CHAPTER III

PRIVILEGES OF THE PARLIAMENT OF INDIA

3.1 Privilege to exclude strangers from the house

To ensure privacy, the Speaker has the power to order the withdrawal of strangers from any part of the House whenever he may think fit. There have been several occasions both in the Parliament and the state legislatures when strangers were asked to withdraw from the House. For example, during a debate in the Lok Sabha, a person named Tanaji Kamble threw some leaflets from the visitors gallery, and the watch and ward officer took him into custody immediately. The House sentenced him to simple imprisonment for one day.¹ On this occasion, the Speaker observed that the throwing of leaflets was against the dignity of the House and was contempt of the House.² In another incident in the Lok Sabha on 29 August 1968, when a member was making a statement during the debate on the Kutch Award, two girls named Praveena Dave and Veena Vora shouted slogans such as “Kutch is ours”, etc., from the ‘Visitors’ gallery.³ The watch and ward staff immediately

² Ibid.
³ The National Herald (New Delhi), 30 August 1968.
intervened, but instead of listening to their request the girls became violent and one had to be bodily lifted and brought out of the visitors' gallery. They were later let off in the evening.\textsuperscript{4} Similarly, on 26 November 1974, while the Lok Sabha was in session, a visitor named Satendarjeet Singh attempted to enter the visitors' gallery with explosives and a dagger on his person.\textsuperscript{5} On search, he immediately took out the dagger and attempted to assault a watch and ward officer; but he was immediately taken into custody and sentenced to rigorous imprisonment for twenty-five days.

On another occasions, some visitors shouted slogans from the Visitors gallery of the Rajya Sabha and threw pamphlets on the floor of the House when it was discussing the memorandum submitted to the President against the Chief Minister of Haryana.\textsuperscript{6} The offenders were immediately taken into custody by the watch and ward staff. By the orders of the House, they were sentenced to simple imprisonment till the rising of the House on that days.\textsuperscript{7}

In the Maharashtra Legislative Assembly, during a sitting of the House, some persons shouted slogans and

\begin{itemize}
\item[4.] \textit{P.D.}, (Lok Sabha Secretariat, 1968, New Delhi), vol. XIII, no. 2, October 1968, p. 64.
\item[6.] \textit{P.D.}, (Lok Sabha Secretariat, 1973, New Delhi), vol. XVIII, no . 1, April 1973, pp. 6-7.
\item[7.] \textit{R.S.D.}, vol. LXXXIII, no. 29, 30 March 1973, cols. 115-16.
\end{itemize}
threw *chappals*\(^8\) from the visitors’ gallery on the floor of the House. The House ordered the offenders to be sentenced to 30 days’ simple imprisonment.\(^9\)

In fact, such cases have been numerous and the Parliament and the state legislatures have been very zealous in protecting their privilege and have been punishing the offender.

The object of excluding strangers is to prevent the publication of the debates and proceedings of the House.

In the Lok Sabha, the Speaker has the power to order the withdrawal of strangers from any part of the House whenever he may think fit.\(^10\) During a secret sitting of the house no stranger is permitted to be present in the Chamber, the Lobby or the Galleries.\(^11\)

If any stranger is found to be present in any part of the precincts of the House which is reserved for the exclusive use of members, or if any stranger misconducts himself within the precincts of the Parliament House or does not withdraw when the strangers are directed to withdraw while the House is sitting, he may be removed from the precincts

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10. Rule 387: Chapter XXXII-Admission of Strangers to the House.
11. Rule 248(2).
of the House or be taken into custody by the Additional Secretary/Joint Secretary, Security of the Lok Sabha.\textsuperscript{12}

### 3.2 Right to Control Publication of Proceedings

Besides the right to exclude strangers, the Parliament also has the right to control the publication of its proceedings to protect and uphold its privilege of freedom of speech. In England the documents published under the authority of Parliament are privileged. The Parliamentary Papers Act, 1840 (England), made the publication of reports, papers, votes and proceedings of a House of Parliament, ordered by the House, completely privileged, whether the publication was only for the use of the members of Parliament or for a wider circulation. A similar provision in the Indian Constitution lays down that no person shall be liable to any proceedings in any court in respect of the publication of any report, paper, votes or proceedings by or under the authority of a House.\textsuperscript{13} Thus, all persons connected with the publication of proceedings of Parliament (or as a matter of fact of any legislature in India) are protected, if such publication is done by or under the authority of the House itself.


\textsuperscript{13} Art. 105(2) The Constitution of India.
Till 1956, this protection was given only to those publications which were undertaken under the authority of the House and did not extend to private publication, e.g., publication of a substantially true and faithful report of parliamentary proceedings in a newspaper. The question whether the words spoken in the House remain privileged even when they are published in a private publications\textsuperscript{14} has been debated both in the Parliament and the law courts. In the case of \textit{Dr. Suresh Chandra v. Punit Goala},\textsuperscript{15} the proceedings arose out of a report, published in a Bengali newspaper, \textit{Loka Sevak}, of a speech made by Dr. Suresh Chandra Banerjee in the Bengal Legislative Assembly on 13 March 1951. At that time Dr. Suresh Chandra Banerjee was also a member of the editorial board of \textit{Loka Sevak}. Punit Goala, in his complaint, alleged that the speech contained matter defamatory to him and had been published maliciously and in bad faith. The Calcutta High Court held that “no publication of reports is protected unless such a

\textsuperscript{14} On this point \textit{Wason v. Walter} is the leading British case. In the course of a debate in the House of Lords, allegations disparaging to the character of the plaintiff had been laid. A faithful report of the debate was published in The Times of 13 February 1867 and the plaintiff proceeded against it for libel. Dimissing the case the court pointed out that the advantage to the community from publicity given to proceedings of the House “is so great that the occasional inconvenience to individual arising from it must yield to the general good.” Therefore it laid down the principle: “While honestly and faithfully carried on, those who publish them will be free from legal responsibility, though the character of individual may incidentally be injuriously affected.”

publication is authorised by the Legislature." Therefore, a faithful report of the proceedings of the Lok Sabha (or any other legislature in India) in the newspapers is not privileged, and if such a report contains matter disparaging the character of an individual, it is actionable for defamation under Section 500 of the Indian Penal Code.

Another case on the question of the status of reports of parliamentary proceedings in the press, arose when the questions of Dr. Jatish Chandra Ghosh, a member of the West Bengal Legislative Assembly, regarding one Harisadhan Mukherjee were disallowed; and Dr. Ghosh published them in the fortnightly 'Janamat'. Harisadhan Mukherjee sued him for defamation, and the case, Jatish Chandra v. Harisadhan, started. Dr. Ghosh moved the Calcutta High Court for quashing the proceedings of defamation started against him by Harisadhan Mukherjee, on the ground that courts were not competent to deal with a matter which was a part of the proceedings of the legislature. The court, however, held that no immunity was attached to the publication of the questions in the fortnightly, because the questions which were disallowed

16. Ibid.
17. Sec. 500 of the Indian Penal Code provides that "whoever defames another shall be punished with simple imprisonment for a term which may extend two years or with fine or both."
could not be said to form a part of the proceedings of the House; therefore, the publication of the questions would not be entitled to the immunity which the debates or speeches or proceedings inside the House enjoyed. Moreover, the court held that unauthorised “reports of the proceedings of the Assembly (or Parliament) are not treated as privileged under the Indian Law and the ordinary criminal law of the land must apply to such reports.”

Still another case of the kind, *Surendra Mohanty v. Nabakrishna*, arose when a newspaper published a statement made in the Orissa Legislature, which amounted to contempt of the High Court. The member who had made the statement was immune to judicial action; but the newspaper was held guilty of committing contempt of court, for not being a publication authorised by the legislature it could not claim privilege. Thus, the publication of a report of the proceedings of the Lok Sabha or of a state legislature did not enjoy a privilege or protection, if it was not published under the authority of the House.

It was, however, felt that there were many advantages to the community if newspapers could be enabled to publish in good faith reports of the proceedings of legislature.

19. Ibid.
Accordingly, the Parliament enacted the *Parliamentary Proceedings (Protection of Publication) Act, 1956*,\(^{21}\) which *inter alia* provided that no person should be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of the proceedings of either House, unless the publication was proved to have been made with malice, or it was not in public good.\(^{22}\)

This immunity provided to the press was withdrawn in 1976 when the *Parliamentary Proceedings (Protection of Publication) Repeal Act* was passed by the Parliament.\(^{23}\) The intention of the Act was to make the press responsible for what it published about the proceedings in Parliament. At the introduction stage, the bill was vehemently opposed by H.N. Mukerjee, who believed that it struck at the very roots of the functioning of Parliament.\(^{24}\) Another member of Lok Sabha opposed the bill on the ground that it would interrupt the communication between the House and the people.\(^{25}\) Dinen Bhattacharyya, another member, characterised the proposed bill as a nail in the coffin of

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22. Ibid., sec. 3.
parliamentary democracy in India. Nearly all the opposition members opposed the bill and felt that, through the bill, the government was trying to blacklist every member of the House, irrespective of party affiliations. On the other hand, Vidya Charan Shukla, minister in charge of the bill assured the members that the passage of the bill would not endanger the privileges of the members of Parliament or free reporting; it would affect only that reporting which might be found to be untrue and for which the press would have to accept legal responsibility. The bill was passed in spite of strong opposition.

In addition to the Parliamentary Proceedings (Protection of Publication) Repeal Act, 1976 censorship imposed on the press during the General Emergency (from 25 June 1975 to 21 March 1977) took away the right of the newspapers to publish, in good faith, reports of the proceedings of legislatures and thus indirectly impinged upon the parliamentary privilege of freedom of speech and the right of the House to control publication of proceedings.

With the passage of the Forty-fourth Amendment Act, 1978, which came into force on 19 June 1978, the legislatures in India regained their privilege of speech and

26. Ibid., Cols. 190-91.
27. Ibid., Col. 216.
the right to control publication of their proceedings. The Act provides for constitutional protection to the press for reporting the proceedings of Parliament and state legislatures without malice.\textsuperscript{29} Due to this protection, censorship cannot be imposed on the press in respect of reporting of the proceedings of Parliament and state legislatures. However, if a member of Parliament of a state legislature publishes his own speech made in the House separately it becomes a separate publication unconnected with the proceedings of the House, and the member is responsible for any libelous matter contained in such a publication under the ordinary law of the land.\textsuperscript{30} This was confirmed by the Calcutta High Court in \textit{Dr. Suresh Chandra Banerjee and Others v. Punit Goala}\textsuperscript{31} when it held:

"it appears that Dr. Banerjee had in his private capacity caused his speech to be published in a newspaper he would still be liable in spite of clause (3) of Art. 194. As this report is not

\textsuperscript{29} \textit{The Forty-fourth Amendment Act, 1978}, Cl. 42. This clause inserts a new Article, 361-A, in the Constitution of India.

\textsuperscript{30} \textit{I Wasan v. Walter}, Cockburn, C.J., in his judgement, indicated why the publication of a single speech from a debate would not be protected:

"It is to be observed that the analogy between the case of reports of Proceedings of courts of justice and those of proceedings in Parliament being complete, all the limitations placed on the one to prevent injustice to individuals will necessary attach on the other; a garbled or partial report, or of detached parts of Proceedings, published with intent to injure individuals, will equally be disentitled to protection."

\textsuperscript{31} A.I.R. 1958 Vol. 45, (Ori.), p. 169.
protected by anything in the Constitution . . . the ordinary law of the land must apply.”

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

Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the house of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to remake it.\(^{33}\)

The underlying object of the power of the House to control and, if necessary, to prohibit the publication of its debates and proceedings is to protect freedom of speech by

ensuring privacy of debate whenever necessary, and prevails over the general right of the individual to freedom of speech and expression guaranteed by the Constitution.\(^{34}\)

In the Lok Sabha, the Secretary-General is authorised to prepare and to publish a full report of the proceedings of the House under the directions of the Speaker.\(^{35}\) The Speaker may also authorise the printing, publication, distribution or sale of any paper, document or report in connection with the business of the House or any paper, document or report laid on the Table or presented to the House or a committee thereof. Such printing, publication, distribution or sale is deemed to be under the authority of the House within the meaning of the constitutional provisions in this regard.\(^ {36}\) If a question arises whether a paper, document or report is in connection with the business of the House or not, the question is referred to the Speaker whose decision is final.\(^ {37}\)

Publication by any person in a newspaper of a substantially true report of any proceedings of either House of Parliament is protected under the Constitution from civil or criminal proceedings in court unless the publication is

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34. Ibid.
35. Rule of Procedure and Conduct of Business in Lok Sabha.
36. Art. 105(2).
37. Rule of Procedure and Conduct of Business in Lok Sabha.
proved to have been made with malice.\textsuperscript{38} Statutory protection has also been given by the Parliamentary Proceedings (Protection of Publication) Act, 1977, to publication in newspapers or broadcasts by wireless telegraphy, of substantially true reports of proceedings in Parliament.\textsuperscript{39}

\textbf{3.3 Right to each House to be the sole Judge of the Lawfulness of its own Proceedings}

Parliament is sovereign within the limits assigned to it by the Constitution. There is an inherent right in the House to conduct its affairs without any interference from an outside body. The Constitution specifically bars the jurisdiction of courts of law in respect of anything said or any vote given by a member in the House. In the matter of judging the validity of its proceedings, the House has exclusive jurisdiction.\textsuperscript{40}

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

\begin{itemize}
\item \textsuperscript{38} Art. 361A inserted by the Constitution (Forth-fourth Amendment) Act, 1978.
\item \textsuperscript{39} The parliamentary Proceedings (Protection of Publication) Act, 1977, ss. 3 and 4. Between February 1976 and April 1977, the Act remained repealed.
\end{itemize}
...It is well known that no writ, direction or order restraining the Speaker, from allowing a particular question to be discussed, or interfering with the legislative processes of either House of the Legislature or interfering with the freedom of discussion or expression of opinion in either House can be entertained.\textsuperscript{41}

The House is not responsible to any external authority for following the procedure it lays down for itself, and it may depart from that procedure at its own discretion.\textsuperscript{42}

The validity of any proceedings in Parliament cannot be called in question in any court on the ground of any alleged irregularity of procedure. No officer or member of Parliament in whom powers are vested for regulating the procedure or the conduct of business, or for maintaining order, in Parliament, is subject to the jurisdiction of any court in respect of the exercise by him of those powers.\textsuperscript{43}

The Allahabad High Court in this regard held:

...This Court is not, in any sense whatever, a court of appeal or revision against the

\begin{flushright}
\footnotesize
\textsuperscript{42} Rule of Procedure and Conduct of Business in Lok Sabha.
\textsuperscript{43} Art. 122 Art. 212 in case of State Legislatures.
\end{flushright}
Legislature or against the ruling of the Speaker who as the holder of an office of the highest distinction, has the sole responsibility cast upon of maintaining the prestige and dignity of the House. 

...This Court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House.\textsuperscript{44}

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

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

If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of Laws.\textsuperscript{45}

\textbf{3.4 Power of Expulsion :}

Power of Expulsion was ultimately decided in the case of cash for query case.


Cash for Query Case

During the Fourteenth Lok Sabha, the matter of acceptance of money by members Parliament for raising parliamentary questions came to light on 12 December, 2005 after an expose on a television news channel showing members of Parliament accepting money for tabling notices of parliament questions. An Adhoc Committee viz. Committee to Inquire into Allegations of Improper Conduct on the part of some members was constituted by the Speaker, Lok Sabha on 12 December 2005 to look into the matter. The Committee adopted their draft Report on 21 December 2005. The Report was presented to the Speaker, Lok Sabha on 21 December 2005 and laid on the Table of the House on 22 December 2005. The Committee in their Report recommended expulsion of ten members who were involved from the membership of the fourteenth Lok Sabha. On 23 December 2005, the Leader of House moved the following motion:

"That this House having taken note of the Report of the Committee to inquire into allegations of improper conduct on the part of some members, constituted on 12 December 2005, accepts the findings of the Committee that the conduct of the ten
members of Lok Sabha, namely, Narendra Kumar Kushawaha, Annasahcb M.K. Patil. Manoj Kumar, Y.G. Mahajan. Pradeep Gandhi, Suresh Chandel. Ramsevak Singh. Lal Chandra Kol. Rajaram Pal and Chandra Pratap Singh was unethical and unbecoming of members of Parliament and their Continuance as members of Lok Sabha is untenable and resolves that they may be expelled from the membership of Lok Sabha."

An amendment to the motion moved by a Member that the matter may be referred to the Committee of Privileges, Lok Sabha was negatived by voice vote.

The motion was adopted by the voice vote and consequently the ten members stood expelled from the membership of Lok Sabha.

All the expelled members challenged their expulsion in the High Court of Delhi, other than Rajaram Pal who challenged his expulsion in the Supreme Court.

All the writ petitions were transferred to the Supreme Court. A five Judge bench of Supreme Court in their judgement delivered on 10 January 2007 upheld the expulsion of the members.
In the matter of its own privileges, the House is supreme. It combines in itself all the powers of Legislature, Judiciary and Executive, while dealing with a question of its privilege. The House has the power to declare what its privileges are, subject to its own precedents. It has power to name the accused who is alleged to have committed a breach of privilege or contempt of the House. It can act as a court either itself or through its Committee, to try the accused, to send for persons and records, to lay down its own procedure, commit a person held guilty, award the punishment and execute the punishment under its own orders. The only limitations are that the Supreme Court in the final analysis and it must confirm that the House has the privilege which is claimed, and, once confirmed, the matter is entirely in the hands of the House. The House must function within the framework of the Constitution, more particularly within the ambit of fundamental rights; act *bona fide*. It must observe the norms of natural justice and not only do justice but seem to have done justice which will satisfy public opinions.  

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

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

Each House has the power to punish its members for disorderly conduct and other contempts committed in the House while it is sitting.\(^{47}\) This power is vested in the House by virtue of its right to exclusive cognizance of matters arising within the House and “to regulate its own internal concerns.”

It has been observed by the Allahabad High Court that “a Legislative Assembly would not be able to discharge the high functions entrusted to it properly, if it had no power to punish offenders against breaches of its privileges, to impose disciplinary regulations upon its members or to enforce obedience to its commands”.\(^{48}\)

Again in a case which related to an action for contempt of court arising out of a speech delivered in the Orissa Legislative Assembly, the Orissa High Court held that “anything said or done in the House is a matter to be dealt with by the House itself and that the Legislature or the Speaker had

\(^{47}\) Art. 105(3).
The power “to take suitable action against a member who, while exercising his freedom of speech under clause (1) of art. 194, transgresses the limits laid down in that clause.”

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

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

A criminal act committed by a member within the House cannot be regarded as a part of the proceedings of

50. Rule 378.
51. Rules 373 and 374.
the House of purposes of protection. Thus, in the Maharashtra Legislative Assembly when a member shouted at the operator to connect his mike to the loudspeaker, threw a paper-weight in the direction of the loudspeaker-operator and rushed towards the Speaker and grabbed the mike in front of the Speaker, he was not only expelled from the House but was subsequently convicted under different sections of the Indian Penal Code and sentenced to a rigorous imprisonment for six months.53

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

On 18 November 1977, a motion was adopted by the House referring to the Committee of Privileges a question of breach of privilege and contempt of the House against Shrimati Indira Gandhi, former Prime Minister, and others regarding obstruction, intimidation, harassment and institution of false cases by Shrimati Indira Gandhi and

others against certain officials who were collecting
information for answer to a certain question in the House
during the previous Lok Sabha.

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

On 19 December 1978, the House adopted a motion
resolving that Shrimati Indira Gandhi be committed to jail
till the prorogation of the House and also be expelled from
the membership of the House for the serious breach of
privilege and contempt of the House committed by her.\footnote{L.S. Deh 18-11-1977, cc. 235-37. 3R (CPR-61.Sr. I.S. Deb., 19-12-
On 7 May 1981, the Seventh Lok Sabha, however, rescinded the motion adopted by the Sixth Lok Sabha on 19 December 1978 by adopting the following resolution.55

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

Now therefore this House resolves and declares that :
(a) the said proceedings of the Committee and the House shall not constitute a precedent in the law of parliamentary privileges;
(b) the findings of the Committee and the decision of the House are inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and the basic safeguards assured, to all and enshrined in the Constitution; and
(c) Smt. Indira Gandhi, Shri R.K. Dhawan and Shri D. Sen were innocent of the charges levelled against them.

And accordingly this House:

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

3.6 Power to regulate its internal affairs

Apart from the parliamentary privilege to exclude strangers and publication of its proceedings, an extension of its privilege of freedom of speech is its right to regulate its internal affairs. This right also is the outcome of the evolution of parliamentary privileges in the United Kingdom. Art. 9 of the Bill of Rights confirms the right of each House of Parliament to exclude all outside interference within its walls and lays down that "freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament." The right of the British Parliament to regulate its own business was won by it after a long struggle between the House of Commons and the Crown’s Court, and it is now recognised by the courts as an absolute right of the Parliament. The Bill of Rights is, in fact, the foundation of the privilege of Indian Parliament that each of its Houses is the sole judge of the lawfulness of its own proceedings. As a corollary of this privilege, each House has the right to lay down its own code of procedure.

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Within the limits prescribed by the Indian Constitution. It has an inherent right to conduct its affairs without any interference from an outside body, and the Constitution specifically denies courts of law jurisdiction over what is said or the vote given by a member in the House. In the matter of judging the validity of its proceedings, the House has an exclusive jurisdiction.  

On several occasions, the courts have unequivocally affirmed that they have no power to question the validity of proceedings of the legislature or the functioning of the Speaker. In case of Saradhakar Supakar v. Speaker of Orissa Assembly, Saradhakar Supakar, a member of the Assembly, During the course of the Governor's Address to the Orissa Legislative Assembly wanted to discuss some issues which were disallowed the Speaker. Saradhakar Supakar moved the Orissa High Court against the ruling of the Speaker. The court dismissed the petition on the 

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57. The Indian Legislatures took long to acquire this privilege in its fullness. The Privilege of the House to be the exclusive judge of its proceedings was first conferred on the Indian legislatures by sec. 41(1) of the Government of India Act, 1935. This section laid down that “The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure (and) . . . no officer or other member of the legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.”


ground that the case did not call for interference, as the Rules of the Assembly confer on the Speaker the power to decide all points of order that might arise. Moreover, by virtue of clause (2) of Art. 212, “we are clearly barred from issuing any direction in exercise of our powers.”

In another case, *Godavaris Misra v. Nandakishore Das*, Godavaris Misra, a member of the Orissa Legislative Assembly, who had sent notice of two questions to the Secretary, Orissa Legislative Assembly, on 5 and 6 September 1952, was informed by the Secretary that the said questions had been disallowed by The Speaker. Misra made a request to the Speaker to furnish him with the reasons for disallowing the questions. Thereupon the Secretary of the Orissa Legislative Assembly, acting under the orders of the Speaker, replied that questions could not be asked under the Rules of Procedure and Conduct of Business of the Orissa Legislative Assembly and were a clear abuse of the right of questioning. Misra filed an

61. *Ibid.*, Art. 212(2) of Constitution of India provides: “No officer or member of the legislature of a state in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business or for maintaining order, in the legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.
application with the Orissa High Court against the decision of the Speaker. The Court rejected the petition, saying:

It cannot be said that he acted in excess of the powers conferred on him by the Rules. Rule 49 confers on the Speaker the power to disallow any question if he considers that such question is an abuse of the right of questioning, His decision on this subject is final.  

The court further held that the Speaker cannot deprive a member of the right of freedom of speech conferred by Art. 194(1) but that this freedom is subject to the other provisions of the Constitution and the rules framed by the legislature.”

In *Anand Bihari v. Ram Sahay*, the Orissa High Court held that the failure of a member to take an oath or affirmation is a matter relating to the internal affairs of the House, and if the Speaker has taken the oath or affirmation, the court cannot restrain him from taking his seat and discharging the duties and functions of Speaker. Similarly, the Allahabad High Court held in *Rajnarain Singh v.*


“Subject to the provisions of this Constitution and to the Rules and Standing Orders regulating the procedure of the legislature, there shall be freedom of speech in the legislature of every state.”
Atmaram Govind,\textsuperscript{67} that it has no jurisdiction to issue a writ, direction or order relating to a matter affecting the internal affairs of the House, and that the Speaker and the officers are protected from scrutiny by a court of law for what is done in that House.\textsuperscript{68}

A similar situation arose in another case, Homi D. Mistry v. Nafisul Hassan and Others,\textsuperscript{69} Homi D. Mistry, acting editor of Blitz, a Bombay weekly, published in its issue of 29 September 1951 certain matter concerning the Speaker of the Uttar Pradesh Legislative Assembly. The Speaker, by his order of 8 October 1951, referred the published matter to the Privileges Committee of the House. On the basis of the report of the Privileges Committee, the House passed a resolution that Homi D. Mistry be produced before the bar of the House on 19 March 1952. In pursuance of the resolution which specifically asked the Speaker to issue a warrant for the production of Homi D. Mistry before the House, the Speaker signed the warrant against him. The Commissioner of Police, Bombay, arrested Mistry on 11 March 1952, and the latter was brought to Lucknow but was not produced before a magistrate. On a petition to the Supreme Court presented on his behalf,

\begin{itemize}
\item \textsuperscript{67} A.I.R. 1954, vol. 41, (Allah.), p. 328.
\item \textsuperscript{68} Ibid.
\item \textsuperscript{69} I.L.R., 1957, part I, Bombay, p. 218.
\end{itemize}
Mistry was released on the ground that there was an infringement of his Fundamental Rights under Article 22(2) of the Constitution of India, inasmuch as he was not produced before a magistrate within 24 hours of his arrest.\textsuperscript{70}

Subsequently, in case of \textit{Homi D. Mistry v. Nafisul Hasan and Others.}, Homi D. Mistry filed a petition in the Bombay High Court against the Speaker of the U.P. Vidhan Sabha claiming damages for his wrongful arrest and detention.\textsuperscript{71} The court held that the arrest of Homi D. Mistry in Bombay in execution of the warrant issued under the directions of the Legislative Assembly of Uttar Pradesh, though outside the territory of the state, was legal and valid.\textsuperscript{72} Moreover, as the warrant was issued against Mistry to answer a charge of contempt of the House,

\begin{quote}
No court was entitled to scrutinise such a warrant and decide whether it was a proper and valid warrant or not ... the Speaker acted as the Officer of the House and signed the warrant in performance of duty arising
\end{quote}

\textsuperscript{70} Art. 22(2) Constitution of India provides: “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

\textsuperscript{71} \textit{I.L.R.}, 1957, part I, Bombay, p. 220.

\textsuperscript{72} \textit{Ibid.}
out of the internal affairs of the House, he enjoyed a complete immunity and he would be protected even if the warrant is wrongly executed by others.\textsuperscript{73}

In \textit{Tej Kiran Jain and Others v. N. Sanjiva Reddy},\textsuperscript{74} the question of supremacy of the Parliament in its internal proceedings arose. Tej Kiran Jain, a member of the Lok Sabha, moved the Delhi High Court, claiming a sum of Rs. 26,000 as damages, against the Speaker and some other members of the Lok Sabha for certain observations made by them in the House on 2 April 1969, during the proceedings on the calling attention notice regarding the reported statement of Shri Shankaracharya of Puna on untouchability and his reported insult to the national anthem. The High Court, while dismissing the petition filed by Tej Kiran Jain, observed in its judgment of 4 August 1969:

\begin{quote}
clause (2) of Article 105 of the Constitution. . . goes to show that as regards anything said by a member of Parliament in the Parliament, or any committee thereof, the Constitution has guaranteed full protection
\end{quote}

\begin{flushleft}
\footnotesize
\begin{itemize}
\item \textsuperscript{73} Ibid.
\item \textsuperscript{74} A.I.R. 1970, Vol. 57, SC, p. 1573.
\end{itemize}
\end{flushleft}
and provided complete immunity against any proceedings in a court of law.\textsuperscript{75}

The court further held that the protection given by Article 105(2) applies to everything said in Parliament: the words ‘anything said’ are of the widest amplitude and it is not permissible to give them a limited interpretation. The object of the provision obviously is to secure an absolute freedom of discussion in the Parliament and to allay any apprehension of a legal proceeding in a court of law in respect of anything said in Parliament by a member thereof.\textsuperscript{76}

After her suit was dismissed by the High Court, Tej Kiran Jain moved the Supreme Court. The Supreme Court, dismissing the appeal, stated \textit{inter alia}:

This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of government 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 the members and the

\textsuperscript{75} \textit{Ibid. PD}, vol. XV, no. 2, October 1970, pp. 39-42.
\textsuperscript{76} \textit{Ibid.}
control of proceedings by the Speaker. The courts have no say in the matter and should really have none.\textsuperscript{77}

Thus, both the High Court of Delhi and the Supreme Court dismissed the petitions of Tej Kiran Jam and others, and the legal position in this respect was settled once for all.

The cases discussed above show that, while the members of the state legislative assemblies often went to the courts, challenging the proceedings of the House, the members of Parliament showed maturity and restraint in not taking every small matter concerning the internal proceedings of the House to the courts. It is desirable that the members of state legislative assemblies also are not very touchy about trifles and show a similar maturity. This is essential for the proper functioning of parliamentary democracy. Apart from its privilege to determine its proceedings, the House has a collective privilege to decide, without any interference from a court of law, what it will discuss and in what order. In the cases brought before them, the courts decided not to take cognisance of what the House discussed and in what order.

\textsuperscript{77} Ibid.
In case of *Hem Chandra Sen Gupta v. The Speaker of West Bengal Legislative Assembly*,\(^7\) Hem Chandra Sen Gupta, a member of the, West Bengal Legislative Assembly, moved the Calcutta High Court challenging the procedure adopted in the House during the discussion on the Report of the States Reorganisation Commission in 1956. The court held:

The powers, privileges and immunities of the state legislatures and their members have been laid down in the Constitution. Within the legislature, members have absolute freedom of speech and discussion (Art. 194). Subject to the provisions of the Constitution they can regulate their own procedure (Art. 208, 212).

The court further held that in such matters and within their allotted spheres, the legislatures are supreme and cannot be called in question by the courts of the land. It said: "The Courts are, therefore not interested in the formative stages of any law. Even where a law has been promulgated, it is not the duty of the Courts to act in a

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supervisory character and rectify the defects suo motu." (Emphasis added).

In the case of Chotey Lal v. State of Uttar Pradesh, Chhotey Lal, a zamindar, appealed to the U.P. High Court for the issue of a writ of Mandamus and a writ of Prohibition against the State of Uttar Pradesh. In these writs Chhotey Lal prayed to the court to prevent the U.P. Government from passing the Zamindari Abolition and Land Reforms Bill. The Court held:

It is necessary to understand exactly how and in what circumstances Courts declare laws invalid or unconstitutional. Until a Bill has become law, the legislative process not being complete, Courts do not come into the picture at all, it is not the function of any court or a judge to declare void or directly annual a law the moment it has been promulgated.

Dismissing the case, the court further held that the courts are not a supervisory body over the legislature: their approval or disapproval is not needed for an Act passed by

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79. Ibid., p. 384.
81. Id., p. 229.
82. Ibid., p. 231.
the legislature to have the force of law; their function is interpretative.\textsuperscript{83}

In another case, \textit{C. Shrikrishen v. State of Hyderabad and Others},\textsuperscript{84} C. Shrikrishen a barrister of Hyderabad High Court, moved the High Court for declaration and the issue of a writ of Prohibition to 22 respondents, including the Speaker of Hyderabad Assembly and the Prime Minister of India. C. Shrikishen alleged that neither the Assemblies of Hyderabad, Andhra, Mysore and Bombay, nor the Parliament of India, has any jurisdiction or authority to create the division of the State of Hyderabad. Rejecting the petition, the Hyderabad High Court held:

\ldots both Parliament and a State Legislature are sovereign within the limits assigned to them by the Constitution \ldots as such the Courts cannot interfere with them in the part they play in the proceedings or business of the assemblies nor can they interfere with their privileges, as the rights of any of them to introduce any Bill in their respective assemblies are rights and

\textsuperscript{83} Ibid.
\textsuperscript{84} A.I.R., vol. 43, (Hyd.) p. 186.
privileges of these members—whether as members or Ministers.\textsuperscript{85}

The court thus justified the inherent right of the legislature to conduct its affairs without any interference from any outside body.

### 3.7 Power to punish for its contempt

Each House of the Parliament of India as well as the state legislatures not only has the power to conduct its affairs without any outside interference but also has the power to punish its members for disorderly conduct and other kinds of contempt committed in the House while it is sitting.\textsuperscript{86} This power is vested in the House by virtue of its exclusive right to take cognizance of matters arising within the House and “to regulate its own internal concerns.”\textsuperscript{87} This privilege of the legislatures was upheld by the Allahabad High Court when it held in the case of Raj Narain Singh v. Atmaram Govind that a “legislative assembly would not be able to discharge the high functions entrusted to it properly, if it had no power to punish offenders against breaches of its privileges, to impose disciplinary regulations

\textsuperscript{85} Ibid., p. 189.
\textsuperscript{86} Art. 105(3) of the Constitution.
\textsuperscript{87} Anson, The law and Custom of the Constitution, Vol. I, p. 184. Anson Says: “It is strictly true to say that the House has the exclusive right to regulate its own internal concerns and that, short of a criminal offence committed within the House or by its order, no court would take cognizance of that which passes within its walls.”
upon its members or to enforce obedience to its commands. Similarity, in the case of *Surendra Mohanty v. Nabhakrishna* it as held by the Orissa High Court 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 has the power "to take suitable action against a member who, while exercising his freedom of speech under clause (1) of Art. 194 transgresses the limit laid down in that clause." The disciplinary powers of the Speaker and the House are contained in the Rules of Procedure of the House the Speaker may issue directions from time to time for the enforcement of the same.

Another corollary of the right of the House to regulate its internal affairs is that its permission is necessary for giving evidence or for the production of any document connected with its proceedings or of any of its committees, in a court of law. This was established in India after the submission of the first report of the Committee of Privileges of the Second Lok Sabha. The report said that

no member or officer of the House should give evidence in a court of law in respect of any proceedings of the House, or any

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committees of the House, or documents in
the custody of the Secretary without the
leave of the House being first obtained.\textsuperscript{90}

Normally, the leave of the House is essential; but when
the House is not in session, the Speaker may allow the
production of relevant documents in courts of law in order
to prevent delay in the administration of justice and inform
the House accordingly when it reassembles. However, when
the matter involves a question of privilege, especially the
privilege of the witness, or the production of the document
appears to the Speaker to be a subject for the discretion of
the House itself, he may decline to grant the required
permission without the leave of the House.\textsuperscript{91}

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

\textsuperscript{90} L.S.D., (Lok Sabha Secretariat, 1957, New Delhi), vol. VII, 13
September 1957, cols. 13760-63.
\textsuperscript{91} Ibid.
officer of the House should produce it in the court. When a request for producing a document connected with the proceedings of the House or its committees, or which is in the custody of the Secretary of the House, in a court of law is received during the session of the legislature, the case may be referred by the Speaker to the Committee of Privileges. After the report of the committee is received, a motion is moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

It may be noted, however, that the House may not permit a member to give evidence before the other House of Parliament or any of its committees, without a request from that House for the attendance of such member and without the consent of the member whose attendance is required.

Regards the evidence of members or officers of the House in the courts of law, a special form or letter of request is prescribed for use by the courts of law to request the House for the production of parliamentary records or for oral evidence of officers of the House is the courts.

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92. Ibid.
93. Ibid.
3.8 Proceedings in Parliament and the Criminal Law

The Constitution of India lays down that a member of Parliament is not liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any of its committees.95 In other words, a member is not amenable to the courts of law for his statements in the House, however, criminal their nature may be.96 Confirming this, the Orissa High Court held in the case of Surendra Mohanty v. Nabhakrishna that “no law court can take action against a member of the legislature for any speech made by him there.”97

The foregoing discussion leads to the conclusion that the members of Parliament and the state legislatures in India enjoy the freedom of speech and an absolute immunity to proceedings against them in the courts for what they say in the House. Nevertheless, there are certain restrictions on this freedom; for example, no discussion can be made on the conduct of a judge, no derogatory speech casting aspersion on another member can be made, and the Rules of procedure of the House also put some limits on the freedom of speech.

95. Art, 105(2) Constitution of India.
As extensions of the parliamentary privilege of speech, the witnesses concerned with the proceedings of the House are protected against suits; the House can exclude strangers to ensure privacy; it controls the publication of its proceedings and has the right to regulate its internal affairs; it has the right to punish its members for disorderly conduct; and its permission is required for giving evidence or producing documents regarding its proceedings before any court of law.

A certain measure of freedom of speech is inherent in every deliberative body. But freedom of speech has both (positive and negative) aspects. In its positive aspect, freedom of speech is absolute in India in the sense that a member is at liberty to speak in the House whatever he thinks fit without being liable to any court of law or any other external authority in respect of anything said by him in the House. In its negative aspect, freedom of speech is not absolute as it has to be exercised subject to the conditions imposed on it by the rules made by the House. There is an apparent contradiction between these two aspects of the freedom of speech, viz., liberty of speech on the one hand and restraints on this freedom on the other; but the contradiction is resolved by law and the customs of
Parliament. It is the essence of parliamentary government that individual members of Parliament should speak out their minds freely and without any external interference, but it is equally important that the forum of Parliament should not be misused and the freedom should not lapse into licence. This, indeed, is the rationale of the rules for restraint and moderation. The rules lay down the procedure for the exercise of the freedom of speech in a decorous and orderly manner; besides, these rules are self-imposed and they are framed and enforced by the House in exercise of its collective privilege to decide what it will discuss and in what manner. A member who violates these rules exposes himself to the disciplinary action of the House; for an equilibrium between the positive and the negative aspects, between freedom and restraint in the House, is vital to the efficacy of the parliamentary system. In our Constitution, as in those of many other countries, both the positive and the negative aspects of privileges of freedom of speech are sought to be reconciled. This is why the freedom of speech guaranteed under clause (1) of Article 105 of the Constitution of India is not absolute and is subject to the provisions of the Constitution and to the rules regulating the procedure of Parliament.
Freedom of speech is meaningless unless a member is protected against the consequences which his speech may entail. Clause (2) of Article 105 gives a member absolute immunity to proceedings against him in any court of law for anything said by him in the House. Unlike clause (1), clause (2) is not expressly subject to the provisions of the Constitution and the rules of procedure of the House. The absence of the restrictive words in clause (2), however, does not imply that a member, under the cover of his immunity, is at liberty to say anything which is unrelated to the proceedings of the House. Prior to the decision of the Supreme Court in *Tej Kiran Jain v. Sanjiva Reddy*, it was doubtful whether the words spoken in the House in contravention of the rules and irrelevant to the business in the House were protected. In the above case, the Supreme Court observed:

What they (MPs) say is only subject to the discipline of the Rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none.

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Thus, the legislators enjoy an absolute immunity to legal proceedings in respect of anything said by them in the House in exercise of their freedom of speech, and that the sole responsibility for preventing the misuse of the privilege and for punishing the guilty lies with the House itself. It is, therefore, necessary that members, including the presiding officer, should strictly observe the rules of procedure, be moderate while exercising their freedom of speech, and avoid making unwarranted allegations against outsiders.

However, like other freedoms, freedom of speech, too, lends itself to abuse. Sometimes, in the course of their speeches, members launch personal attacks on one another or against outsiders, in contravention of the rules. When attack is made on another member, the matter is usually dealt with there and then by the presiding officer who takes disciplinary action against the author of the remarks. But when the person attacked is an outsider, he is in a disadvantageous position, having no right to reply and defend himself. There have been occasions when certain high officials like the Comptroller and Auditor General were made the target of criticism by certain senior ministers. But on the representation made by such officers, the Speaker either expunged those remarks or got them withdrawn by the minister.100 It was doubtful whether the doubtful

entertain representations from officers of lower ranks who felt aggrieved by the allegations made against them in the House. Those who were not officers had practically no opportunity to reply and defend themselves. To this effect, a ruling given by the Speaker on 17 December 1970 lays down the procedure for making allegations against outsiders, and gives the person against whom an allegation has been made an opportunity to reply. After the ruling, any outsider, whether he is an officer or not, can make a representation to the Speaker who may refer the matter to the Government of the Committee of Petitions for enquiry and report. It is expected that the ruling will minimise the making of unwarranted allegations against outsiders.

The aforesaid ruling of the Speaker was viewed by some members of the Lok Sabha as a curtailment of their freedom of speech but it does not appear to be so. So far as the procedural aspect is concerned, the ruling is in conformity with Rule 353 of the Lok Sabha Rules of Procedure and the previous rulings thereon, and cannot be said to be an encroachment on the freedom of speech of


102. Rule 353 provides

“No allegation of a defamatory or incriminatory nature shall be made by a member against any person unless the member has given previous intimation to the Speaker and also to the minister concerned so that the minister may be able to make an investigation into the matter for the purpose of reply: Provided that the Speaker may at any time prohibit any member from making any such allegation if he is of opinion that such allegation is derogatory to the dignity of the House or that no public interest is served by making such allegation,”
the members. Citizens are as much zealous of their rights and reputation as the members are of theirs. It is fair that those whose reputation has suffered as a result of attack made on them in the House should have a reasonable opportunity of refuting the charges levelled against them.

Thus, the freedom of speech is a powerful weapon which is most effective when it is properly used. Numerous leaders have used it skillfully to advance public weal. But when it tends to be licence, it does more harm than good. A misconception of parliamentary privileges and their misuse are responsible for the indecorus and undignified scenes Parliament, which are a matter of grave public concern. The fault lies not with the freedom of speech but with those members of Parliament and state legislatures who do not understand the concept of parliamentary privileges or adhere to democratic norms. Free and responsible debate is the sine qua non of democratic deliberations, but freedom cannot be preserved without responsibility and discipline. Hence the need for moderation and restraint while exercising the freedom of speech in Parliament.