CHAPTER VI

CONCLUSION AND SUGGESTIONS

6.1 Conclusion:

Parliament of India is the mirror and microcosm of the people of India and it mirrors the minds, hopes and aspirations of the people and represents all shades of public opinion and as such occupies a pre-eminent and pivotal position in the country’s constitutional setup. In modern sense, parliament is a deliberative organ of the state in which legislators especially the opposition benches have to semed and critically analysis the working govt. this would necessarily and naturally, involve serious attacks and allegations or the policies of the govt. For this, legislators must have certain privileges in excess or ordinary citizens. It is therefore necessary that it shall have all the privileges consistent with its stature and necessary for it to function effectively and for effectively discharging the duties by members.

In England the privileges of the House of common emerged from the historical reasons because of the fierce and prolonged tussle of House of commons with the Royalty and later between House of Lords and with the people themselves. Privileges became to be claimed as customary
rights and now at the beginning of each session of parliament, they are claimed as ancient and undoubted rights of the house of commons. Repeated assertions of these rights hardened them into legally recognized privileges.

We in India, have given to ourselves a written constitution, and arts 105 and 194 of the Constitution constitute a short code on privileges of freedom of speech in Parliament and clause (2) ensures unfettered immunity against any legal action in respect of anything said or note given in Parliament or committees thereof and also immunity from publication by or under the authority of parliament. For good or bad, the framers of the constitution tied the Indian legislatures to apron strongs of the British House of common, in respect of other privileges by virtue of clause (3) of Art 105 and 194 103(3) provides that in other respects the privileges of Indian legislature shall be such as were enjoyed by House of commons at the commencement of this constitution, are as plan as any other words can be and should mean the Indian legislatures, get under the constitution all such power and privileges as belonged to the House of Commons on the date on which our constitution came into force and will
continue to be the same till they are defined by Parliament by making law.

The words’ at the commencement of the Constitution have been a source of trouble that the words mean only 26 Jan. 1950 is agreed at all hands but there is no statement of powers and privileges and immunities which the British House of Common claimed and exercised on the precise date. The history of Parliamentary privileges in U.K. goes back to 14th century and with the Passage of time, these had undergone a radical change and some of the privileges have been given up not by passing specific resolution but by letting the privilege to fall into desuetude. Secondly, the words in other respects’ appearing in clause(3) of art 105 and 194 have been productive of extreme confusion and controversy what meaning should be attached to these words is beset with innumerable difficulties in the absence authoritative written statement of parliamentary privileges belonging to the house of commons its members and committees thereof.¹ The difficulty in interpreting the Art. 105 and 194 are and less. In U.K. on which our legislatures depend in the matters of privileges notions

¹ In 1967 Mr. A.L. Abraham appearing as a witness before select committee, appointed by house of commons to remind the entire law on Parliamentary Privilege produced a statements of privilege which the select committee approved, but no.
keep or changing. Therefore, the role and scope of parliamentary privileges have too undergone a radical change. But whatever be the difficulties in the way, art. 105(3) and 194(3) have to be interpreted in order to discover the privilege, powers and immunities which the Indian legislature can claim and exercise. In its opinion on president’s reference. The Supreme Court saw in the construction of Art. 194(3) the real crux of the problems. The problem of interpretation of Art. 105(3) and 194(3) has certainly been solved to a large silent by Supreme Court. All the comprehensive action has been taken see a report of select committee on Parliamentary privilege, 1 Dec., 1967 power, privileges and immunities, which the House of commons claimed as on 26th Jan. 1950 can not be claimed by Indian legislature certain privileges cannot come to India in the very nature of things. These relates to audiences of the commons with the British sovereign, to the traditional prayer of the commons for continue extension of privileges and for favours and construction to be put on their proceedings. Certain other privileges cannot be enjoyed by Indian legislature because of their

2. Reference No. 1 of 1964, AIR 1965 SC 745 para 45.
3. Ibid., p. 764.
inconsistency with the provisions of our constitutions. The Supreme Court has thus made an effort to settle that the words ‘in other respects mean only to the extent possible.

There is, then again, the absence of the expression subject to the provisions of the constitution. In Article 105(3) and 194(3) which we find in cl. Art 105 and 194. This absence has inclined the courts in India to read the Article in isolation from the other provisions of the constitution and to accord preeminence to privileges of legislatures viz-a-viz Fundamental Rights of the citizens. There are three considered opinions on the parliamentary privileges viz-a-viz fundamental rights. The first decision is that of Ganapati K. Reddy v. Nafisual Hassan. It dealt with applicability of Art. 22(2) to a case falling under dale part of Art. 194(3) of the Constitution. The SC in this case held the order of detention as violation of Art. 22(2).

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4. E.g the privilege of the provide and regulate its own constitution.
5. To do away with the implications of these pronouncements of S.C., The Constitution (44th amendment) Act, 1978 was passed which provided the in other respects, the privilege shall be those as were immediately before coming into cooperation of section 15 and 26 of this amendment Act. Thus reference to the House of commons has been omitted but it remains this Amendment at. Thus reference to House of commons has been omitted but it remains indirectly because as and when we have to ascertain as to what are privileges between coming inforce of the constitution and 44th amendment Act, one has to refer to the House of commons for ascertaining the privileges in other respects, until they are not codified.
In Pandit Sharma's case the fundamental rights of freedom of speech and expression under art. 19(1)(a) and personal liberty were involved. The court in its majority opinion held that provision of art. 194(3) are constitutional law and not ordinary law and therefore as Supreme as the provisions of part III (Fundamental Rights) the court concluded.

"Art 19(1)(a) and 194(3) are to be reconciled and the only way reconciling the same is read art. 19(1)(a). The provisions of art. 19(1)(a) which are general must yield to Article 194(3) and latter part of its clause (3) which are special.

This leads to inference that the privileges shall override the fundamental rights.

It is respectfully submitted that it was this general observation which has created must confusion. This is evident from the fact that advisory opinion in U.P. Controversy has offered on explanation to the implication of this observation by observing that it would not be right to read the majority decision as laying a man a decision, therefore must be taken to have settled that art. 19(1)(a)

8. *Ibid.*, p. 413. General proposition that whenever there is to a conflict between the provisions of fundamental right and latter part of Art. 194(3) the former must always yield to the latter.
would not apply and art. 21 would. As regards the applicability of Art. 22, the question was left open, although in Reddy’s case it was held applicable put the majority decision observed:

In earlier case (Reddy’s case) decided by the Supreme Court it was held Art. 22(2) is also applied. It was further observed that it was hardly necessary for the majority decision to deal with the point pertaining to the applicability of Art. 22(2) because the point did not arise in the proceedings before the court in Pandit Sharma’s case.

That is why we wish to make it clear that the obiter observations made in majority judgment about the validity for correctness of earlier decision of this court in Reddy’s case should not be taken as having decided the point in question. In other words the question whether Article 2(2) would apply may have to be considered by this court if and when it becomes necessary to do so.”

With due respect, it is submitted that observations about the correctness of the decision in reference case does not sound logical, when it is admitted that the observations were obiter, there was hardly any necessity of

11. AIR 1965 SC 745.
12. AIR 1965 SC 745.
saying that matter will be decided in a further case. Since the precedent is there, it is submitted that art. 22(2) should apply. Further, it is submitted that when these provisions were intended to be transitory in nature\textsuperscript{13} and such is the intention of the constitution the fundamental rights should be given higher sanctity.

Secondly in Pandit Sharma’s case\textsuperscript{14} the Supreme Court held that art. 194(3) accept when law is not made is not subject to fundamental right embodied in Art. 19(1)(a) thereof. In the special reference case No. 1/1964\textsuperscript{15} the held that Art. 194(3) subject to the Fundamental Right under art. 21 and the validity of now speak warrant, of arrest for contempt can be questioned under art. 226 of the Constitution. Indeed, there is conflict between Pendit Sharma’s case decision and in the Reference case. Both of them cannot be right. The logic of the reasoning in latter case (Reference case) leads to in evitable conclusion that the decision of the Sharma’s case is wrong. If art 194(3) does not superscde in the matter of privileges, either art 21 or art. 22, by party of reasoning it does not exclude art. 19(1) also. Presumably the SC did not expressly over rule the decision in Sharma’s case as the question did not arise

\begin{itemize}
  \item \textsuperscript{13} \textit{Ibid.}, p. 761.
  \item \textsuperscript{14} \textit{AIR 1959 SC 395}.
  \item \textsuperscript{15} Supra Note 14.
\end{itemize}
directly before it and also perhaps thought is advisable to one rule in exercise of its advisory jurisdiction, an earlier decision given by that court.

Another conflict regarding the Parliamentary privileges is about the power of the court to determine the extent and existence of privileges. In case affecting parliamentary privileges the training of boundary between the competence of courts and the conclusive jurisdiction of House is a difficult question of constitutional law which has provided many puzzling cases.16 The view of the House is that it is not the function of the court to determine what the privileges of the House are and they are what the House declare-them to be the court on the other hand assert that just as it is their function to determine what the law in other respect is, it is for them to determine what these privileges are.

In England, this dualism between the two rival jurisdiction claimed by the judicature and Parliament has always existed and at occasions has assumed very bitter form17 (never after Hansard case) and the parliament refused to submit to the jurisdiction of courts. It also

17. In 1688, the House Chose to Summon that judges of King's bench and sent them to the tower of London for the judgment they had delivered in 1684. But it is in conceivable that House of the commons could repeat such things today.
appears to be recognized by House of commons that existence and extent of privilege can be examined by courts. The courts have also shown greater awareness and the courts will not tread on the does of parliament nor will the House of commons are to enter into the domain of the judiciary.”

Although the Parliament conceded that it would out create new privileges but it was not prepared to part with its authority to deal with their breaches of privileges and how to punish the delinquent citizen. It is now recognized by the courts that in the existence of the power to punish by speaking warrant for its contempt or breach of privileges, the courts always have the power to examine the validity of such a warrant on the basis that House commons is a High Court of Parliament.

But there is no scope for importing into our constitution this dualism which rusted in England between judiciary and the House of commons the sovereign power is distributed among three institutions by the constitution. There is no doubt that the question of interpretation of art. 105 and 194 falls within the exclusive jurisdiction of the courts of law in India and the construction which the SC

18. May parliament practice.
will place on the relevant provision of art. 105 and 194 would finally determine the scope and extent of privileges in question. Further, it is submitted that art. 105 and 194 can not be read in isolation but must read in its context and in the light of other important provisions such as art. 32, 226 and 211, of the constitution. When the material part of art. 194(3) and 105(3) is thus read, it would appear that there is no scope for introducing any antimony or conflict or dualism between jurisdiction of court and legislature in the matter of Parliamentary Privileges. As to the recognition of English courts that they would consider the general warrant as conclusive. It is submitted that it will not apply to India, because there appears to be some conventions recognized by English courts by which they treat the general on non-speaking warrant usually as conclusive. It is further submitted, that the expression that non-speaking warrant as usually taken as conclusive has been rightly used because we may have to distinguish between a black warrant and non-speaking warrant the basis for evolving this convention is again rooted in the history of House of commons, which has been regarded as superior court of record. Such an assumption can not be made in respect of the House of Legislatures in India. The
courts have in India rightly rejected this doctrine of non-speaking warrant.

Besides this, in dealing with the question about the effect of general warrant, the court can not ignore the significance of art. 32(1) and 226 of the constitution. As art. 32(1) guarantees the enforcement of fundamental rights, if this article is ignored, the guarantee is of no consequence and it will be a guarantee on the paper.

The modern controversy in the law of Parliamentary Privilege is whether they should be defined or left in the present form. Even in U.K., this question has been raised from time to time, keeping in view that the law on Parliamentary Privilege is beleved with uncertainty. The committee appointed by the House of Commons reported but the suggestions were never acted upon;

"We think the best solution to this problem would be to codify the law and practice relating to Parliamentary privilege by statute"

19. On April 11, 1957, the following motion was moved in the House of commons that it be an instruction to the committee of Privilege in view of the prevailing public uncertainly and anxiety on matter to prepare and submit to the House a report which shall define the nature and clarify the purpose of partoamentary privilege; and accommodate a procedure designed to secure its equitable protection see journal of Parliamentary information, Vol. III, 1957, p. 188.
or failing this by resolutions of House of Commons."²⁰

In India, the demand for codification has been in more categorical and in uncompromising terms and clause (3) of art. 105 and 194 has been the main source of the existent demand of codification, as this question is necessarily implied in the second limb of clause(3) of articles 105 and 194, which conferred on Parliament the power, privileges and immunities of House of commons until they are not defined by our parliament. So construe this clause to mean that two alternate powers are given, is to negative the clear intention of the framers of the constitutions which has been construed by our courts of law as transitory provision and also such was the intention of constitution makers.²¹

The only dominating reasons for the calculated silence of the legislature in India in not defining is the apprehension that in case the privileges are codified, it will become justifiable and would detract from the prestige of the legislature. It is submitted that these reasons involves an assumption that fundamental rights are unwarranted obstruction in the way of exercise of Parliamentary Privilege. Secondly the prestige of legislature does not

²⁰. H.C. Papers 34, 1967-68.
depend upon the justifiability or the non-justifiability of its acts, rather it hinges around its performance. It that be not so, its prestige and reputation is lowered every time, its acts are set aside by judiciary.

On the other hand, its prestige will be enhanced in the public eye. It would therefore plead with humility that privilege should be codified under expert advice.

6.2 Suggestions:

It begin with, an exploring survey should be conducted to find out what precisely are the existing privileges which can be appropriately be defined, delimited and declare by law. For this purpose, it is suggested that a committee of experts, consisting of Parliament Arians academicians and legal experts in drafting be constituted to study and analyse the whole matter in greater details and depth.

1. Although the powers to legislate on the subject is not exclusive but a concurrent power between state and centre, to avoid the consequence of large multiplicity of the enactments by the various state legislatures, it is suggested that subject on the powers, privileges and immunities of the legislatures its members and committees should
first be transferred to the union list so that a common law of the privileges may be made by parliament contributing to a unified and integrated growth of stable system of Lex-Parliament or alternatively art 194(3) may be amended and the following words may be inserted:

2. “Privileges and powers of State legislature shall be those of Parliament and its members and committees” and art 194(3) should read as under 194(3) “In other respects, the powers, privileges and immunities of the House of Legislature of a state and of the members and the committees of a House of such legislature, shall be those of Parliament and its members and committees...

3. In order to put the controversy regarding the relationship between fundamental rights and the Parliamentary Privileges, like clause 105(1) and 194(1), in both the articles includes cl(3). The expression “Subject to the provisions of constitution” be inserted so that, the fundamental rights of the people of India do not become non-entity. So for the Parliamentary Privileges concerned those will always remain operative as
reasonable restrictions on the fundamental rights, which is permitted by the constitution as well as recognised by the judiciary.

4. Categories of Privileges which needs urgent codification should be made.

Once it is accepted that law on the Parliamentary Privileges should be enacted attempt to codify the privileges on the following categories should be made.

1. Freedom of speech.
2. Freedom from arrest or molestation.
3. Immediate communication by the authority concerned to the speaker, of information, about the arrest, detention or imprisonment of a member together with a statement of grounds, to enable the speaker to pace the matter before the House for its information at the earliest opportunity.
4. Right to regulate internal proceedings.
5. Breach of privileges and contempt of House, what constitute contempt and breach of privilege, power to punish the contemnor.
6. Non-liability for anything said or done in Parliament in a court of law.
7. Right to exclusive cognizance in respect of matters arising within the four walls of the House, short of criminal offence.

8. Process not be served on the members whether criminal or civil within the precincts of the House, when the House is in session.

9. Authority of the House or committee thereof to summon any person to give evidence or produce documents before it or the committee thereof.

10. The right to exclude the strangers and sold its, sitting in camera when contingencies so requires, specially during war.

11. Right to publish the debates of the House and to prohibit publication by other without its prior consent.

12. To punish misreporting or publication of expunged portion of the proceedings.

13. To punish reflections on the character of the speaker and accusation of partiality in the discharge of his duties.

14. exemption from personal appearance in any crime or criminal proceedings.
15. The publication of true report of any proceedings in either house of Parliament and state legislature has been given constitutional protection, except those proved to be published with malice art. 361 of the constitution during the continuance of the session of Parliament.

Although it is not easy task to codify the law of privilege but we must tool and produce a code of privileges suitable to our own conditions and in accordance with the fundamental law of our country the constitution.

Besides, what has been stated above there is need for adoption of a new concept of privileges “Democracy is not merely a form of govt., it is a way of life an act of faith in the dignity and the freedom of individual. Freedom is inward restraint – A democratic form of govt. should function for the good of every person. We do not have a democratic form of govt., if a few individuals have privileges that are denied to other by checks and Balances a democratic constitution of powers in a few hands. Possession of power does not lead to humility but to conceit. Action’s words are well known” Power corrupts and absolute power corrupts absolutely. Action quotes Leibniz: Those who have more power are liable to sin more, no
Theorem in geometry is more certain than this: Fenclen said,

"Power is Poison". It corrupts the conscience, hardens the heart and confounds the understanding, those who have power need to exercise great vigilance.\textsuperscript{22}

Those who are clamouring for privileges should take a lesson from above observations and realize that they are to use them as a shield and not as a sword. After all they are not an end in themselves but only means an and itself. It is not designed to benefit members personally.\textsuperscript{23}

They were given to the House of Parliament for the sake of the subject and not for convenience of the members.\textsuperscript{24} It has also to be not lost right of that at whose expense are Parliamentary Privileges asserted in the modern democratic state? It is definitely at the expense of the public themselves.

The Canadian and Australian Constitutions also have provisions similar to art. 105 and 194 but why they have arisen no case like the U.P. Controversy? It is because of the modern concept of privileges. In the words of Dawson\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{22} S.Radha Krishnan in his introduction to S.S. More’s. Practice and Procedure of Indian Parliament.
\item \textsuperscript{23} Kilmar; Law of Parliamentary Privilege.
\item \textsuperscript{24} Lord Chancellor Lyndhurst Quoted in Dawson: Procedure in the Canadian House of Commons, p. 54.
\item \textsuperscript{25} \textit{Ibid.}, p. 52.
\end{itemize}
privileges has little real significance in Canada today three hundred years ago the Earl of Clarendon wrote in the history of the Rebellion. It is not to be believed how many sober and well-mind men had there understanding perverted by the mere mention of privileged by the mere mention of privileges of Parliament. In a some what different sense these words might easily be applied to the Canadian House of Commons. At best P in the Canadian House is little understood and little used. At worst, it is looked on as being a conversant excuse to make any remark in the House which can not be made in the formal course of business. The public acceptance of Parliaments rights and responsibilities has so increased and political ominously has so diminished, that it is unlikely that the Canadian House will ever see a repetition of the stream of offenders who appeared at the Bar of the House in the last century.

The question of privileges and their codification is a vast and complicated question. Though I think that it is possible to codify the privileges and there is a good case for its codification especially after the Presidential Reference case, still the matter will have to be considered very carefully and closely with the Speaker and Chairman of the
Houses of Parliament and also with the members of the Houses. Only after such discussion a clear picture may arise in this respect. Codification and definition of privileges is, however, not an impossible task. Privileges have been codified in South Africa. The first Act was passed by the South African Parliament in 1911. The short title of this Act is, the Powers and Privileges of Parliament Act, 1911. The latest Act in this respect passed by the South African Parliament is the Act of 1963. The Ceylon Parliament also has passed an Act. It is interesting to point out that in 1939 a Bill was prepared in Bengal known as the Bengal Assembly Powers and Privileges Bill, 1939. It was published in the Calcutta Gazette of the 27th July, 1939. With all these precedents before us, it may not be an impossible task to draft and write a Bill on the subject if a decision is taken in that behalf.

Lastly, we would like to suggest that we should not make a fetish of parliamentary powers and privileges, in this connection it would not be inappropriate to refer to what Gajendragadkar, C. J. said:

*Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of*
a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts also have to play an equally significant role in the development of the rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life; In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the Judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antinomy nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic Slate
alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country.”

The powers and privileges of the House exist chiefly 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 insistence upon parliamentary privileges as in the character, calibre, wisdom and sense of self-respect of the members of the House themselves. As Dr. J. F. S. Ross, an authority on elections, has stated:

It is not primarily professional skill or technical knowledge that are needed in the legislative branch of Government, but high quality of mind and heart and character. Intelligence, breadth of vision, warm human sympathies, receptiveness to new ideas, balanced judgment, capacity for hard work, mastery of details—such is the equipment to be desired in the people who undertake to direct public policy on behalf of their fellows.”

Or, as the great Carlyle said
Certainly, this is a fearful business; that of baring your able man to seek, and not knowing in what manner to proceed about it. That is the world’s sad predicament. We need the man of intellect at the top of affairs: this is the aim of all constitutions and revolutions, if they have any aim; for the man of Intellect Is the noble-hearted man withal; the true, just human and valiant man. Get him for a leader, and all is got; fail to get him, though you had constitutions plentifully as blackberries and a Parliament in every village, there is nothing yet got; we shall either learn to know our true leaders and statesmen somewhat better than we see them, or else go on to be for ever governed by the unheroic.

The first Prime Minister of India, Pandit Jawaharlal Nehru, also once said:

You may define democracy in a hundred ways; but surely one of its definitions is self-discipline of the community. The less the imposed discipline and the more the self-discipline, the higher the development of democracy.