only the court can go into the question of validity of the committal and can scrutinise the grounds to ascertain whether these are sufficient or adequate to constitute contempts or breach of privilege of the House. But if the warrant mentions contempts in general terms and not mentioning the grounds which the House held to be its contempt, in such cases the courts have nothing to do and its validity too can not be questioned. In sheriffs case since the warrant did not mention the facts constituting the contempt of the House, the court refused to issue the writ, because of the absence of such specific nature, of habeas corpus to discharge the sheriff from imprisonment saying that “if the warrant merely stated a contempt in general terms the court is bound by it”. This shows that the House may reprimand or suspend a Member from the House and use force as may be absolutely necessary for the purpose. The jurisdiction of the House in matters of discipline maintaining within the four walls and over its Members is absolute and exclusive. The court is not

5. Brad Lough V. Gossette, 12 Q.B.O. 27 (1884).

This is because the courts regarded the House of Commons and treated the House as a court and its warrants as that of a Superior Court. On the other hand the House too, accepted the summons from the courts and is represented if a person imprisoned under order of the House moved petition for habeas corpus. Only in case of general warrant the decision of the superior court i.e. the House of Commons is not and can not be reexamined. In the medieval times the power used by the British Parliament was in a manner which would shock every body. In the last 100 yrs. Or so it has used to exercise its power with commendable restraints. The House of Commons not only tolerated public criticism but recognised them as absolute necessity. Gladstone observed in the House of Commons in 1888 that “Indeed, it is absolutely necessary that there should be freedom of comment, that freedom of comment may of course be occasionally abused, but I do not think that it is becoming the dignity of the House to notice that abuse of it."
Recognising the importance of comment and freedom of expression, Patanjali Sastri, J., observed that "Freedom of speech and of press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible."^7

On the other hand if a prisoner is committed by the House for contempts and he obtained a writ of habeas corpus a return of which was that he had been committed for a contempt of the House, the court would inquire no further but would remand the prisoner to gaol.8 After prolonged conflicts and controversies in a number of cases between Judiciary and the House of Commons an understanding has been emerged between the two on the following accounts:

1) Neither House of Parliament has the right to do any thing in contravention of the law, in the assertion of its privileges, so as to affect the rights of persons exercisable outside the four walls of each House.

2) Each House of Parliament is the sole judge of the question

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whether any of its privilege has been infringed; but whether the House does in fact possess a particular privilege is a question for the courts to decide.

3) Neither House alone is competent to declare the extent of its privilege and this is subject to judicial determination. However, it does not affect the power of Parliament to legislate on the subject of Parliamentary privileges.

4) If the House commits for contempts of privilege which is not specified in the warrant the courts are powerless, they cannot examine it, this is denied by the courts in India.

5) The courts deny the right of the House to define its own privileges but given an undoubted privilege it is for the House to judge on the occasion and of the manner of its exercise.

6) The courts will not interfere with interpretation of a statute so far as the regulation of internal proceedings are concerned. Each House has unquestionable authority as regards the regulation of internal procedure if any proceeding in the House affects the rights of other person arising out of the ordinary law of the land and exercisable outside the walls of the House. The ordinary courts of land shall at once have the jurisdiction to determine whether the privilege...
claimed by the House exists and if so whether it would go so far as they justify the breach of the ordinary law of the land.

A balance has been established between the judiciary and legislature that the courts will recognise those privileges which have the sanction of common law, a new privilege can be created for the House only by a law passed by the Parliament and not merely by a resolution of one House; and whether a particular privilege claimed by the House 'exists or not' is a question for the courts to decide. The courts have the right to determine the nature and limits of parliamentary privileges.

Position in India:

In India the position is different. Here the Parliament and state legislature's claim is limited by the presence fundamental Rights and the doctrine of judicial review. The court, in the ordinary circumstances have accorded the speaker of the House as the judge to decide the privileges of the House. For instance, the common practice in India to arrest a Member is through a warrant but the case of R.S. Patel, M.L.A., who was arrested in December, 1953, without warrant during the session, deviated
from the normal practice, but agreeing with the committing authority the committee found no difficulty in saying that the membership of the House conferred no immunity, since the arrest was made under the ordinary law on charges involving offences for which, under the Indian Penal code, a person is liable to be arrested without warrant. Further on one occasion the speaker of Uttar Pradesh Assembly instructed the leader of opposition to out from the day's sitting. The committee of privileges also agreed with the behaviour of the House as a result of which a resolution was passed to suspend him for the rest of the session. But the Member pleaded against the action of the speaker on the ground that double punishment had been awarded in contravention of Article 21 of the Constitution. The court rejected by holding that "disciplinary action for breach of parliamentary rules was not punishment as intended by the chapter on fundamental rights, therefore the question of double punishment did not arise and what is more, the resolution passed by the House was an internal matter which the courts have no power to scrutinise which is quite clear from the Article 122(1) which says that the validity of any proceeding in Parliament shall not be called in question on the ground of any

alleged irregularity of procedure. The C1(2) of the same Article says that "no Officer or Member of Parliament in whom power is vested by or under this constitution or regulating procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those power." The same view is applied to the states under art 212 C1(1&2). But it is also noticed that there was no agreement among the judges on general position thus, emerging two contradictory views, one was that in reconciling the privileges of Parliament as set out in Article 105 and 194 with the rest of the Constitution it had to be taken that the framers had not intended the privileges to be over ruled by the fundamental rights." While others were of the opinion that fundamental rights were more fundamental Article 14 & 18 of the Indian Constitution guarantee the right to equality to every citizen of India embodies the general principle of equality before law and prohibits unreasonable discrimination among citizens. Article 18 abolishes title and Article 14 declares that the state shall not deny to any person 'equality before the law' and provides equal protection of the laws within the territory of India. This provision expresses equality before the law and equal protection of the law.
However, on the other hand it is also argued that equality does not mean absolute equality among citizens which is physically not possible to achieve. Jenings strengthened this view by saying that equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. Where as Dicey calls quality before the law as the rule of law in England which means that no man is above the law and every person, whosoever be his rank or condition, is subject to the jurisdiction of ordinary courts.

On this occasion a question very often comes into mind that is there any longer the same need for parliamentary privileges? At whose expense are parliamentary privileges asserted in the modern democratic states? Also in the context of the Indian Constitution, are parliamentary privileges more fundamental than Fundamental Rights. If the privileges get defined by the law then they will become unambiguously subject to the Constitution and it will become the duty of the Supreme Court to determine cases where the privileges and fundamental rights are contravened with one another. But if privileges remain so long as those of the House of Common in India, the Supreme Court would probably uphold this power and protect it against restrictions even by the
fundamental rights. In case of codification the court is entitled to enquire into the constitutionality of such privileges. It is suggested that the area of privileges be determined by the courts in the context of citizen's right than by the legislature in its description as most modern privileges seems to consist conflicts between the legislature and the public and not between the legislature and executive.

Since the powers are not defined clearly, conflicts appears between the two bodies as it has happened in West Bengal. The Speaker of the Assembly granted temporary permission to two communist M.L.As to remain on the Assembly premises in order to avoid arrest under the Preventive Detention Act. The court observed that general immunity can not be conferred upon Members from arrest. The only immunity permitted by established practice in Britain is that the arrest can not be effected within the precincts of the chamber when the House is actually sitting.

In practice the legislature claims an absolute power to commit a person for its contempts and a general warrant, if issued by it, has a nature of conclusive and free from judicial scrutiny. The question however raised whether such a claim can be accepted in India where there is unlike England, written
Constitution with fundamental rights and doctrine of judicial review of legislative action.

Regarding its own proceedings the Houses of Parliament have an inherent right to conduct its affairs without any interference from an outside body. Constitution restricts the jurisdiction of court in this regard, the validity of its proceedings can not be questioned in any court. By Article 122, no Officer and Members in whom powers are vested for maintaining order and regulating procedure can be called in court for their acts. This was clear from the case of Raj Narayan in which Allahabad High Court observed that:

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\text{this court is not, in any sense whatever, a court of appeal on revision against the legislature or against the ruling of the speaker who, as the holder of any office of the highest distinction, has the dignity of the House. This court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House.}^{10}
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In a number of cases the courts have decided the question whether a particular privilege claimed by a House exists or not and when once it is decided that a particular privilege exists it is for the House then to judge the occasion and the manner of

\[10. \text{A.I.R., 1958 Allahabad 168.}
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\[11. \text{A.I.R., 1959 S.C. 395.}
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its exercise and the court would not sit in judgement." The Court was of the opinion that provisions contained under Article 105(3) and 194(3) are constitutional laws, therefore, are as supreme as Fundamental Rights, Freedom of speech in the legislature in Part III including Article 208 and 211, rights under Article 19(1) (a) can be restricted by law for breach of such law if they affect the:

1) Sovereignty and integrity of India.
2) Security of the State.
3) Friendly relations with foreign states.
4) Public orders
5) Decency or morality
6) Contempt of court
7) Defamation, and
8) Incitement to an offence

Where as cl (2) of Article 194 clearly says that Member of Legislature is not liable to any proceedings in any court in respect of any thing said or done on the floor or during the proceedings of the House. Provision contained under Article 194(2) is different from that of 19(1) (a) and therefore can not be cut down in any way by law contemplated by 19(2), on this ground.

the court dismissed the petition. Article 105 (2) vests exclusive control in the House of legislature. Supreme Court ruled in case of *Kameshwar Rao* that "It can not call the question of validity of its proceeding on the grounds of alleged irregularity of the procedure. In case of *Surender Mohanty vs Nabha Krishna* the Orissa High Court observed that:

> no law court can take action against a Member of the Legislature for any speech made by him there even when a Member in a speech casts reflection on High Court in the House."^{12}

Though the tendency of the court is to uphold the legislation rather than to quash it but however, when the power of the executive (legislature) interfere or contravenes with the rights of an individual without providing procedural safeguards the court then acts sensitively and its action is justified on the grounds that it is necessary to check administrative arbitrariness in a society governed by the rule of law and which has vast powers to affects the life, liberty and property of the people. The Supreme Court ruled that if a citizen moves this court and complains that his fundamental rights under Article 21 had been contravened, it would plainly be the duty of this court to examine the merits of the said contention. The impact of the fundamental constitutional right conferred on Indian citizens by
Article 32 (to move the Supreme Court is decisively against the view that a power or privilege can be claimed by the House though it may be in consistent with Article 211. Thus, in courts too wide and unfettered powers are vested under Article 32 and 226 of the constitution and fundamental rights guaranteed to citizen. Secondly, it ought to be pointed out that the powers enjoyed by the House of Commons were incidental to its legislative function and an integral part of its privilege. Under these two considerations it was held that legislature in India are not the superior court of records as in England, only such powers can be exercised by the legislature of the House of Commons which are integral parts of its privileges and are incidental to legislative function, but not those which are used by the House of Commons as superior court of record or as a result of convention the Supreme Court gave its opinion that *Courts in India can not only examine the validity of an order of commitment made by the legislature, whether the issued warrant is speaking warrant or a general one but It was also held that courts have jurisdiction to issue interim order in the proceedings before it and grant of bail to a person who stands committed for contempt. This is because these function were under the exclusive jurisdiction of the courts and legislature did not
exercise any of them in part. This is clear from the *Keshav Sing*’s case who while reprimanded by the speaker of U.P. Legislative Assembly for his objectionable behaviour, asked for the writ of habeas corpus under Article 226 in the Allahabad High Court, alleging his detention as illegal as he was not given an opportunity to defend himself therefore his detention was mala fide and violative of natural justice. As a result of which an interim bail was awarded by the court to him. But the House, keeping in view its powers, again passed a resolution alleging that his advocate (Soloman) and the two judges who passed interim bail had committee contempt of the House therefore be brought before it in custody. This resolution was challenged by the judges under Article 226 in the High Court on which a full bench of 28 judges of the court ordered stay on the implementation of the resolution. The House then passed a clarificatory resolution saying that the question of contempt would be decided only after giving opportunity to judges to explain why the House should not proceed against them for contempt. On referring the matter to Supreme Court, the court by 6 to 1 majority held that the two judges of High Court had not committed any contempt by issuing bail order rather Article 211 restricts the state legislature and Article 121 restricts Parliament
to discuss the conduct of judges of the court, therefore, no action can be taken against them for the discharge of their duty and fearless and independent judiciary is the foundation of the constitutional structure in India and is uncontrollable by Article 105(3). The court further declared that in presence of fundamental rights the order of the House can be challenged under Article 21.

The Supreme Court's verdict thus, achieved two objectives -

1) To maintain judicial integrity and independence, for if a House were to claim a right to question the conduct of judge then judicial independence would be seriously compromised and the constitutional provisions safeguarding judicial independence largely diluted.

2) To concede to the House quite a large power to commit for its contempt on breach of its privilege for even though the judiciary can scrutinise legislature's committal for its contempt.

The conference of presiding officers in Bombay adopted a resolution saying that the advisory opinion of the Supreme Court had the effect of reducing legislature to the status of inferior courts of the Land which was against the underlying intentions
of the Constitution makers who had actually meant to oust the jurisdiction of the courts. On the occasion speaker Hukum Singh read out what Ambedkar once said “under the House of Commons powers and privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of court is ousted. That is an important privilege. But there is not the slightest doubt in my mind and I am sure, also in my mind of the drafting committee, that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to letter contempt and may loose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.” Suggestions was also made in the conference to amend Articles 105, and 194 to clear beyond doubt the powers, privileges and immunities of legislature, their Members and Committees, not being subject or subordinate to any other provision of the Constitution. Later on after realising the importance of legislature, on March 10, 1965, the Allahabad High Court dismissed the petition, ordering him to surrender his bail and to be served with the remaining punishment imposed on him by the U.P. Assembly. It was also observed by the court that
"Once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempts and to impose the sentence passed on the petitioner, we can not go into the question of the correctness, propriety or legality of the commitment. This court can not, in a petition under Article 226 of the Constitution, sits in an appeal over the decision of the Legislative Assembly committing the petition for its contempts." The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempts have been committed or not. As a result of which in various later cases the court has refused to entertain the writ petition against the legislature keeping in view the dignity of legislature, as in 1986 membership of ten DMK legislators were terminated by the Tamil Nadu Assembly for tearing and burning of few pages of the Constitution. The challenged the decision of the House but the Madras High Court dismissed their petition.

The legislature too for itself claims that it has the power to decide by it self, matters arising in connection with the proceedings of the House, the judiciary contends that it has power to interpret the Constitution. In 1970 when court summoned some members including a former speaker of the House to appear either in person or by advocate before the
Supreme Court in a case related to *Jagad Guru Shankarcharya*, the privilege issue was raised in the House. But the speaker directed them to ignore the notice, directing the Attorney General to bring to the notice of the court that what is contained in the case is something which is covered by Article 105 of the constitution. The speaker further ruled out that "whether the court issues a summons or notice does not make any difference to us. Ultimately, the privileges of the House are involved when Members are asked to defend themselves for what they said in the House" and when a member desired to defend himself in the Court the speaker ruled out that "If he appears before the court, fully knowing Article 105, I think we will have to bring a privilege motion against him", It was said that the only question before the House is that If once we accept that the courts have a right to call it whether it is an optional notice or judicial summons, our privileges are at an end. So, in the circumstances, it was my duty to request the Honourable. Members of Parliament to ignore the notice."\(^\text{13}\) It is clear that though both are the important organs of the Constitution but more emphasis is put on the Members of Legislature as the law makers who enjoy some what more privileges than a common man. The

Supreme Court while upholding the powers and prestige of the Legislature, restricts itself from interfering with its internal proceedings. Only in cases when such things cause civil disputes, the court steps in.

Kaul says that "for his speech and action in Parliament, a Member is subject only to the discipline of the House itself and no proceeding, civil or criminal can be instituted against him in any court in respect of any thing said or any vote given in Parliament or a committee thereof so that Members may not be afraid to speak out their minds and can freely express their views. Members are therefore completely protected from any proceeding in any court even though the words uttered by them in the House may be false and malicious of their knowledge. Though a speech delivered in the House by a Member of the house may amount to contempt of court, no action can be taken against him in a court of law as speeches made in the House are privileged. To commence proceedings in a court of law against any person for his conduct in obedience to the orders of either House or in conformity with its practice, or to be concerned in commencing or conducting such proceedings is a breach of privilege. Both Houses treat the bring 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 is a breach of privilege. The House of Commons resolved in 1818 “that witness, examined before this House, or any committee thereof, are entitled to the protection of this House in respect of any thing that may be said by them in their evidence.”

It is not the matter whether the power was available in the past or not, but whether they lie under the Indian constitution or not which is very much clear by the Article 105(3) whose language is so plain and unambiguous about which Sarkar J. Who while expressing minority opinion in Keshau Singh’s case said that I can not imagine more plain language than this, the language can have only one meaning and that is that it was intended to confer on the State Legislature, privileges and immunities which the House of Commons in England had. Further it is also not correct to say that Parliament in India does not enjoy any such power, rather impeachment of president under Article 61 and removal of judges under Article 124 (4) or 218 of the Constitution are all judicial in nature.

Emphasizing the importance of freedom of expression

Hidayatullh, C.J, in *Tej Kiran vs Sanjeeva Reddy* case observed that:

"once it was proved that Parliament was sitting and its business was being transacted, any thing said during the course of that business was immune from any proceedings in any court. This immunity is not only complete but it has as it should be. It is the essence of Parliamentary system of Govt. that people's representatives should be free to express themselves without fear of legal consequences what they say is only subject to the discipline of the rules of Parliament, the good sense of members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none."

The speaker, apart from as a defender of privileges, adopts control measures too against M.Ps & M.L.As when they cross their limits. As on August, 1st, 1974, some 38 legislators of Maharashtra Legislative Assembly were suspended by the speaker for three days for persistently defying the chair and hindering the proceedings of the assembly. Similarly on March 16, under the cover of privileges the members of opposition (congress) rushed towards podium and started shouting slogans and interrupting the speech of Governor, within the 5 minutes of his address, against the govt. (TDP) inaction in the wake of suicides by cotton growers

in the state. They also tore the copies of the speech and flunging them in the air but exercising his power to maintain discipline and self restraints by the legislators, the speaker Y. Rama Nadu suspended 26 Members for the day from the A.P. legislative Assembly and described the episode as very "unfortunate development." He also said that "we should also exercise restraint and maintain self discipline."18 The full bench of Supreme Court in Tej Kiran's case held that cl. (1) of Article 105 confers freedom of speech on the legislators within the legislative chamber and cl(2) makes it plain that the freedom is literally absolute and unfettered. The protection given by above is to "any thing said" are of widest amplitude and it is not permissible to read any limitation there in. The object of the provision obviously was to secure absolute freedom of discussion in Parliament and to allay any apprehension of legal proceeding in a court of law in respect of any thing said in Parliament by a Member thereof. Article 26 restrict the High Court from issuing a writ to any House of Parliament or speaker or any of its officers to restrain the House from enacting any legislation even if it may be ultra vires. The court would interfere with the legislative process in a House either in the formative stage of law making, or with the

the President for his assent. The related case was seen in the United Kingdom when a Member of the House of Commons, Tonny Benn raised a privilege issue on the grounds of the action taken by the court on Rees Mogg's application interfering with Bill while it was in discussion before the Parliament. The Speaker Rt. Hon Bitty Boothroyd observed that "I do take with great seriousness any potential question of our proceeding in the courts, ... There has of course been no amendment of the Bill of Rights, and that Act places a statutory prohibition on the question of our proceedings. Article 9 of the Act reads ....... 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 power is not only awarded in terms of speech and expression on the floor of the House but it is also vested within the House to prohibit any stranger or outsider to report its proceedings, punish even expel from the House if breach of its privilege happens. This was agreed by the Supreme Court also in 1958 during Search light case in which majority of the Supreme Court led by Chief justice S.R. Das ruled that:

"the House of Commons had at the commencement of our constitution the power or privilege of prohibiting the publication of

even a true and faithful report of the proceedings. The effect in law of the order of the speaker to expunge a portion of the speech of a Member may be (Sic) as if that portion had not been spoken. No such statement occurs in such circumstances, though factually correct may in law, be regarded as perverted and unfaithful.  

Power to expel a member existed even in subordinate legislative bodies established under a statute of British Parliament though such a body had no power to regulate its own constitution therefore such inherent powers can not be denied to the State Legislative Assemblies in India.

Usually the courts themselves show great reluctance to interfere with the working of the legislature, only in case of mala fide or perversity they go into the matter otherwise the power of the House is so wide, enabling the House to enforce its own decision. That was the reason why the Allahabad High Court while considering the Keshav Singh's petition on merit after Supreme Court's opinion, refused to interfere with the judgement of the House. Article 122 and 212 of the Constitution of India, Section 37 of the Government of Union Territories Act, 1963 and Section 26 of the Delhi Administration Act, 1966 restrict the jurisdiction of the courts to enquire into the validity of the proceedings of Parliament, States and Union Territory's
Legislatures on grounds of any irregularity of procedure. It is further stated that courts have no jurisdiction over any Officer or Member for exercising the powers vested in him under Constitution/Govt. of Union Territories Act, 1963. The Delhi High Court on one occasion has said that:

"the court will not intervene in matters relating to the conduct of the business and internal management of such statutory bodies like the metropolitan council when such matter fall within their authority of power."

The Constitution guarantees immunity from proceedings in any court in respect of any thing said in the House of Parliament or State Legislature and the word 'any thing' according to Supreme Court version is equivalent to every thing, thus Articles 122 and 212 of the constitution, Section 37 of the Govt. of Union Territories Act, 1963, and Section 26 of Delhi Administration Act, 1966, strengthen the provisions contained in Article 105, 194 and Section 16 of the Govt. of Union Territories Act, 1963, respectively.

On the other hand when MPs ignore the summons sent by the Supreme Court or any other court, seems strange since Article 144 of the Constitution says:
"All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". It is significant that no qualifications or exceptions are given. If as representatives of the peoples M.Ps do not "act in aid of the Supreme Court" and thus set an example how can they logically expect their constituents to do so? And is the Supreme Court meant to be ignored by the constituents and their representatives when the later expect the court to interpret their laws."22 And to say that it is no possible to reconcile the powers and immunities of Member essential to the legislative process with the Fundamental Rights of the citizen is only to sanction abuse of privilege.23

CONCLUSION

Parliament in India has played a pioneering role in the working towards the goals of national reconstruction and nurturing the values of freedom, secularism and democracy. As a microcosm of the nation, it has consistently reflected the feelings, hopes and aspirations and even weaknesses and frustrations of the people. It has been clearly emerged as the most crucial political institution on whose working depends the success of any nation. This is possible only if its Members devote themselves whole heartedly to meet the rising expectations of the teaming millions. A proper exercise of their duties and responsibilities warrant certain liberties and immunities on their part so as to enable them to carry out their obligations which are necessary to indicate unhindered by external and internal pressures.

The term parliamentary privilege is applied to certain especial rights and immunities enjoyed by each House of Parliament collectively, its Members individually and its Committees thereof. They are indispensable for an effective democratic process. This is not a new practice rather in vogue since time immemorial when petition was demanded from the King or ruler of the state, the position was different from what
we have today. The representative elements were insignificant and for the most part of the reign of Edward II, they could not make constitutional claim to share parliamentary functions which were exercised by the Council. Later the Commons acquired the right of giving counsel on the matters of policy and their grant of supply became conditional to it. The Parliament in India is very much modelled on the British pattern which had been developed from a council of nobles and high ranking clergy that used to advice the King of England. After the Norman conquest in 1066 this informal advisory group became a formal assembly known as Great Council which used to meet thrice a year to help the King in deciding matters of state policy.

During the early 1200's King John began to call knights, elected from the shires (counties), to some meetings of Great Council. He used to summon the knights to obtain their approval on taxes he had levied because tax collection was difficult without their cooperation. In the mid 1200's, the English statesman Simon de Montfort enlarged the council and was named as 'Parliament' to include elected representatives from the towns, shires and boroughs. The meeting which the King Edward I called in 1295 became the Model Parliament. By the mid 1300's the elected representatives began to meet separately from the nobles
and bishops and thus, division of Parliament took place (into two Houses). By the late 1300's Commons obtained the right to consider tax legislation before it was discussed by the Lords. However, they had no power to initiate legislation. In early 1400's they got the right to introduce bill. As the role of the government increased, the Parliament demanded more and more power. During 1620's the struggle between Parliament and King became bitter and in 1628 it forced the King (Charles I) to sign the 'Petition of Rights', a document that limited royal power but he refused it and did not allow Parliament to meet since 1629 till 1640, and when he called it, the Parliament refused to provide any money unless he obeyed the petition of rights. On his denial a civil war broke out, Parliament ordered the execution of Charles in 1649 and the Legislature led by the Puritan General Oliver Cromwell declared England a republic and ruled untill 1653. The Bill of Rights, 1689, established the right of Parliament to meet frequently providing freedom of speech during debates and confirmed the right of the Commons to control financial legislation. By the early 1700's Parliament gained nearly total control over the monarch. They struggled mainly to:

1. narrow down the sphere of ordinance, and

2. providing a limit to the powers of the King for making laws
outside the Parliament.

In the 16th century when speaker demanded the privileges they were just four in numbers as: freedom from arrest; freedom of speech; access to the royals; and favourable construction of all their proceedings but later many more have been added.

Its relationship with other organs of the State:

In a democratic set up every organ of government occupy importance of its own. In India the provision of fundamental rights especially under Article 14, 18 and 19 strengthened the judiciary vis a vis the privileges but since the inception of the Constitution an attempt has been made by the Parliament to weaken this equilibrium. In England the House of Commons and Lords claimed to be the sole judges of their own privileges however, the court maintained that privileges were part of the law of the land and that the judiciary cannot be sidetracked. However, the scope of judicial review of the privileges in England is limited. The court is not authorized to nullify its parliamentary acts on any ground. The Supreme Court in U.S.A., on the contrary, enjoys judicial review and there "the Constitution is what the judges say it is". The position in India is a mid-way between the Judicial paramountcy of the USA and Parliamentary
supremacy of UK.

So far as press is concerned the press and media play a unique role. Their criticism and comments are considered to be of utmost importance for the proper understanding of political literacy but their freedom is hedged by the privileges and liberties accorded to the Parliament. Premature publications, disclosure of impugned proceedings, misrepresenting the proceedings, and casting aspersions on Members of the House, constitute breach of privilege and contempt of the House. In 1982 question of privilege was raised by Satish Agrawal, M.P., against R.K. Agrawal editor-in-chief of Blitz, Bombay, and Rajpal Chaudhury, editor, Delhi recorder, for alleged misrepresenting the proceedings of the House and casting aspersions on Satish Agrawal in a news report and in an article published in the Blitz. The committee viewed that both persons have committed breach of privilege and contempt of the House\(^1\) and the matter was dropped only when the two rendered an unconditional apology. A similar incident occurred in Aug., 1992, when the matter was raised by Gufran Azam, an M.P. for casting aspersion on M.Ps in general and on him in particular by ‘Dainik Jagran’ under the heading “Sansad Mein Prashno Ke Zariye Swarth Poorti Karne Wala Giroh Sakriya”

\(^1\) 5R (CPR) 7th L.S., pp.1-11.
(Gang active in exploiting Parliamentary questions for selfish interest), for that too was considered derogatory and unfair by the committee and the editor and reporter had to apologise.

**Power to Punish:**

Parliament not only enjoys the liberties and privileges but also possesses the power to punish those who interfere with Members or contempts of its ruling. Once the punishment is awarded, there is no remedy for it either in court or in Parliament itself. The phrase ‘contempt of the House’ or ‘breach of privilege’ covers a wide area and of utmost importance. Whenever the matter is raised, immediate action is taken particularly when arrest or molestation of Members is made with mischievous and malicious intent or is protected from attending the proceedings of the House. This right of punishing is analogous to the right of a superior court to punish for its contempts thus, described as a “Key Stone” of parliamentary privileges without which the House would sink into utter contempt and inefficiency.

But on the other hand, it is also true that making statements within the privileged precincts of Parliament have the effect of unjustly injuring the reputation of individual citizen or
the public in general. Unrestricted speech on the floor of the House is no doubt valuable provided it is not misused. Further, the privileges can not be claimed so easily by the Legislature in the light of the Fundamental Rights and the doctrine of Judicial Review. Despite these constraints the legislators do enjoy enormous power and privileges. Often these privileges are misused affecting the sanctity of the House. The nation has witnessed noisy sessions, shouting slogans, mongering and walkouts even when crucial bills are under considerations. They do not hesitate even to throw articles on each other as what we saw in U.P. Assembly in October, 1997. Snatching and tearing of papers even from the hands of chair is now not unusual. On March 16, 1998, the opposition members (BJP and BJD) in the Orissa Legislature Assembly tore the speech of the Governor\textsuperscript{2} which was circulated to the Members earlier because they urged the Governor K.V. Rangunathan Reddy to abrogate his speech, advising the government to step down but the governor paid no heed to them. A similar drama was staged on the same day in A.P. Legislative Assembly, the Governor was forced to end his speech abruptly within five minutes of his address because the opposition (Congress) members rushed towards the podium and started shouting slogans against the government’s (TDP) inaction

\textsuperscript{2} The Times of India, 17 March, 1999
in the wake of suicide by cotton growers in the state. The opposition tore the copies of the speech and flung them in the air one of which landed on the shoulder of the Governor.\textsuperscript{3} These incidents are a sad commentary on the working of the parliamentary institutions. Speaker Y. Ramanudu described it 'as unfortunate development' and appealed for restraint and self discipline. Later, 26 M.L.As were suspended for the day.

Under these circumstances 'can the President or Governor of the state expel a Member who shows disrespect to him or interfere in discharging his constitutional responsibilities?' There persists two opinions, according to one—being a part of Parliament he is competent enough to expell any Member who disrupts the proceeding of Parliament or make attempts to do so even he can call the services of the uniformed marshal. But the other opinion is that being the presiding officer, Speaker alone is the competent authority vested with the power to expel or take any action against the irrare Members and that too with the approval of the House. The President is only the Constitutional or ceremonial head who attends the House just for addressing it and thus, have no punitive power and if he exercises this power

\textsuperscript{3} \textit{The Hindustan Times}, March 17, 1998,
this will be only at the cost of loosing his office.

Nonetheless, a highly unruly scene was witnessed in Parliament on July 14, 1998, when the bill regarding the reservation quota for women in the legislature was about to be presented before the Lok Sabha. It was, however, not new. A similar Pandemonium was staged in the Lok Sabha in 1963 when the Official Language Bill was introduced. The speaker had to summon the uniformed Marshal to bodily remove the defiant Members, Mani Ram Bagri, (socialist), and Rameshwaranand (Jan Sangh) from the House. Later, the party members staged a walkout, threw all canons of parliamentary decorum to the winds and made an unsuccessful attempt to prevent the introduction of the bill.¹

Our Parliamentary proceedings are ‘an open book’ constantly being watched by the millions of people all over the country and now by the world through media. Any lowering in the quality of its functioning or deviation from requisite norms becomes much more perceptible and pronounced. This not only affects the image of the Key Institution before the world but also taxes the nation’s resources. It is a supreme forum expected to

⁴ Hindustan Times, April, 14, 1963.
set the tone and tenor, provide a pattern of discussions and deliberations. The select committee of the House of Commons has provided answers to various questions, which have been raised in India from time to time as the basic problems in both the countries are identical. It declared that "in ordinary cases where an M.P. has a remedy in the courts he should not be permitted to invoke the penal jurisdiction of Parliament." From the statement it seems a little advantage flows towards the court but if we go into depth this too goes in favour of the legislators as it covers the cases when a Member claims that he has been defamed, but what is to be done when the claim is opposite and someone outside Parliament has been defamed by an M.P. under the cover of privileges. No satisfactory answer till yet has been given to that.

Today the standard of Parliament is so degrading that its Members do not even hesitate to get involved in corruption and bribery cases. In JMM-MPs bribery case the Supreme Court judgement has the direct confrontation with legislators. Congress M.P. Meira Kumari says that Parliament is supreme' as M.Ps have certain privileges and the judgement puts a question mark on its supremacy. Though she said that nobody is above the law, take action against any person M.P or MLA but let Parliament take
action but no action against the culprits has been taken so far. The Supreme Court had interpreted the prevention of corruption to declare that M.Ps were not beyond the purview of the Act and were public servants but according to Congress leader Pranab Mukharjee the government could if not satisfied with the interpretation, take a fresh look' and make amendments if necessary. But at this point a question is raised that is Prevention Corruption Act not enough and complete in its own sense to book an M.P. or M.L.A.?

The Powers and privileges of the House and its Members exist for the maintenance of the dignity and independence of the House but the real guarantee for such dignity and independence lies not so much in the existence upon parliamentary privilege as in the character, calibre, wisdom and sense of self respect of the Members of the House themselves. J.F.S. Ross stated “It is not primarily professional skill or technical knowledge that are needed in the legislative branch of government but high quality of mind heart and character. Intelligence, breadth of vision, warm human sympathy, receptiveness to new ideas, judgement, capacity for hard work, mastery of details, such is the equipment to be desired in the person who undertakes to direct public policy on behalf of their
fellows. Nehru once said "you may define democracy in a hundred ways; but surely one of its definition is self discipline of the community." The statement when absolutely suits the common man why not then for their representatives as the less the imposed discipline the more will be the self discipline and higher the development of democracy. The Supreme Court made it clear in 1970 in case of Jagat Guru Shankaracharya that "It is the essence of Parliamentary system of government that peoples representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of Members and control of proceedings by the speaker. The court have no say in the matter and should really have none." In view of this attitude there have been a demand from the Press that M.Ps should become very responsible and careful in using this freedom. Freedom of speech does not mean licence, the greater the freedom the greater should be the responsibility that accompanies its exercise, if the Supreme Court has held that freedom to be absolute the public would expect that responsibility to be absolute. Further, privileges are available to individual capacity only in so far as they are necessary for the House to perform its functions freely and without any let or hindrance. They do not
exempt the Members from such obligations to the society as apply to other citizens. Parliamentary privilege do not place an MP on a footing different from that of an ordinary citizen in the matter of application of laws, unless there are good and sufficient reasons in the interest of Parliament itself to do so.

The moot point in this regard is that democratic institutions in India are yet to be laid deep roots, fifty years are too short a period in the history of the country. With the passage of time the task of presiding officer has become more and more difficult in controlling the proceedings of the House and maintaining decorum. Lack of political stability, party discipline and frequent floor crossing have further complicated matters for the presiding officers. The lack of tolerance on the part of the Members and their inability to listen to the viewpoint of others is another malady. This has often resulted in unruly scenes and noisy sessions. And in the process democratic norms and parliamentary niceties are thrown to winds. The respect for parliament and its institutions are awfully lacking especially in the recent past. Accusation and counter-accusation in the House, with scant respect to the chair, have made the credibility of Parliament suspect in the public eye. Lack of interest on the part of Members and their attendance in the House have become the
order of the day. It is a deviation from the days of Nehru when he used to sit in the Parliament right from eleven in the morning till lunch and throughout the question hour whether it was the Prime Minister's day or not. He replied, when a journalist asked him why he spent so much time in Parliament, that "I consciously and deliberately remain present in Parliament because through my presence I want to feel the pulse of the Parliament and through it the pulse of the Nation and that is absolutely necessary for a democratic experiment."^6

Parliamentary system of Government works on the basis of give and take. A proper and healthy equation among leaders of different political parties in Parliament is essential. Rigid postures, open defiance of the chair, disrespect to the head of state, which is often manifested through walkouts during Presidential and Governor's addresses, are the major irritants in the working of Parliament in India. Pary whips, besides being accomplishing their normal duties of making and keeping the House, should establish and maintain good and amicable relations through tactful handling of situations between the government and the opposition. Whips of government and of parties in opposition should understand and accommodate each other on

crucial occasions and arrive at concrete understanding.

Ideally, the Members are required to have broad knowledge of vast field, assess importance and gravity of the matter and know what is good and what is not. There is a lot of difference between the parliamentary speech and public speech, by keeping in view, self-discipline is the sure and sober remedy to ensure the effectiveness of the Parliament.

Money and muscle power have come to occupy a significant place in the electoral parties which in turn has affected the quality of Parliament and parliamentarians. No political party is an exception to this phenomena and it is not surprising that man with criminal background often found entry to the august body. What adds fuel to the fire is the flexibility of the Constitution and laws which some time play an adverse role. Legally one is not and can not be a culprit, even if he has committed serious crime, unless and until his guilt is proved beyond all doubts in a law court, and by the time the court gives its verdict these people get elected and have a gala time. One remedy to create a sober atmosphere in Parliament is to induct more and more women members. They are less coercive and their participation could be productive. Unlike their counterparts they are less destructive and more committed to the
task they are assigned to. But unfortunately women in our Parliament and State Legislatures are awfully represented.

The press has an important role to play in creating democratic thos and inculcating respect for parliamentary institution. It should refrain from publishing scandalous and defamatory writeups, false account of proceedings, premature publication of any report, leakage of budget proposals and casting aspersions on Members, making imputations, publishing cartoons or jokes with malicious captions or divulging confidential reports and taking notes from other than the press gallery.

Another factor which maximise the problem is 'the critical police behaviour'. Its help is needed to maintain law and order. If an M.P or M.L.A. is arrested or detained by the police resulting in the breach of privilege of the Member and the House ultimately, it is incombent on the authorities to inform the House immediately. The authority who detains the Member should intimate the House as early as possible and treat him with the respect he deserves.

Last but not the least is the court's alleged superiority. Parliamentarians often make complaints about its interference in their proceedings and decisions. It is advisable for the courts not
to take cognizance when a mistake is committed in following the
procedure or irregularity of procedure. Only when they exercise
such power which are not vested with them, the court shall claim
its jurisdiction. It should differentiate clearly between the
irregularity in procedure and illegality of procedure. All the three
branches of the government must try to create harmonious and
smooth relationship and consider difficulties and intricacies
involved in each other's case. The Parliament gains supremacy by
the mandate it receives in election but on the other hand it too
should refrain from discussing the conduct of Judges, President
or Governors. It is only then the harmonious functioning of the
government can be ensured.

It is absolutely incorrect to assume that the new elected
representatives are not good and have not enough skills which
would help them to behave properly, rather their educational level
has been increased, about 72% of the seats have been shared by
the graduates and postgraduates and more than 5% by doctorate
degree holders. Only a very small portion of about 2.9% is
occupied by the under matriculates whereas intermediates occupy
about 18.18% of the total seats. What we need at the moment is
a change in the attitudes which should enable the Members to
become active participants in the task of nation building and
should not remain static. It is the living institution, constantly
reflecting the needs, urges desires and aspirations of the people.
# APPENDIX-I

A PARTY POSITION IN LOK SABHA  
(AS ON 30 JUNE 1998)

| Sl. No. | States            | Seats | BJP | INC | JD | CPM | TMC | DMK | SP | TDP | SHIV | BSP | CFI | SAD | BMP | ORS | IND | TOTAL | VAC. |
|---------|-------------------|-------|-----|-----|----|-----|-----|-----|----|-----|------|-----|-----|-----|-----|-----|-----|-------|-----|-----|-----|
| 1.      | Andhra Pradesh    | 42    | 4   | 22  | 1  | -   | -   | -   | 12 | -   | -    | 2   | -   | -   | 1(a) | -   | -    | 42   |
| 2.      | Arunachal Pradesh | 2     | -   | -   | -  | -   | -   | -   | -  | -   | -    | 2   | -   | -   | 2(b) | -   | -    | 2    |
| 3.      | Assam             | 14    | 1   | 10  | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 2(c) | -   | 1    | 14   |
| 4.      | Bihar             | 54    | 20  | 5   | 1  | -   | -   | -   | -  | -   | -    | 10  | 18(d) | -   | 54   | -   | -    |      |
| 5.      | Goa               | 2     | -   | -   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 2    |
| 6.      | Gujarat           | 26    | 18  | 7   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 25   |
| 7.      | Haryana           | 10    | 1   | 3   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 10   |
| 8.      | Himachal Pradesh  | 4     | 3   | 1   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 4    |
| 9.      | Jammu & Kashmir   | 6     | 2   | 1   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 3(1) | -   | -    | 6    |
| 10.     | Karnataka         | 28    | 13  | 9   | 3  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 28   |
| 11.     | Kerala            | 20    | -   | 8   | 6  | -   | -   | -   | 2  | -   | -    | -   | -   | -   | -   | -   | -    | 20   |
| 12.     | Madhya Pradesh    | 40    | 30  | 10  | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 40   |
| 13.     | Maharashtra       | 48    | 4   | 33  | -  | -   | -   | -   | 6  | -   | -    | 1   | -   | -   | -   | -   | -    | 48   |
| 14.     | Manipur           | 2     | -   | -   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 1(j) | -   | -    | 2    |
| 15.     | Meghalaya         | 2     | -   | 2   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 1(j) | -   | -    | 2    |
| 16.     | Mizoram           | 1     | -   | -   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 1    | -   | -    | 1    |
| 17.     | Nagaland          | 1     | -   | 1   | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 1    |
| 18.     | Orissa            | 21    | 7   | 5   | -  | -   | -   | -   | -  | -   | -    | 8   | -   | -   | 9(k) | -   | -    | 21   |
| 19.     | Punjab            | 13    | 3   | 1   | -  | -   | -   | -   | -  | -   | -    | -   | 1   | -   | 1     | -   | 1    | 13   |
| 20.     | Rajasthan         | 25    | 5   | 18  | -  | -   | -   | -   | -  | -   | -    | -   | -   | -   | 1(l) | -   | -    | 25   |
| 21.     | Sikkim            | 1     | -   | -   | -  | -   | -   | -   | -  | -   | -    | 1   | -   | -   | -   | -   | -    | 1(m) | -   | 1    |
| 22.     | Tamil Nadu        | 39    | 3   | -   | -  | -   | -   | -   | 3  | 5   | -    | -   | -   | 1   | -   | 26(n) | 1    | 39   |
| 23.     | Tripura           | 2     | -   | -   | 1  | -   | -   | -   | -  | -   | -    | -   | -   | -   | -   | -   | -    | 2    |

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Dr. (Mrs.) Beatrix D’Souza, one of the nominated member, joined Samata Party w.e.f. 9.6.1998.

- All India Majlis-e-Ittehad-ul-Muslimeen-1
- Arunahal congress-2
- Autonomous State Demand Committee-1: UNF-1
- All India Rashtriya Janta Party-1; Rashtriya Janta Dal-17
- Haryana Vikas Party-1; Haryana Lok Dal (Rashtriya)-4
- National conference-3.
- Lok Shakti-3
- Muslim League-2; Revolutionary Socialist Party-1, Kerala congress (M)-1
- Republican Party of India-4; Peasants and Workers Party of India-1
- Manipur State Congress Party-1
- Biju Janata Dal-9
- All India Indira Congress (Secular)-1
- Sikkim Democratic Front-1
- A I A D M K-18; Pattali Makkal Katchi-4; MDMK-3; Janata Party-1
- Samajwadi Janata Party (Rashtriya)-1
- West Bengal Trinamool Congress-7; Revolutionary Socialist Party-4; All India Forward Block-2

Source: The Journal of Parliamentary Information, Lok Sabha Secretariat, New Delhi, 1998
### APPENDIX-II

**B. PARTY POSITION IN RAJYA SABHA**  
 *(AS ON 9 JULY 1998)*

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<td>87</td>
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a) T.D.-11; T.D.-1-1; CPI-1  
b) Asom Gana Parishad-2; Autonomous State Demand Committee-1; CPI-1  
c) C.P.I.-3; Rashtriya Janta Dal-9; Jharkhand Mukti Morcha-1  
d) Himachal Vikas Congress-1  
e) National Conference-3  
f) M.L.-2; C.P.I.-1; Kerala Congress-1  
g) Shiv Sena-5; Maharashtra Vikas Aghadi-1 h) Biju Janat Dal-3  
h) Shromoni Akali Dal-5  
i) Sikkim Sangram Parishad-1  
j) AIADMK (1)-6; AIADMK (ii)-1; DMK-6; Tamil Maniila congress (Moopenar)-3  
k) Samajwadi Party-8; Bahujan Samaj Party-4  
l) C.P.I-1; F.B.-2; RSP-1  
m) D.M.K.-1  
o) S.P.-1

**Source:** The Journal of Parliamentary Information, Lok Sabha Secretariat, New Delhi, 1998
## APPENDIX-III

### Educational Background of Members from the First to Eleventh Lok Sabha

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<thead>
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<th>Educational Background</th>
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<th>5th Lok Sabha</th>
<th>6th Lok Sabha</th>
<th>7th Lok Sabha</th>
<th>8th Lok Sabha</th>
<th>9th Lok Sabha</th>
<th>10th Lok Sabha</th>
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<tr>
<td>Number Percentage</td>
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<td>Number Percentage</td>
<td></td>
<td></td>
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<td></td>
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<td>Under-Matriculates/</td>
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<td>Higher Secondary or</td>
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<td>Post-Graduates</td>
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<td>Doctoral Degree or</td>
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<td>Total number of members who have supplied information</td>
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<tr>
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<td>Total number</td>
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Source: The Journal of Parliamentary Information, Lok Sabha Secretariat, New Delhi, 1996
## APPENDIX IV

### OCCUPATIONAL BACKGROUND OF MEMBERS FROM THE FIRST TO THE ELEVENTH LOK SABHA

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<th>1st Lok Sabha</th>
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<th>6th Lok Sabha</th>
<th>7th Lok Sabha</th>
<th>8th Lok Sabha</th>
<th>9th Lok Sabha</th>
<th>10th Lok Sabha</th>
<th>11th Lok Sabha</th>
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<td>189 36.0</td>
<td>206 39.3</td>
<td>203 38.3</td>
<td>230 44.14</td>
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<td>4 0.8</td>
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<td>101 19.1</td>
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<td>18.7</td>
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<td>0.4</td>
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<td>523</td>
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<td>544</td>
<td>544</td>
<td>544</td>
<td>529</td>
<td>509</td>
<td>543</td>
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### APPENDIX V

**REPRESENTATION OF WOMEN MEMBERS FROM THE FIRST TO THE ELEVENTH LOK SABHA**

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<th>Lok Sabha</th>
<th>Total No. of Seats</th>
<th>No. of Women Members</th>
<th>Percentage to the total</th>
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<td>5.4</td>
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</tr>
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<td>Fourth</td>
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<td>5.9</td>
</tr>
<tr>
<td>Fifth</td>
<td>521</td>
<td>22</td>
<td>4.2</td>
</tr>
<tr>
<td>Sixth</td>
<td>544</td>
<td>19</td>
<td>3.4</td>
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<td>Seventh</td>
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<td>Eighth</td>
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<td>44</td>
<td>8.1</td>
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<td>529</td>
<td>58</td>
<td>5.29</td>
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<td>Tenth</td>
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<td>Eleventh</td>
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<td>40*</td>
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**Source:** The Journal of Parliamentary Information, Lok Sabha Secretariat, New Delhi, 1996
Primary Sources

1. Debates:
   1.a. Legislative Assembly Debates; Managers of Publication, Delhi.
   1.b. Constituent Assembly Debates; Govt. of India Press, New Delhi.
   1.c. Parliamentary Debates; Parliament Secretariat, New Delhi.
   1.d. Lok Sabha Debates; Lok Sabha Secretariat, New Delhi.
   1.e. Rajya Sabha Debates; Rajya Sabha Secretariat, New Delhi;

2. Reports of Committees of Privileges, Lok Sabha
   (Lok Sabha Secretariat, New Delhi.)
   2.a. First Lok Sabha 1952-1957
      - IR (CPR), 1951.
      - IIR (CPR), 1952.
      - IIIIR (CPR), 1953.
   2.b. Second Lok Sabha, 1957-1962
      - IR (CPR), 1957.
      - IIR (CPR), 1958.
      - IIIIR (CPR), 1958.
      - IVR (CPR), 1958.
      - VIR (CPR), 1958.
      - XIIR (CPR), 1961.
      - VIIIIR (CPR), 1969.
2.d. *Fifth Lok Sabha, 1971-1977*
- IIIR (CPR), 1972.
- VII 7 (CPR), 1974.

2.e. *Seventh Lok Sabha, 1979-1984*
- IVR (CPR), 1983.
- VR (CPR), 1983.

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