SUMMARY

Parliament is not only Legislative Organ but also in the words of Lord Denman – a grand inquest of nation. Parliament functions through free discussions, open debate, exchange of arguments and criticism. Privileges are, therefore, necessary to enable the members to discharge their duties and responsibilities affectively and efficiently without any interruption, especially the opposition bench who in a parliamentary polity has to build itself as an alternative government. These privileges are enjoyed by the members because House can not perform its function without unimpeded use of the services of its members and by each House collectively for the protection of its members and the vindication of its own authority and dignity.

Privileges are, therefore, necessary not only to help the legislators, fearlessly discharge their duties but also to keep up the solemnity and dignity of Parliament.

Parliamentary privilege is an integral part of parliamentary democracy as it existed in England and adopted by many other democratic countries in the world. Whenever the parliamentary democracy of British pattern has been adopted, the concept of parliamentary privilege has also been made a part of such a democracy, although
the extent of such a privilege has, of necessity varied in each country.

**Meaning:**

In parliamentary language, the term “privilege” applies to certain rights and immunities enjoyed by each House of Parliament collectively and by members of each House individually. The object of parliamentary privilege is to safeguard the freedom, the authority and dignity of parliament. In the words of May, privilege means “the sum of the peculiar rights enjoyed by each House collectively and by members individually without which they could not discharge their functions and which exceed those possessed by other bodies or individuals”. Redlich in his book, “Procedure of House of Commons” has defined the privilege as “sum of the Fundamental Rights of House and its individual members as against the prerogatives of the Crown, the authority of ordinary courts and special rights of the House of Lords”. From these definitions, it follows that the privileges though part of the law of the land are to a certain extent an exemption from ordinary law.

There are number of Parliamentary Privileges available to members of parliament. List of these privileges are given below.

1. Freedom of speech in Parliament (art. 105(1) of the constitution).
2. Immunity to a member from any proceeding in any court in respect of anything said or any vote given by him in Parliament or any committee thereof of art (105(2) of the Constitution).

3. Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either house of Parliament of any report, paper votes or proceedings (art 105(2) of constitution).

4. Prohibition on the courts to inquire into proceedings of Parliament (art 122 of Constitution).

5. Freedom from arrest of members in civil cases during the continuance of the session of the house and 40 days before its commencement and 40 days after its conclusion (section 135 A code of civil procedure).

6. Right of the house to receive immediate information of the arrest, detention, convention, imprisonment and release of a member (Rules 229 and 230 of the Rules of procedure and conduct of Business in Lok Sabha).

7. Prohibition of arrest and service of legal process within the precincts of the house without obtaining the permission of speaker (rules 229 and 230 of the Rules of procedure and conduct of Business in Lok Sabha).
8. Prohibition of disclosure of the proceedings or decisions of a secret setting of the house (rule 252 of the rules of procedure and conduct of Business in Lok Sabha).

9. Members or officers of the house are not to give evidence or produce documents in courts of law relating to the proceedings of the house without the permission of the house.

10. Members or officers of the house are not to attend as witnesses before the other house or a committee thereof or before a house of state legislature or a committee there of without the permission of the house and they can not be compelled to do so without their consent.

11. All Parliamentary Committees are empowered to send for persons, papers, and records relevant for the purpose of the inquiry by a committee. A witness may be summoned by a Parliamentary committee who may be required to produce such documents as are required for the use of a committee (Rules 269 and 270 of the rules of procedure and conduct of Business in Lok-Sabha).

12. A Parliamentary committee may administer Oath or affirmation to witness examined before it (Rules 272 of the rules of procedure and conduct of Business in Lok-Sabha).
13. The evidence tendered before a Parliamentary committee and its report and proceedings can not be disclosed or published by anyone until these have been laid on the table of the house (Rule 275 of the rules of procedure and conduct of business in Lok-Sabha).

In edition to above mentioned privileges, immunities each house also enjoys certain consequential powers necessary for the protection of its privileges and immunities these powers are as follows.

(1) To commit persons, whether they are members or not, for breach of privilege or contempt of the house.

(2) To compel the attendance of witness and to send for papers and records.

(3) To regulate its own procedure and the conduct of its business (Art 118 of the constitution).

(4) To prohibit the publication of its debates and proceedings (Rule 249 of the rules of procedure and conduct of Business in Lok-Sabha).

(5) To exclude strangers from the house (Rule 248 of the rules of procedure and conduct of business in Lok-Sabha).

**Freedom of Speech in Parliament :**

The essence of parliamentary democracy is a free, frank and fearless discussion in the legislature. To enable the members to express their views in the legislature freely,
it is essential that they are free from fear of being penalised for what they say in the House. That's why, the British Constitution provides the freedom of speech and debate in the Parliament and the immunity to judicial proceedings i.e. civil or criminal, against a member of Parliament for his statements in the House.

On the pattern of England, the court in the case of Dr. Suresh Chander v. Punit Goela observed that in India also unless an absolute freedom of speech was granted to the legislators, they might be afraid to speak out their minds freely. Therefore, legislators are fully protected even though the words they utter are malicious and false to their knowledge. Under the Constitution of India, no member of the legislature is liable to any proceedings in any court for anything said or any vote given by him in the Parliament or in any of its committees. If a member steps beyond the limits imposed on this freedom by the Constitution or the Rules of Procedure of the Lok Sabha (or Rajya Sabha or state legislatures), it is a matter to be dealt with by the Speaker or the House itself and not by a court. This important point of law was settled by the Orissa High Court in Surendra v. Naba Krishna. The Chief Minister of Orissa, Naba Krishna, made a statement in the state legislature, derogatory to the High Court and amounting to its contempt: An action was brought against him in the High Court of Orissa on the ground that he had committed a
contempt of the High Court. It was argued that the Chief Minister could claim no immunity to court action because in making the statement he had infringed upon the provisions of the Constitution. Dismissing the case, the High Court held that the Constitution extended an absolute immunity to a member to proceedings against him in any court in respect of anything said by him in the legislature, and that the matter was entirely within the purview of the House which could act in the matter in accordance with its own rules.

A member of Parliament is subject to the discipline of the House itself and no proceedings, civil or criminal, can be instituted against him in any court. This was finally decided by the Supreme Court of India in *M.S.M. Sharma v. Sri Krishna. Sinha*. In his speech in the Bihar Legislative Assembly on 30 May 1957 in the course of the general discussion on the Budget for the year 1957-58, Maheshwar Prasad Narayan Sinha, a Congress member of the Assembly, delivered what has been described as “one of the bitterest attacks against the way the Chief Minister was conducting the administration of the State.” In its issue of 31 May 1957, Searchlight published a report of the speech of Maheshwar Prasad Narayan Sinha, containing all such references as were ordered by the Speaker to be expunged from the proceedings. Thereafter, the matter was referred to the Committee of Privileges. On 10 August 1958, the
Committee of Privileges passed a resolution calling upon the editor of Searchlight to show cause why, in view of the offensive language of the paper, appropriate action should not be recommended against him for breach of privilege of the Speaker and the Assembly.

The editor moved the Supreme Court, contending that the said notice and the proposed action by the Committee of Privileges were violative of his fundamental rights of freedom of speech and expression under Article 19(1), as well as of his personal liberty under Article 21; and he prayed for the enforcement of these fundamental rights. The Court held:

It must be left to the House itself to determine whether there has, in fact, been any breach of its privilege. Thus, it will be for the House on the advice of its Committee of Privileges to consider the true effect of the Speaker’s directions that certain portions of the proceedings be expunged, is, in the eye of the law, tantamount to publishing something which had not been said, and whether such a publication cannot be claimed to be a publication of an accurate and faithful report of the speech.

Dismissing the appeal of the editor of Searchlight, the court further opined that it was for the House to determine whether the Speaker’s ruling, made distinctly and audibly, that a portion of the proceedings be expunged, amounted to a direction to the press reporters not to publish the same
and whether the publication of the speech, if it has included the portion directed to be so expunged, is or is not a violation of the order by the Speaker and a breach of the privilege of the House, amounting to a contempt of the Speaker and the House.

The privilege of freedom from arrest protects members from arrest in civil cases for the duration of the session. This privilege, like other privileges, is granted to the members of Parliament in order that they may be able to perform their duties in the Parliament without any hindrance. However, the tendency has been to confine the application of this privilege to the civil cases against the members and to exclude every kind of criminal case.

**PRIVILEGES OF THE PARLIAMENT OF INDIA**

1. Privilege to exclude strangers from the house
2. Right to Control Publication of Proceedings
3. Right to each House to be the sole Judge of the Lawfulness of its own Proceedings
4. Power of Expulsion
5. Right of the House to punish its Members for their Conduct in Parliament
6. Power to regulate its internal affairs
7. Power to punish for its contempt

**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 in 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 recongised by the judiciary.

4. (Categories of Privileges which needs urgent codification)

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 from of govt. should function for the good of every person. We do not have a democratic from 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.

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.