CHAPTER II

PRIVILEGES OF MEMBERS OF PARLIAMENT

UNDER INDIAN CONSTITUTION

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 there 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 conducts 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.¹

10. Members or officers of the house are not to attend as witnesses before the other house or a committee

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¹ First report of committee of privileges of the 2nd Lok Sabha, adopted by Lok-Sabha on 13 Setp., 1957
thereof or before a house of state legislature or a committee thereof of without the permission of the house and they can not be compelled to do so without their consent.²

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).

² 6th report of the committee of privileges of the second Lok-Sabha, adopted by Lok Sabha on 17 Oct., 1958
In addition 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).

2.1 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.³

On the pattern of England, the court in the case of Dr. Suresh Chander v. Punit Goela⁴ 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.⁵ 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.⁶ 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.⁷ The Chief Minister of Orissa, Naba Krishna, made a statement in the state legislature,

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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

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8. *The Constitution of India,* Art. 211 prohibits discussion of conduct of a judge or a Supreme Court or of a High Court in a state legislature. For a similar provision for the Parliament of India, Art. 121.
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.11 The Court held:

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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.¹²

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

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privilege of the House, amounting to a contempt of the Speaker and the House.¹³

The freedom of speech enjoyed by the members of either House of Parliament, however, is subject to the restrictions imposed by the Constitution. Without such restrictions the freedom of speech in the House would turn into licence. One such constitutional restriction is that no discussion can take place in the Parliament on the conduct of a judge of the Supreme Court or of a High Court in the discharge of his duties.¹⁴ Such a safeguard is essential to maintain and protect the integrity of the judiciary, so that it can function without being subjected to political pressures and criticisms which it cannot reply to publicly. Limits on the right to freedom of speech of the legislators are also put by the Rules of Procedure of the Central and the state legislatures. This is essential to prevent the misuse of freedom and the consequent undermining of the smooth functioning of the House.¹⁵

Fair criticism is the right of the members of Parliament; but, if a member’s speech is derogatory and casts aspersions on another member, the Speaker has to

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¹³. Ibid.
¹⁴. The Constitution of India, Art. 121
¹⁵. Rules of Procedure and Conduct of Business in Lok Sabha, Rules 349 to 357.
intervene, even if the offender is a minister. For instance, during the course of his speech in the Lok Sabha, Defence Minister Krishna Menon, referring to Mahanty, another member of the House, sarcastically said that "if the hon’ble member thinks that the moral sanction of the House resides in him he is very much mistaken. That is an attitude of mind that requires treatment other than by my answering by speeches."\(^{16}\) Again, referring to the Defence Audit Report for 1959, the Defence Minister observed that "had it not come from the Auditor-General and we were not familiar with it and if I wanted to say-I do not want to-I could have said that this was a malicious statement, but I do not intend to say so."\(^{17}\) Exception was taken to both these statements and a privilege motion was moved. On receiving the notice of privilege motion, the Speaker observed that in the opinion of the House those statements were defamatory and undignified; and that the minister should explain to the House or withdraw the words gracefully.\(^{18}\) Subsequently, the Defence Minister expressed his regrets over the above statements and requested that they be withdrawn from the proceedings of the House.

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17. Ibid.
18. Ibid.
In another case, Somjibhai Demor, a member of the Lok Sabha, alleged in the House that the Chairman of the House Committee had discriminated against him and had not allotted a house to him. He added that the latter had locked his house and that he had to come to the Parliament in soiled clothes. Imputing motives to the Chairman of the House Committee, he said “He is a Brahmin, he gives to Brahmins, I belong to Scheduled Tribe and, therefore, he does not give to me. He has regularised the cases of all Brahmins, I belong to the other party, why has he not given to me?” A privilege motion was moved against Demor, too. On a notice of privilege motion against Somjibhai Demor, the Deptty Speaker informed the House that the erring member had expressed unqualified regrets and, therefore, the matter should be treated as closed.

In view of the decisions in the above cases, it is obvious that derogatory speeches are not allowed in the legislature. As a corollary of this, there should be no speech in one legislature casting aspersions on another legislature; nor should a member of one House cast aspersions on another House or its members. However, a House cannot exercise jurisdiction over a member of another House where

he has an absolute freedom of speech. For instance, P.K. Deo, a member of Parliament, brought a privilege motion against Dr. Hare Krushna Mahatab, Chief Minister of Orissa, on the basis of a news item in *Samaj*, an Oriya daily, according to which the Chief Minister had stated in the State Assembly that “members of the State Assembly and members of Parliament also furnish false accounts.” The Speaker of the Lok Sabha ruled:

If really hon’ble Chief Minister had said what he is alleged to have said, it is regrettable. . . . No House will cast any aspersion on any member of the other House or any other House in this way.\(^2^2\)

The Speaker, however, agreed with the contention of Pandit G.B. Pant, Minister of Home Affairs, that “so far as the motion of privilege is concerned, the proceedings of all legislatures and Parliament are privileged and no action can be taken in one House for anything that is said in another.”\(^2^3\) The matter was, therefore, treated as closed.

In another case, Sheel Bhadra Yajee, during the course of a debate in the Rajya Sabha, made the following allegation:

\(^2^2\) *L.S.D.*, 1959, col. 7969.
When the Report of the Vivian Bose Commission was being discussed, even though there were 750 members of Parliament Sahu-Jain did not find a single member to lament, and Dr. Ram Manohar Lohia, a member of Lok Sabha, had to take Rupees one lakh and, on receiving the amount, his signatures were taken.\(^{24}\)

Rajnarajan, another member of the House, sought to raise a question of privilege on the ground that the above allegation made by Sheel Bhadra Yajee was malicious, untrue, baseless and defamatory of Dr. Ram Manohar Lohia and constituted a breach of privilege and contempt of the House.\(^{25}\) The Chairman of the Rajya Sabha ruled that the members who were not in a position to substantiate charges such as those made in the present case, should not make such statements, and that “allegations and counter allegations of this character disturb the decorum of this great House.”\(^{26}\)

There are a few extensions of the privilege of freedom of speech. One of them is that protection is given to witnesses, petitioners and their counsels, who appear before


\(^{25}\) Ibid., col. 2208.

\(^{26}\) Ibid., col. 2211.
a House or any of its Committees, against Suits and molestation on account of what they say in the House or a committee of the House. The purpose of this protection is to ensure that information is given to the House freely and without fear. The House, therefore, considers it its contempt if any person, who has given evidence before any of its committees or has submitted a petition to the House, is molested or threatened or any legal proceedings are brought against him by anyone.

To exclude strangers from the sittings of the House is another right which is a necessary corollary of the privilege of freedom of speech, as it enables the House to obtain, when necessary, such privacy as may secure freedom of debate. This was confirmed by the Supreme Court of India in the case of *M.S.M. Sharma v. Shri Krishna Sinha* (the *Searchlight Case*) when its *inter alia* observed:

The freedom of speech claimed by the House (House of Commons) and granted by the Crown is, when necessary, ensured by the secrecy of the debate which in its turn is

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27. *The Constitution of India*, Art. 105(4). For similar provision for states, Art. 194(4). The British House of Commons adopted a resolution on 25 May 1818, saying "That all witnesses examined before this House, or any Committee thereof, are entitled to protection of this House in respect of anything that may be said by them in their evidence."
protected by prohibiting publication of the debates and proceedings as well as by excluding strangers from the House. . . This right (to exclude strangers) was exercised in 1923 and again as late as November 18, 1858. This shows that there has been no diminution in the eagerness of the House of Commons to protect itself by securing the secrecy of debate by excluding strangers from the House when any occasion arises. The object of excluding strangers is to prevent the publication of the debates and proceedings in the House.\textsuperscript{28}

In \textit{search light case},\textsuperscript{29} the Supreme Court held argument that the whole of art 194 is subject to art 19(1)(a) overlooks the provision of art 194(2). The right conferred on a citizen under art 19(1)(a) can be restricted by law under clause 2 of art 19 and he may be liable in a court of law for breach of such law but cl(2) of art 194 categorically days down that no member of the legislature is to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or in committee.

\textsuperscript{28} AIR (1959) S.C. 395-422.
\textsuperscript{29} \textit{Id.}
thereof and that no person will be liable in respect of the publication by or under the authority of the house of such legislature of any report, paper or proceedings the provisions of art 194(2) therefore indicate that the freedom of speech and expression guaranteed under art. 19(1)(a) and can not be cut down in any way by any contemplated by art 19(2).

So under art 19 the right of free speech is subject to reasonable restriction, for instance, the law of libel. An ordinary person who speaks something libelous is liable to be proceeded against but a member of parliament speaking in the house or in one of its committees is immune from any attack on the grounds that his speech was libelous or defamatory.

Members have to given expressions to public grievances and raise various matters of public importance. In doing this, members should not suffered any inhibition and they should, be able to speak out, their mind and express their mind freely. Inside the house or committees of parliamentary, a member is absolutely free to say whatever he likes subject only to internal discipline of the house or the committee concerned, no outside authority has any right to interfere. Freedom of speech is absolutely necessary
for a member to function freely without any fear or favour in the committees and in the house of parliament. Unless whatever a member says enjoys immunity from legal action, he can not be expected to speak freely and frankly. Therefore the constitution provides no action can be taken against a member of Parliament in any court or before any authority other than the parliament in respect of anything said or note given by him in the houses of Parliament or any committee there of. It is also a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliamentary or in a committee there of.

A member cannot be questioned in any court or by any agency outside the Parliament for any disclosure he may make in the Parliament. It has been held by the Supreme Court in the "Search Light Case" that the freedom of speech conferred on members under art 105 is, subject only to those provisions of the constitution which regulate the procedure of Parliament and to the rules and standing orders of the House but is free from any restrictions which may be emposed by any law made under art 19(2) upon the freedom of speech of an ordinary citizen. Any investigation by outside agency in respect of anything said or done by
members in the discharge of their parliamentary duties would amount to serious interference in the members rights. Even though a speech delivered by a member in the house may amount to contempt of courts not action can be taken against him in any court. Court being an outside authority, does not have the power to investigate the matter. Art 122 specifically forbids any inquiry by courts into the proceedings of Parliament.

The immunity from external influence or interference however does not means an unrestricted licence of speech within the walls of Parliament. It is subject to constitutional provisions for example art 121 provides that no discussion shall take place in the Parliament with respect to the conduct of any judge of Supreme Court or of a High Court in discharge of his duties except upon a motion for presenting an address to the president praying for the removal of the judge.

Rules 352 and 353 of the rules of procedure of the House *inter alia* prohibit making of unwarranted allegation against a person and provision for remedial measures for incorrect statements made by ministers or members of the House, when a members violates any of the restrictions, the speaker may direct him to discontinue his speech or order
the defamatory, indecent, unparliamentarily or undignified words used by the members to be withdrawn or expunged from the proceedings of the house. In extreme cases he may even direct the member to withdraws from the house, and/or initiate the processes for suspension of the members from the service of the house.

2.2 Protection of Witnesses, etc. concerned in Proceedings in Parliament

Witnesses, petitioners and their counsel, who appear before any House or any committee thereof, are protected under Article 105(3) from in respect of what they say in the House or a Committee thereof. This privilege may be regarded as an extension of the privilege of freedom of speech of the House as its purpose is to ensure that information is given to the House freely and without interference from outside.

Any molestation or threats against, persons who have given evidence before any committee thereof on account of what they may have said in their evidence, is treated by the House as a breach of privilege.30

2.3 Privilege of Freedom from Arrest:

The privilege of freedom from arrest protects members from arrest in civil cases for the duration of the session.\textsuperscript{31} 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. This is in conformity to the principle laid down by the Commons in a conference with the Lords in 1641, providing that the privilege of Parliament “is granted in regard to the service of the commonwealth and is not to be used to the danger of commonwealth.”\textsuperscript{32}

As in England, in India also the members of the legislatures have been enjoying this privilege since 1925: The Legislative Members Exemption Act, 1925,\textsuperscript{33} exempted the members of the legislative bodies from arrest and detention under civil process during the continuance of a meeting of the legislature or of any of its committees, and

\textsuperscript{32} Gilbert Campion, \textit{An Introduction to the Procedure of the House of Commons}, 3rd Ed. p. 63.
\textsuperscript{33} The Legislative Members Exemption Act, XXIII of 1925.
for 14 days before and after such meetings. The Constitution of India brought the legislators in India at par with their British counterparts in respect of the privilege of immunity to arrest, and the 17-day period of exemption was increased to 40 days through an amendment to the Civil Procedure Code in 1976. The Indian legislatures follow the example and practice of the House of Commons, and the privilege of the members of Parliament to be free from arrest extends only to civil cases. This is so because the extension of the privilege to all types of cases would interfere with the administration of criminal justice and emergency legislation. It has been more than once ruled by the Indian Speakers that every member of the House is subject to ordinary law and that, if he does anything which necessitates his arrest, he can be arrested and such arrest will not involve any breach of privileges. The Committee of Privileges of the Lok Sabha has also held that the arrest of a member in the course of administration of criminal justice does not in itself constitute a breach of privilege of the House. The following discussion of some cases would clarify

the nature of this privilege as it is enjoyed by the legislators in India.

In Dasaratha Deb Case,\textsuperscript{37} Dasaratha Deb, a member of Parliament, was arrested on 12 June 1952 in connection with a kidnapping case while the House was in session and was released on bail on the same day. The Committee of Privileges, to whom the matter was referred, held that the arrest of a member of Parliament in the course of administration of criminal justice did not constitute a breach of privilege of the House.

In another case, V.G. Deshpande, a member of Parliament, was arrested under the Preventive Detention Act, 1950, and lodged in jail on 27 May 1952 when the House was in session.\textsuperscript{38} Deshpande’s case was raised in the House by N.C. Chatterji, another member of the Lok Sabha. The House referred the case to the Committee of Privileges, saying

That a breach of privilege of the House of the People has been committed by the arrest of V.G. Deshpande, M.P. by the police in the early hours of the morning of 27 May 1952, when the House is in session and the House

\textsuperscript{37} First Lok Sabha, Report of Committee of Privileges, presented to the Lok Sabha, pp. 1-3.

\textsuperscript{38} ibid., presented to the Lok Sabha on 9 July 1952.
has been deprived of the contribution that the said member would have made by participating in the deliberations. 39

The Committee of Privileges was constituted under the chairmanship of Kailas Nath Katju,40 it examined three witnesses and gave a due opportunity to Deshpande also to examine them himself. In its report, the Committee observed that preventive detention was in its essence as much a penal measure as any other arrest made by the police or under an order of a magistrate, on suspicion of the commission of a crime, in the course of or as a result of the proceedings under the Criminal Procedure Code; and that no substantial distinction could be made between preventive detention occasioned by mere suspicion and that due to the commission of an offence by the person directed to be detained.41 According to the Committee, the Constitution authorised preventive detention—irrespective of its description as preventive, punitive, etc.—in the interest of the state and to protect the community as a whole. The Committee made it clear that the fundamental principle was

39. Ibid.
40. In addition to Kailas Nath Katju, there were nine other members; viz., Satya Narain Sinha, A.K. Gopalan, Shyama Prasad Mookherji, Sucheta Kriplani, Sarangdhar Das v. Shivarao, R. Venkataraman, Sayed Mahmud and Radhe Lal Vyas.
41. First Lok Sabha, Report of Committee of Privileges, f.n. 8, p. 4.
that all citizens, including the members of Parliament, were
equal in the eyes of law and unless so specified in the
Constitution or in any law, a member of Parliament could
not claim privileges other than those enjoyed by an ordinary
citizen in the matter of application of laws. In another case
of K. Ananda v. Chief Secretary to the Govt. of Madras,\textsuperscript{42}
Supreme Court has held that so far as valid order of
detention is concerned, a member of Parliament can claim
no special status higher than that of an ordinary citizen. On
the basis of law and practice obtaining in the, British House
of Commons, the Committee expressed the opinion that if
preventive arrest was made through an executive order
under statutory authority, no breach of privilege was
involved in the matter. However, four members\textsuperscript{43} of the
Committee appended a note to the report, urging the
freedom of members from arrest under the Preventive
Detention Act during the session of the House.\textsuperscript{44}

The courts of law also have held a similar position on
the issue. In Ansumali Majumdar v. the State of West
Bengal,\textsuperscript{45} a writ of Habeas Corpus was filed by the Ansumali
Majumdar on behalf of Dr. Ranen Sen, a member of the

\textsuperscript{42} AIR 1966 SC p. 657.
\textsuperscript{43} The dissenting members were S.P. Mookherjee, AK. Gopalan, Sucheta Kriplani and Sarangdhar Das.
\textsuperscript{44} First Lok Sabha, Report of Committee of Privileges, pp. 6-10.
West Bengal Legislative Assembly, and Bhupesh Chandra Gupta, a member of the Council of the State, in the Calcutta High Court in 1952, against the detention of these two legislators under the Preventive Detention Act. The court dismissed the case on the following grounds. It held that preventive detention partook more of a criminal than a civil character and that, even when it was true that such orders were made when criminal charges possibly could not be established, the basis of the orders was a suspicion of nefarious, criminal and treasonable activities.\(^{46}\)

In another case of *Pillamarri Venkateswarlu v. The District Magistrate, Guntur and Superintendent Central Jail Cuddalore*,\(^{47}\) *Pillamarri Venkateswarlu*, a member of the Madras Legislative Assembly, was arrested on 7 November 1948 in pursuance of an order issued under the Provisions of the Madras Maintenance of Public Order Act, for being an active member of the Communist Party of India which had been declared illegal. Venkateswarlu stated that his detention in the Central Jail at Cuddalore was illegal, and he appealed to the court to issue a proper writ in this behalf. But Govinda menon J. of the Madras High Court refused to issue a *writ of Habeas Corpus*. In his opinion, the

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provisions of Preventive Detention Rule 18B of England were somewhat similar to the Madras Maintenance of Public Order Act and the petitioner could not claim immunity to arrest:

... so long as the legislature of the state has not provide by law and declared the rights, immunities and privileges of its members, we have to take it that the English system prevails here and if under the English system there is no immunity from arrest in the case of a preventive detention order, a member of the legislature here too cannot have it.\textsuperscript{48}

The case of \textit{Anandan Nambiar v. Chief Secretary to the Government of Madras}\textsuperscript{49} also establishes that the legislators are not immune to arrest unless the case against them is civil in nature. Anandan Nambiar, a member of the Madras Legislative Assembly, was arrested on 4 May 1949 and was detained under the Maintenance of the Public Order Act. He applied to the Madras High Court for an appropriate \textit{writ} to declare and enforce his right to attend the sittings of the Madras Legislative Assembly. The court held that a member

\textsuperscript{48} Ibid., p. 273.
of the Legislative Assembly could claim no immunity to arrest under preventive detention legislation, and the petition was dismissed. Similarly, in another case *A Kunjan Nadar v. The State*, Kunjan Nadar a member of the Travancore-Cochin Legislative Assembly, was arrested in a criminal case on 12 August 1954. He applied for a writ of Habeas Corpus as well as for bail which was rejected by all the junior courts in the state. Later, he prayed to the High Court for *writ* of Mandamus, privilege or any other appropriate direction to enable him to attend the session of the legislative assembly. Dismissing the petition, the High Court held that the petitioner could not claim privilege in view, of the earlier judgments of Madras High Court in *Re Venkateswarlu* (1951) and Calcatta High Court in *Ansumali Majumdar* (1952).

In another case *K. Ananda Nambiar and R. Uma Nath v. Chief Secretary to the Government of Madras*, K. Ananda Nambiar, a member of Parliament, was detained by the Government of Madras on 30 December 1964 under the Defence of India Rules, 1962, issued subsequent to the proclamation of emergency. Nambiar filed a writ petition in

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the Supreme Court of India, and Setalwad, a top constitutionalist of India, argued on his behalf that

A member of Parliament...has constitutional rights to function as such member and to participate in the business of the House to which he belongs. He is entitled to attend every session of Parliament, to take part in the debate, and to record his vote . . . no law can validly take away his right to function as such member.52

But the court rejected this plea in view of the privileges of the members of the House of Commons. It quoted May on the distinction between civil and criminal cases against the legislators, as also to the case of Captain Ramsay, to substantiate its stand. It opined:

If a person who is convicted and sentenced has necessarily to forego his right of participating in the business of the legislature to which he belongs, because he is convicted and sentenced, it would follow that a person who is detained must likewise forego his right to participate in the

52. Ibid., p. 661.
business of the legislature . . . The true constitutional position, therefore; is that so far as a valid order of detention is concerned, a member of Parliament can claim no special status higher than that of an ordinary citizen and is as much liable’ to be arrested and detained under it as any other citizen.53

The court thus rejected the application of Nambiar on the plea that freedom from criminal arrest did not constitute a privilege of the members of the House of Commons in England.

In another case of a similar nature, Raj Narain,54 a member of the Rajya Sabha, not only wanted his parliamentary privilege protected but also challenged the legality of his arrest before the Privileges Committee. Rajnarain was arrested on 6 April 1967 on a non-bailable warrant. The date of hearing mentioned at the back of the warrant, 18 March 1967, was charged to 13 April 1967 but no signatures were appended to authorize the change. Rajnarain contended that the change of date was without authority and therefore his arrest was illegal and mala fide

53. Ibid., p. 665.
and constituted a breach of privilege. The Privileges Committee found that the warrant was in order at the time of Rajnarain’s arrest on 6 April 1967, and in the light of section 75(2) of the Criminal Procedure Code, it concluded that the arrest was not illegal. The Committee, however, appreciated the ground for Rajnarairi’s apprehension that his arrest was not bona fide; therefore it felt that it was desirable that in future any alteration in dates should be duly signed by the authority making the alteration.\textsuperscript{55} The above cases confirm that the parliamentary privilege of freedom from arrest in India is the same as that of the House of Commons in England. Time and again the Indian courts and the Privileges Committee of the Lok Sabha have emphasized that the privilege of freedom from arrest cannot be claimed in respect of criminal offences or statutory detention, and that this freedom is limited to civil cases only.

Whether or not a member of Parliament, or of a state legislature, should be handcuffed on arrest in a criminal case, is another relevant question. The legislators are not specifically exempted from being handcuffed. This issue was examined by the Privileges Committee in the Haldar

\textsuperscript{55} \textit{Ibid.}
(Kansari) Case. In this case, an attempt was made to handcuff a member of the Lak Sabha who had been arrested on a criminal charge. While the member contended that the handcuffing of legislators was extremely improper, the additional district magistrate, Delhi, argued that handcuffing of the accused was a part of the law of the land. The Privileges Committee, to whom the matter was referred for investigation, noted that in this regard the Punjab Police Rules were applicable to Delhi. The rules provided that the persons accused of a non-bailable offence, punishable with any sentence exceeding three years must be carefully handcuffed on arrest before they are taken away from the place of arrest. Since the member had been arrested in connection such an offence, the Committee held that “the police officers had committed no irregularity under the law” in attempting to handcuff Haldar. However, it was of the opinion that

the fundamental principle is that all citizens including the members of Parliament have to be treated equally in the eyes of law. Unless so specified in the Constitution or in any

law, a member of Parliament cannot claim any higher privileges than those enjoyed by any ordinary citizen in the matter of the application of the law.\textsuperscript{58}

Another case which came before the Privileges Committee was that of Ishwar Choudhry, a member of Parliament, who was handcuffed in Bihar while he was taken from the jail to the magistrate’s court and back. After examining the case, the Committee came to the conclusion that the handcuffing of Ishwar Choudhry was in utter disregard and defiance of the clear instructions of the Ministry of Home Affairs, Government of India, as well as of the Government of Bihar, particularly those concerning the arrest of the members of Parliament.\textsuperscript{59} As such the Committee held that the action of the concerned officials was highly improper and deserved to be severely censured. However, in view of the departmental action already initiated against the guilty, it recommended no further action against them.\textsuperscript{60}

On a reference to it by the Speaker, the Privileges Committee reconsidered it whether it would be desirable to

\begin{flushright}
\textsuperscript{58} Ibid.
\textsuperscript{60} Ibid.
\end{flushright}
provide that a member of Parliament, who is under arrest on a criminal charge, should ordinarily be exempted from being handcuffed. The Committee recommended\(^\text{61}\) that the Ministry of Home should be requested to again bring its circular of 26 July 1957\(^\text{62}\)—the circular said “the handcuffing should not be a matter of routine”—to the notice of the state governments and impress upon them the desirability of strictly complying with it, especially in the case of members of Parliament in view of their “high status”.\(^\text{63}\)

The Privileges Committee did not consider it necessary to go into the larger question whether handcuffing of a member of Parliament as such constituted a breach of privilege or contempt of the House. it only expressed the hope that the instructions regarding handcuffing of prisoners, issued by the Union Ministry of Home Affairs from time to time, would be strictly followed by all the authorities concerned and there would ordinarily be no occasion to handcuff prisoners such as the members of Parliament, members of state legislatures, peaceful

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62. Ministry of Home Affairs Circular No. F. 2/13/57-P IV, 26 July 1957. The contents of this circular were again circulated on 21 January 1959 vide Ministry’s circular No. 35/8/58-P II.
satyagrahis, persons Occupying good positions in public life, and professionals like journalists, jurists, doctors, writers and educationalists.\textsuperscript{64}

The parliamentary privileges of exemption from attending a court as witness is akin to the privilege of freedom from arrest in a civil case and is based on the principles that the attendance of a member in the House takes precedence over all other obligations and that the House has the supreme right and prior claim to the attendance and service of its members. In fact, the members should be at complete liberty to attend the House, and no call from a court should be permitted to interfere with this important duty. The following cases would show that the Indian Parliament has been following the British precedents in respect of this privilege, too.

On 1 May 1974, the Speaker of the Lok Sabha received a notice from the Supreme Court in connection with a Special Reference to Presidential election, asking him to appear before the court either personally or through an advocate. The General Purposes Committee of the House was of the view that "neither the Lok Sabha nor the Speaker

\textsuperscript{64.} \textit{Ibid.}, pp. 27-28.
should enter appearance in this matter.” However, Dinesh Chandra Goswarni, a member from Assam, differed with the suggestion of the General Purposes Committee and pointed out that “earlier also notices were issued and, in fact, some of the state legislatures appeared in the earlier Supreme Court Reference.” The Speaker opined that the members “should confine the discussion only to the Speaker of the Lok Sabha and leave it for state legislatures to follow the procedure as they decide. They differed from us in the past. . . it is up to them to decide as they like.” After a thorough discussion, the House decided that neither the Lok Sabha nor the Speaker should appear before the Supreme Court in the said case and that the privilege of Parliament should be upheld. A similar notice from the Supreme Court was also received by the Chairman of the Rajya Sabha. But, in accordance with the advice of its General Purposes Committee, the Rajya Sabha, too, did not respond to the notice.

In another case, the Chairman of the Public Accounts Committee was summoned by the city civil court of Calcutta in connection with a suit involving certain remarks made in

67.  *Ibid*.
68.  *R.S.D.* vol. LXXXVIII, no. 12, Co. 121.
a report of the Committee. Placing the matter before the House on 1 August 1975, the Speaker said

   Since this matter relates to the proceedings of a parliamentary committee . . . . I am placing this matter before the House. As has been the practice of this House, I am asking the Chairman of the Public Accounts Committee to ignore the summons and not to put any appearance in the Court.69

   The House concurred with the views of the Speaker and the Chairman of the Public Accounts Committee was accordingly advised.

   Another privilege enjoyed by the members of Parliament is that no arrest can be made within the precincts of the House,70 nor can a legal notice concerning a civil or criminal case be served on them without the permission of the Speaker.71 For instance, a police officer attempted to execute a warrant of arrest against a member of the Punjab Vidhan Sabha within the precincts of the House, without first obtaining the leave of

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70. *Rules of Procedure and Conduct of Business in Lok Sabha*, Rule 2(1) defines “Precincts of the House” as “including the Chamber, the Lobbies, the Galleries and such other places as the Speaker may from time to time specify.”
the House. The House held the police officer guilty of breach of privilege and the latter had to tender an unqualified apology which the House accepted.72

On the order of the District Magistrate and Superintendent of Police of Shillong, two members of the Assam Legislative Assembly, Dulal Chandra Barua and Tarapada Bhattacharjee, were arrested on 1 April 1965 in the Assembly premises.73 According to the members, the police entered the Speaker’s chamber and took them into custody.74 A question of breach of privilege was raised in the Assembly. The Speaker observed that the arresting of “these two honorable members inside the Speaker’s Chamber is a breach of privilege of the House, even police entry inside the room, for whatever reasons it may be, without permission is a gross breach of privilege of this House; and the most unfortunate thing is that the police has tried to suppress this fact. Therefore, I am of the opinion that on this score there is a case of gross breach of privilege of this House.”75

In another case, a Sub-Inspector of Police in Trivandrum arrested some employees of the Legislative Secretariat of the Kerala Legislative Assembly from the

74. Ibid.
75. Ibid., p. 11.
precincts of the House on 6 February 1973 without the permission of the Speaker. When the question of privilege was referred to the House, the Speaker observed:

The prohibition against making arrest, without obtaining the permission of the Speaker, from the precincts of the House is applicable only to the members of the Assembly. I do not think it is possible nor is it desirable to extend this privilege to persons other than the members. . . . I do not consider the act done by the police official in this case in the discharge of his official duties constitutes a breach of privilege of the House.

The Speaker did not allow the question of breach of privilege to be raised and the matter was dropped. Thus, it was made clear in this case that immunity to arrest within the precincts of the House is applicable fully to the members of the House and not to the members of the staff of the assembly Secretariat.

Legally, the members of Parliament and state legislatures enjoy freedom from arrest in civil cases, if not

76. Ibid., vol. XVIII, no. 2, p. 34.
77. Ibid.
in criminal cases; but a member has the right that his arrest, in both civil and criminal cases, must be immediately communicated to the presiding officer of the House. Such intimation must also indicate the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member in a prescribed form. Besides, the Speaker must be intimated with the release of a convicted member on bail by the authority concerned. In turn, the Speaker is required to immediately communicate to the House the arrest or release of a member on bail, and if the House is not in session he may direct it to be published in the Bulletin for the information of the members.\textsuperscript{78}

The failure on the part of the convicting authority to inform the House of the arrest, detention or imprisonment of a member constitutes a breach of privilege of the House.\textsuperscript{79} V.G. Deshpande,\textsuperscript{80} a member of Parliament, was arrested under Preventive Detention Act, 1950, and was lodged in jail at 6.30 A.M. on 27 May 1952 when the House was in session. The Speaker was informed of his arrest on the

\textsuperscript{78} Rules of Procedure and Conduct of Business in Lok Sabha, Rule 229-31.

\textsuperscript{79} Thomas Erskine May, the law Privileges Proceedings and usages of Parliament, p. 121.

\textsuperscript{80} “Deshpande Case”, First Lok Sabha, Report of the Privileges Committee, presented on 9 July 1952, pp. 4-5.
same day at 4.45 P.M. by the District Magistrate. Nevertheless, the case was referred to the Privileges Committee to ascertain whether or not the Speaker was informed of Deshpande’s arrest in time. The Committee observed that, while it was well-recognised that such intimation ought to be given promptly, it was not possible to lay down hard and fast rules on the subject and much depended on the circumstances of each case. As regards the present case, the Committee found that Deshpande was arrested and lodged in jail shortly after 6.30 in the morning. The District Magistrate stated that he had left his house at 7.15 A.M., for urgent public work in the city and received the information of the arrest of the member when he returned a little after 10.00 A.M. Thereupon, at 11.00 A.M., he dictated a letter, addressed to the Speaker, to his personal assistant but had to immediately leave again for another round of the city. On his return, he signed the letter at about 1.30 P.M., and despatched it to the Parliament House.\footnote{Ibid.}

The Committee found from the evidence before it that there was great tension in the city on 26 and 27 May 1952. It felt that, while it would have been wiser and proper on
the part of the District Magistrate to despatch his letter to the Speaker soon after. He had dictated it at 11.00 A.M., the delay of about 2½ hours in his signing and sending the letter was understandable and ought to be condoned. Thus the Committee held that the intimation of the arrest was sent to the Speaker as expeditiously as the circumstances allowed and that there was no breach of privilege of the House. 82

On the other hand, in the case of Jambuwant Dhote, the Privileges Committee found that there was a delay of about 21 hours between the arrest of this member of the Lok Sabha and the sending of the telegram intimating his arrest and detention to the Speaker. V.V. Naik, the Police Commissioner of Nagpur, stated in his evidence that there was no suitable place in the nearby jail to lodge Dhote and hence he had to be taken to another jail, which took time and caused delay in sending the intimation. 83 The Police Commissioner, however, admitted that it would have been better if he had sent the intimation of Dhote’s arrest to the Speaker by telegram immediately and had sent a second telegram about the place of detention. The Committee was not satisfied with his explanation but in view of the apology

82. Fifth Lok Sabha, Seventh Report of the Privileges Committee, presented on 5 April 1974.
tendered by him\textsuperscript{84} it recommended that no further action be taken in the matter. The members were very particular about their privilege in respect of their arrest and its timely intimation to the Speaker. Indrajit Gupta,\textsuperscript{85} a member of the Lok Sabha, wrote to the Speaker that he was arrested in Calcutta on 3 October 1972 at about 6 P.M. and was subsequently produced before a magistrate and discharged at about 9 P.M., on the same day; but he complained that no intimation regarding his arrest and release had been furnished to the Speaker by the concerned authorities as required under the Rules of the Lok Sabha. The Speaker referred the matter to the Ministry of Home Affairs, Government of India, for a factual report for his consideration. Giving the details of Gupta’s arrest and release, the Commissioner of Police, Calcutta, said that “the failure on our part to report on the arrest is deeply regretted. I have since taken steps to ensure that such lapses do not occur in future.”\textsuperscript{86} In view of this unqualified apology, the matter was treated as closed.

In another case, S.M. Banerjee and Indrajit Gupta,\textsuperscript{87} both members of Parliament, were convicted under Section

\textsuperscript{84} Ibid., p. 40.
\textsuperscript{85} Ibid., vol. XVIII, no. 1, April 1973, p. 6.
\textsuperscript{86} Ibid.
\textsuperscript{87} Ibid., vol. V, no. 2, 1961, p. 36.
27 of the Industrial Disputes Act and were sentenced to six months' simple imprisonment and a fine of Rs. 500 each. But the concerned magistrate delayed the sending of intimation to the House regarding the conviction and release of these two members on bail. When the case was taken up by the Lok Sabha, the magistrate expressed regret for his oversight, and the House decided not to take any further action in the matter.\textsuperscript{88}

Prof. Mukut Behari Lal,\textsuperscript{89} a member of the Rajya Sabha, was arrested at Bulandshhar (Uttar Pradesh) on 19 September 1964 but the House was not informed of his arrest. A question of privilege was raised on 25 September 1964\textsuperscript{90} and again on 28 September 1964. When Govinda Reddy, another member, sought to raise a question of privilege regarding delay intimation of arrest,\textsuperscript{91} the Chairman ruled:

\begin{quote}
In view of the fact that a wireless message was sent to me immediately after the arrest of Prof. Mukut Behari Lal and also in view of the explanation furnished and regrets expressed by the District Magistrate, I am of
\end{quote}

\textsuperscript{88} L.S.D., 1961, cols. 2081-82.
\textsuperscript{90} R.S.D., 1964, cols. 3028-30.
\textsuperscript{91} Ibid., cols. 3273-76.
the view that we need not pursue the matter as a question of privilege.\textsuperscript{92}

The stand taken by the House in the above cases suggests that, in order to determine whether or not in a particular case the required intimation has been immediately sent to the Speaker, all the circumstances of that case are taken into account. It is well-recognised that such intimation should be given promptly, but it is not possible to lay down any hard and fast rule on the subject.

The House takes a different view of the non-intimation of the arrest and release of a member involved in a criminal case. When a member of Parliament is arrested in the course of administration of criminal justice and is immediately released on bail, the non-intimation of such release to the Speaker does not constitute a breach of privilege. For example, Dasaratha Deb,\textsuperscript{93} a member of the Lok Sabha, was arrested on 12 June 1952 at Agartala, Tripura, on criminal charge during the session of the House. He was immediately released on bail and no information regarding his arrest and subsequent release on bail was sent to the Speaker.\textsuperscript{94} A question of privilege was raised by

\begin{flushleft}
\textsuperscript{92} Ibid.
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\textsuperscript{94} Ibid., p. 12.
\end{flushleft}
K. Anandan Nambiar on 16 June 1952 in the Lok Sabha and the matter was referred by the Speaker to the Privileges Committee. The Committee held that, when a member was arrested in the course of administration of criminal justice and was immediately released on bail, the magistrate was not duty-bound to inform the House; therefore in the case of Dasaratha Deb there was no breach of privilege of the House.

Another member of Parliament, Kansari Halder, was arrested by the West Bengal Government for offences under sections 120-B, 302 and 436 of the Indian Penal Code. The concerned authorities did not intimate the Speaker about his arrest and subsequent release on bail. A question of breach of privileges was raised in the House and the matter was referred to the Privileges Committee. The Committee held that no breach of privilege had been committed by the authorities concerned in not sending intimation to the Speaker of the release of the member on bail pending trial, inasmuch as the release on bail was made during the trial and not after conviction.

95. The Committee was headed by Dr. Kailas Nath Katju and the other members were Satyanarain Sinha, A.K. Gopalan, Shyama Prasad Mookherjee, Sarangdhar Dass, B. Shiva Rao, R. Venkataraman, Syed Mahinud, Radhe Lal Vyas and Sucheta Kriplani.

In another case, J.M. Biswas, a member of Parliament, stated in the Lok Sabha that he was arrested on 19 September 1968 and was ordered to be released at 4 P.M. He alleged that he was kept under unlawful detention by the police till midnight when he was again arrested but released subsequently. Because the concerned authorities had not informed the Speaker about the unlawful detention of the member between 4 P.M. and midnight, a privilege issue was raised and referred to the Privileges Committee for examination. The Committee, after careful consideration of the evidence before it, came to the conclusion that J.M. Biswas was either illegally detained or put under some kind of restraint or guard or surveillance by the police on 19 September 1968 between 4 P.M. and about 11.30 P.M. When the concerned police officers were apprised of the findings of the Committee, they offered their unqualified regrets, and the matter was dropped.

In the case of Tulmohan Ram the evidence on the arrest was ambiguous; whereas the police sub-inspector denied any such arrest, the member alleged that he had been arrested and kept in police custody for more than half

an hour on 28 November 1969. In the absence of any conclusive evidence, the Committee held that the charge of arrest or detention could not be proved and that the sub-inspector of police had not committed a breach of privilege in not sending intimation of the alleged arrest to the Speaker.

Apart from the above privileges, a member also enjoys the privilege of communication with the Speaker and the Secretary or Chairman of a Parliamentary Committee, while in custody. However, it was held on case of Kansari Halder that it is no breach of privilege is involved when the government withholds a letter written by a member from jail to another member. For instance, Kansari Halder, a member of the Lok Sabha, wrote a letter to Hiren Mukherjee, deputy leader of Halder’s party in the House, while the former was in police custody; but the letter was withheld by the jail authorities. This, Halder alleged, was an unwarranted interference with his rights and constituted a breach of privilege. The Privilege Committee, to which the matter was referred for examination, observed that no

99. In England the members of Parliament in custody or in prison have been permitted by the authorities concerned to correspond with the Speaker of the House of Commons and the Chairman of Parliamentary Committee.
100. Second Lok Sabha, Fourth Report of the Privileges Committee, pp. 11-12.
101. Ibid.
breach of privilege had been “committed by the authorities concerned of the West Bengal Government in withholding Shri Kansari Halder’s letter to Shri Hirendra Nath Mukherjee, M.P.”\textsuperscript{102} Moreover, the committee recommended that the Ministry of Home Affairs may be moved to arrange the incorporation of a provision in the jail codes of state governments and centrally administered areas, in respect of all communications addressed by a member of Parliament, under arrest or detention or imprisonment for security or other reasons, to the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, as the case may be, or to the Chairman of a parliamentary committee or of a joint committee of both Houses of Parliament. The Committee also recommended that similar provisions be made in respect of the members of State Legislatures as well.

On the other hand, a breach of privilege is involved if the withheld letter is addressed to the presiding officer of a House or to the Chairman of a committee of a House. In case of \textit{Anandan Nambiar v. Chief Secretary to the Government of Madras},\textsuperscript{103} K. Anandan Nambiar, a member of Madras Legislative Assembly, was arrested on 4 May 1949 and again under the Maintenance of the Public Order Act.

\begin{flushright}
\textsuperscript{102} \textit{Ibid.}
\textsuperscript{103} A.I.R. 1952 Vol. 39, M. p. 117.
\end{flushright}
He remained under detention and applied to the courts for a writ of Mandamus and other appropriate writs. He also complained that his letter to the Chairman of the Committee of Privileges had been withheld by the Superintendent, Central Jail, and he sought a declaration of his right to communicate with the legislature from prison in his capacity as a member without let or hindrance. In its judgment, the Madras High Court held:

As long as a detenue continues to be a member of a legislature, drawing the emoluments of his office, receiving summons to attend, he is entitled to the right of correspondence with the legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence. This letter should not have been withheld; as has been done in this case.\(^\text{104}\)

The court ordered that the letter of the petitioner be placed before the Madras Legislative Assembly which might

deal with it in accordance with the practice prevailing in the House of Commons of England.

The above cases suggest that the House, its Privileges Committee and its member were quite sensitive to their privilege of freedom from arrest and attended to every case of alleged breach of privilege, however minor. But the Privileges Committee scrupulously adhered to facts and gave its decisions in the light thereof; it guarded the privileges of the members where they were actually violated, but dismissed the members’ complaints if they were based on flimsy grounds.

2.4 Freedom of Access to the head of the State

One such relatively minor privilege is freedom of access to the head of the State. In England the members of the House of Commons have access to the monarch, as a body through their Speaker and monarch receives decision of the whole House. He cannot take notice of the matters pending in the House, still less of the debates or speeches of the individual members.

Similarly in India, members of Parliament have access to the President through their Presiding Officers. Access to the President, by an individual member is a matter of courtesy and cannot be claimed as a matter of right. India
being a Parliamentary democracy, the President is not expected to take cognizance of speeches by individual members made on the floor of the House. He is required to function in consonance with the decisions of Parliament as a body, and not in accordance with the views of individual members.

2.5 Judicial Review of Privilege:

Judicial Review of Parliamentary Privileges was made in case of *P.V. Narasimha Rao v. State*105 (known as Jharkhand Mukti Morcha Case).

In the General Election for the Tenth Lok Sabha held in 1991, the Indian National Congress (I.N.C.) emerged as the single largest party and it formed the Government with P.V. Narasimha Rao as the Prime Minister. During the Seventh Session of the Tenth Lok Sabha, on 28 July 1993, a No-Confidence Motion was moved against the Government by Ajoy Mukhopadhyaya, a member belonging to CPI(M). At that time, the effective strength of the Lok Sabha was 528 and Congress (I) had a strength of 251 members, Congress (I) was short of 14 members for a simple majority. The Motion of No-Confidence was taken up for discussion in the Lok Sabha on 26 July 1993 and the debate continued till 28

July 1993. The Motion was, thereafter, put to vote on that
day. On 28 February 1996, Ravindra Kumar of Rashtriya
Mukti Morcha (R.M.M.) filed a complaint, dated 1 February
1996 with the Central Bureau of Investigation (C.B.I.)
wherein it was alleged that in July 1993, a criminal
conspiracy was hatched by P.V. Narasimha Rao, Satish
Sharma, Ajit Singh, V.C. Shukia, R.K. Dhawan and Lalit
Sun to prove the majority of the Government on the floor of
the House on 28 July 1993 by bribing members of
Parliament of different political parties, individuals and
groups to an amount of over Rs. 3 crore. In furtherance of
the said criminal conspiracy a sum of Rs. 110 crore was
handed over by the aforementioned persons to Suraj
Mandal. On the basis of the said complaint, the CBI
registered four cases under Section 13(2) read with Section
13(1)(2)(iii) of the Prevention of Corruption Act, 1988 *inter
alia* against Shibu Soren, Simon Marandi and Shailendra
Mahto members of Parliament belonging to the Jharkhand
Mukti Morcha (JMM) Party.

During the Sixteenth Session of the Tenth Lok Sabha,
on 11 March 1996, a question of privilege was sought to be
raised in the House regarding the issue of alleged pay off
and inducements to members of JMM for not voting in
favour of the No-Confidence Motion. The then Speaker, Shivraj V. Patil, while disallowing the notice observed, “The matter is before the court which may take a proper decision on the basis of the evidence that may be produced before it”. Subsequently, in pursuance of the order dated 24 May 1996 passed by the Delhi High Court in Civil Writ Petition No. 23/96, another case was registered on 11 June 1996 against V.C. Shukla, R.K. Dhawan, Lalit Sun and others tinder Section 120-B IPC and Sections 7, 12, 13(2) read with Section 13(l)(d)(iii) of the Prevention of Corruption Act, 1988. After completing the investigation, the CBI submitted three chargesheets dated 30 October 1996, 9 December 1996 and 22 January 1997 in the court of Special Judge, New Delhi.

Meanwhile, October 1996, representations were made to the Speaker (Eleventh Lok Sabha), P.A. Sangma by Shihu Soren, member, Eleventh Lok Sabha and Suraj Mandal, Simon Marandi and Shailendra Mahto, members of the Tenth Lok Sabha in the matter.

Shibu Soren, in his representation dated 5 October 1996 inter alia had posed a legal query viz. “an allegation of bribe against a member of House in connection with the voting in the House is a breach of privilege, which can only
be inquired by the House and is not justifiable in a Court of Law”

Shibu Soren, Suraj Mandal, Simon Marandi and Shailendra Mahto, in their joint representation dated 18 October 1996, while referring to the ongoing case against them in the court of Ajit Bharihoke, Special Judge. Delhi in response to a, Civil Writ Petition filed by R.M.M., had *inter alia* contended that “the investigation which is being conducted by the CBI in the aforesaid allegations, are not only unconstitutional or without any jurisdiction but constitute a serious encroachment upon the supremacy of the Lok Sabha in its exclusive field of powers and privileges”.

On the point of immunity to the members of Parliament from proceedings in any Court of Law. In respect of anything said or any vote given by them in Parliament or any Committee thereof, it had also been contended that “the entire proceedings of the learned High Court are barred not only by Article 105(2) of the Constitution of India, but also by the powers and privileges and the exclusive jurisdiction of the Lok Sahha to investigate any matter which involves breach of its privileges”.

On examination of this matter, it was felt that as there was no definitive judicial pronouncement on these issues till that time, the proper forum for raising such legal and constitutional points would therefore be a Court of Law. Shibu Soren was thereafter informed in writing that as the constitutional and legal issues raised in his representation regarding the scope and extent of the immunity to members under Article 105 of the Constitution involve precise interpretation, and the proper forum for raising such issues was therefore a Court of Law. The member was accordingly requested that he who so desires, he might take up these constitutional and legal points through his counsel, with the appropriate court.

The Special Judge, after hearing the arguments, passed the order dated 6 May 1997 wherein he held that there is sufficient evidence on record to justify framing of charges against all the appellants. The Special Judge also held that there is prima facie evidence of commission of offence under Section 193 of IPC by accused Nos. A-3 to A-S, i.e. Suraj Mandal, Shibu Soren and Shailendra Mahto.

Before, the Special Judge, an objection was raised on behalf of the accused persons that the jurisdiction of the court to try the case was barred under Article 105(2) of the
Constitution because the trial is in respect of matters which relate to the privileges and immunities of the House of Parliament (Lok Sabha) and its members inasmuch as the foundation of the charge sheets is the allegation of acceptance of bribe by some members of Parliament for voting against the No-Confidence Motion and that the controversy to be decided in this case would be in respect of the motive and action of members of Parliament pertaining to the vote given by them in relation to the No-Confidence Motion. The Revision petition against the said order of the Special Judge in the Delhi High Court was filed. After examination of the matter, the Delhi High Court found that there was no ground for interfering with the order passed by the Special Judge.

Feeling aggrieved by the said judgment of the High Court, the appellants moved in appeal to the Supreme Court of India. The appeals were heard by a bench of three Judges of the Supreme Court. After hearing the arguments of the counsel for the appellants, the following order was passed by that bench on 18 November 1997:

Among other questions a substantial question of law as to the interpretation of Article 105 of the Constitution of India is
raised in these petitions. These petitions are, therefore, required to be heard and disposed of by a Constitution Bench.

In pursuance of the said order, the matter was placed before the five-judge Constitution Bench of the Supreme Court. At the commencement of the hearing, the Court passed the following order on 9 December 1997:

By order dated 18 November 1997 these matters have been referred to this Court. The learned counsel for the parties agree that the Constitution Bench may only deal with the questions relating to interpretation of Article 105 of the Constitution, the applicability of the Prevention of Corruption Act to a member of Parliament, member of State Legislative Assembly and the other question can be considered by the Division Bench.

The five-judge Constitution Bench of the Supreme Court delivered their judgment in the matter on 19 April 1998.

The two basic questions formulated by the Court for its consideration were as follows—
(i) Does Article 105 of the Constitution confers any immunity on a Member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe?

(ii) Is a Member of Parliament excluded from the ambit of the Prevention of Corruption Act, 1988 for the reason that -- (a) he is not a person who can be regarded as a “public servant” as defined under Section 2(c) of the said Act, and (b) he is not a person comprehended in clauses (a), (b) and (c) of sub-section (1) of Section 19 of the said Act and there is no authority competent to grant sanction for their prosecution under the said Act?

Three separate decisions were delivered by the five-judge bench - first by Justice S.C. Agarwal and Justice A.S. Anand; the second by Justice G.N. Ray; and the third by Justice S.P. Bharucha and Justice S. Rajendra Babu.

The learned judges, put the accused/appellants into two broad categories — (a) the alleged bribe takers: and (b) the alleged bribe givers. The first category was further divided into two sub-categories — those who voted in the
House on the Motion of No-Confidence and those who did not vote on the motion.

The majority and minority judgments on each of the above two points and the rationale adopted for the judgment may be summarised in brief as follows:

The Majority Judgment delivered by Justice S.P. Bharucha and Justice S. Rajendra Babu, Justice G.N. Ray concurring with them in a separate judgment on the 1st issue held that the alleged bribe takers, other than Ajit Singh have the protection of Article 105(2) and are not answerable in a Court of Law for the alleged conspiracy and agreement. Ajit Singh, not casted his vote on the Motion of No-Confidence derives no immunity from Article 105(2). The alleged bribe givers do not enjoy any immunity. The criminal prosecution against them must, therefore, go ahead.

"The charge against the alleged bribe takers is that they were party to a criminal conspiracy and agreed to or entered into an agreement with the alleged bribe givers to defeat the No-Confidence Motion...by illegal means... The stated object of the alleged conspiracy and agreement is to defeat the No-Confidence Motion and the alleged bribe takers are said to have received monies as a motive or reward for defeating it. The nexus between the alleged
conspiracy and bribe and the No-Confidence Motion is explicit. The charge is that the alleged bribe takers received the bribes to secure the defeat of the No-Confidence Motion... We do not think that we can ignore the fact that the votes were cast arid, if the facts alleged against the bribe takers are true, that they were cast pursuant to the alleged conspiracy and agreement it must then follow, given that the expression “in respect of” must receive a broad meaning, that the alleged conspiracy and agreement had a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings is in regard to the motivation thereof. It is difficult to agree with the learned Attorney-General that, though the words ‘in respect of’ must receive a broad meaning. The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a Court of Law Article 105(2) does not say that a member is not liable for what he has said or how he has voted. While imputing no such motive to the present prosecution, it s not difficult to envisage a member who has made a speech or cast a vote that is not to the liking of the powers that be being troubled by a prosecution, alleging that he had been party to an
agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe.”

“The protections to be enjoyed by a member of Parliament as contained in sub-Article(2) of Article 105 essentially flows from the freedom of speech guaranteed under sub-Article (1) of Article 105. Both the sub-Articles (1) and (2) are complement any to each other and indicate the true contents of freedom of speech and freedom to exercise the right to vote envisaged under Article 105 of the Constitution. The expression ‘in respect of’ appearing in several Articles of the Constitution and in some other legislative provisions has been noticed in a number of decisions of this Court. The correct interpretation of the expression ‘in respect of’ cannot be made under any rigid formula but must be appreciated with references to the context in which it has been used and the purposes to be achieved under the provision in question. The context in which the expression 'In respect of' has been used in sub-Article (2) of Article 105 and the purpose for which the freedom of speech and freedom to vote have been guaranteed in sub-Article (2) of the Article 105 do not permit any restriction or curtailment of such right expressly
given under sub-Article (1) and sub-Article (2) of Article 105 of the Constitution.

“Mr. Rao submitted that since, by reason of the provisions of Article 105(2), the alleged bribe takers had committed no offence, the alleged bribe givers had also committed no offence. Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a member of Parliament and has a connection with his speech or vote therein. What is provided thereby is that a member of Parliament shall not be answerable in Court of Law for anything that has a nexus to his speech or vote in Parliament. If a member of Parliament has by his speech or vote in Parliament, committed an offence, he enjoys, by reasons of Article 105(2), immunity from prosecution therefore. Those who have conspired with the member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it.”

The minority judgment delivered by Justice S.C. Agarwal and Justice A.S. Anand held that a member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for
the purpose of speaking or by giving his vote in Parliament or in any committee thereof.

“The expression ‘in respect of’ precedes the words ‘anything said or any vote given’ in Article 105(2). The words ‘anything said or any vote given’ can only mean speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given. The immunity would not be available in a case where a speech has not been made or a vote has not been given... If the construction placed by Shri Rao on the expression ‘in respect of’ is adopted, a member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and
speaks or gives his vote in that manner and a member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter. Such an anomalous situation would be avoided if the words in respect of in Article 105(2) are construed to mean ‘arising out of’. If the expression ‘in respect of is thus construed, the immunity conferred under Article 105(2) would not be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament.”

“The construction placed by us on the expression in respect of Article 105(2) raises the question: Is the liability
to be prosecuted arising from acceptance of bribe by a member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending for consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver."

“The offence of criminal conspiracy is made out when two or more persons agree to do or cause to be done an illegal act or when two or more persons agree to do or cause to be done by illegal means an act which was not illegal. In view of the proviso to Section 120A IPC, an agreement to commit an offence shall be itself amount to criminal conspiracy and it is not necessary that some act besides the agreement should be done by one or more parties to such agreement in pursuance thereof. This means that the offence of criminal conspiracy would be committed if two or
more persons enter into an agreement to commit the offence of bribery and it is immaterial whether in pursuance of that agreement the act that was agreed to be done was done or not."

"The criminal liability incurred by a member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner. This making of the speech or giving of vote by the member cannot, therefore, be regarded as a liability in respect of anything said or any vote given in Parliament. We are, therefore, of the opinion that the protection granted under Article 105(2) cannot be invoked by any of the appellants to claim immunity from prosecution."

On the IInd issue, strictly speaking there were no majority or minority decisions. All the three judgments held that members of Parliament are ‘public servants’.

However, according to Justice Bharucha and Justice Rajendra Babu, the members of Parliament cannot be prosecuted for offences under Sections 7, 10, II and 13 of the Prevention of Corruption Act, 1988 because of want of authority competent to grant sanction.

According to Justice Agarwal and Justice Anand, since there is no authority competent to remove a member of
Parliament and to grant sanction for his prosecution under Section 19(1) of the Act, the court can't take cognizance of the offences mentioned in Section 19(1) of the said Act in the absence of sanction. But till any such provision is made by Parliament in this regard by suitable amendment in the law, the prosecuting agency, before, filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the Prevention of Corruption Act, 1988 against a member of Parliament in a criminal court, shall obtain the permission of the Chairman, Rajya Sabha/Speaker of Lok Sahha as the case may be.

**Justice G.N. Ray concurred with this judgment**

“Although in the Constitution the word ‘office’ has not been used in the provisions relating to members of Parliament and members of State Legislatures but in other parliamentary enactments relating to members of Parliament the word ‘office’ has been used. Having regard to the provisions of the Constitution and the Representation of the People Act, 1951 as well as the Salary, Allowances and Pension of Members of Parliament Act, 1954 and the meaning that has been given to the expression ‘office’ in the decision ‘of this Court’, we are of the view that membership of Parliament is an ‘office’ in as much as it is a position
carrying certain responsibilities which are of a public character and it has existence independent of the holder of the office. It must, therefore, be held, that the member of Parliament holds an ‘office’.

The next question is whether a member of Parliament is authorised or required to perform any public duty by virtue of his office. As mentioned earlier, in R.S. Nayak v. A.R. Antulay, this Court said that though a member of the State Legislature is not performing any public duty either as directed by the Government or for the Government but he no doubt performs public duties cast on him by the Constitution and by his electorate and he discharges constitutional obligations for which he is remunerated fees under the Constitution.”

“In the 1988 Act, the expression ‘public duty’ has been defined in Section 2(b) to mean a duty in the discharge of which the State the public or the community at large has an interest.”

“The Form of Oath or Affirmation which is required to be made by a member of Parliament (as prescribed in Third Schedule to the Constitution) is in these terms:

“I, A.B. having been elected (or nominated) a member of the Council of States (or the House of the People) do
swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter.”

“The words ‘faithfully discharge the duty upon which I am about to enter’ show that a member of Parliament is required to discharge certain duties after he is sworn in as a member of Parliament. Under the Constitution, the Union Executive is responsible to Parliament and members of Parliament act as watchdogs on the functioning of the Council of Ministers. In addition, a member of Parliament plays an important role in parliamentary proceedings, including enactment of legislation which is a sovereign function. The duties discharged by him are such in which the State the public and the community at large have an interest and the said duties are, therefore public duties. It can be said that a member of Parliament is authorised and required by the Constitution to perform these duties and the said duties are performed by him by virtue of his office.”

“We are, therefore, of the view that a member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties
are in the nature of public duties. A member of Parliament would, therefore, fall within the ambit of sub-clause (viii) of clause (c) of Section 2 of the 1988 Act.

One important observation made by the learned judges (Justice Bharucha and Justice Rajendra Babu) is that Parliament may proceed against the alleged bribe givers as well as the bribe takers for breach of privilege and contempt.

**Subsequent developments**

In November 1998, the Union Government filed a petition seeking review of the above judgment of the Supreme Court. On 16 December 1998, a five-judge Constitution Bench of the Supreme Court dismissed the Union Government’s review petition on the ground of inordinate delay in filing of the same. The Bench was headed by Chief Justice A.S. Anand and consisted of Justices S.P. Bharucha, K. Venkatasami, B.N. Kirpal and S. Rajendra Babu. The Chief Justice, in his order, observed:

“There is inordinate delay in filing the review petition. The application seeking condonation of the delay contains no reasonable or satisfactory explanation. It is merely mentioned that the delay occurred
due to paucity of staff... It is hardly any ground for condonation of delay. The application for condonation of delay is dismissed and as a consequence the review petition is also dismissed as time barred.

On 5 May 1999, the Supreme Court of India while disposing of all appeals to it moved by P.V. Narasimha Rao and others against the order of the Delhi High Court dismissing the appellants revision petition against the order of Special Judge Ajit Bharihoke, Delhi High Court, *inter alia* passed the following order:

“During the pendency of these appeals, as this Court had not granted any stay of further proceeding, the trial has already commenced and is continuing. In view of the questions already answered by the Constitution Bench on the issues posed before their Lordships, it is not necessary for us to go into any other questions raised in these appeals since those questions have to be answered by the learned Trial Judge bearing in mind the law laid down by the Constitution Bench in the aforesaid case.”
In pursuance of the above order of the Supreme Court, the alleged bribe takers moved applications for their discharge claiming immunity from prosecution in view of their parliamentary privilege under Article 105(2) of the Constitution.

These applications were contested by the prosecution vide its reply dated 31 May 1999, wherein it was alleged that the judgment of Constitution Bench of the Supreme Court dated 17 April 1999, cannot be construed to have conferred immunity to alleged bribe takers (applicants) for the act of abetment of commission of offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Therefore, this trial against them should proceed under Section 12 of the Prevention of Corruption Act, 1988. It was further alleged that the accused Shibu Soren, Suraj Mandal and Simon Marandi had also been charged with offence punishable under Section 193 IPC, which was allegedly committed during the pendency of investigation of this case. Thus, the aforesaid act having no direct nexus with the votes given by the said applicants in the Parliament, the trial on the aforesaid charge should proceed. It was also alleged that so far as accused Ajit Singh was concerned, Supreme Court had categorically held that he was not
entitled to protection of Article 105(2) of Constitution of India; therefore, there was no merit in his plea seeking immunity under Article 105(2) of the Constitution of India as well as discharge in this case.

After consideration of the submissions by the applicants and the prosecution, the Special Judge, CBI delivered the following Judgment on 4 June 1999:

(i) “All the applicants have been charged for having committed offence of conspiracy punishable under Section 120-B IPC read with Sections 7, 12 and 13(2) read with 13(l)(d) of Prevention of Corruption Act, 1988 as well as substantive offences punishable under Section 7 of the Prevention of Corruption Act, 1988 and 13(2) read with 13(l)(d) of Prevention of Corruption Act, 1988. Besides that, accused Suraj Mandal, Shibu Soren and Simon Marandi have also been charged for the offence punishable under Section 193 IPC. There is a factual difference pertaining to voting pattern on No-Confidence Motion in the role of accused Ajit Singh and other applicant-accused persons. As per record, the applicants except Ajit Singh voted against the No-Confidence Motion,
whereas Ajit Singh voted in favour of No-Confidence Motion...”

(ii) ‘It is obvious that as per majority view of the Constitution Bench of the Apex Court all the applicants except Ajit Singh are entitled to immunity conferred by Article 105(2) of the Constitution of India.

(iii) “Perusal of the observation of Honourable Justice Bharucha in the above referred judgment makes it clear that majority view of the Constitution Bench of Honourable Supreme Court is that Article 105(2) of the Constitution should be given a broader interpretation and immunity granted vide said Article is not only available to the applicants against the criminal proceedings regarding their alleged act of taking bribe for voting against the No-Confidence Motion, but it is also available against the alleged conspiracy by the bribe takers to defeat the No-Confidence Motion by illegal means because the nexus between the alleged conspiracy and the bribe and No-Confidence Motion is explicit. Conclusion of Honourable Justice Bharucha in para no. 143 of the judgment reported in (1998) 4 SCC 425
makes it clear that after analysing the facts of the case and Article 105(2) of the Constitution vis-a-vis the provisions of Prevention of Corruption Act, majority have concluded that alleged bribe takers other than Ajit Singh have protection of Article 105(2) of the Constitution and they are not answerable in the Court of Law for the alleged conspiracy and agreement.

(iv) “Now the question arises, if the aforesaid immunity under Article 105(2) of Prevention of Corruption Act., 1988 can be extended to accused Suraj Mandal, Shibu Soren and Simon Marandi who have charges or the offence punishable under Section 193 IPC. Allegations against them are that during the pendency of investigation of the present case, while writ Petition no. 789/96 was pending in Honourable High Court of Delhi between February and April 1996 at Delhi. Accused persons caused to bring false evidence into existence by fabricating or causing to fabricate the documents or records, i.e. to JMM Central Office, Ranchi, in order to create an evidence to the effect that the amounts deposited in their accounts were actually donation received by the party and not the alleged bribe amount.”
(v) “As per evidence collected by investigating officer, voting on No-Confidence Motion was done in July 1993 and fabrication of the evidence have allegedly been done during February to April 1996 when the investigation of this case was going on. Considering such a long time gap between the voting and the alleged fabrication of evidence/record, it cannot be said that there is any nexus between the actual vote given by these accused persons in the Parliament and the fabrication. Immunity under Article 105(2) of the Constitution is only in respect of anything said or any vote given by member of Parliament in the Parliament. But alleged act which is subject matter of charge under Section 193 IPC, has been committed outside the Parliament and after a lapse of more than two and half years from the vote given by these accused persons in the Parliament. Now, therefore, no nexus can be drawn between vote given by accused and fabrication. Thus, I am of the view that applicants can be tried for charges under Section 193 IPC...”.
(vi) “His (Ajit Singh’s) role in the episode is different from the role of other alleged bribe takers. As per evidence collected during investigation, other alleged bribe takers had voted against the No-Confidence Motion and they had allegedly received bribe in furtherance of conspiracy for defeating the Confidence Motion by voting against it. However, in the case of accused Ajit Singh as per his own contention he has voted in favour of No-Confidence Motion, whereas charges against him are that he entered into a criminal conspiracy with others to defeat No-Confidence Motion by illegal means and agreed to obtain illegal gratification other than this legal remuneration from the alleged bribe givers as a motive or reward for defeating the No-Confidence Motion and in furtherance of said agreement he also accepted and obtained illegal gratification of Rs. 300 Iakh for self as well as other Janata Dal (Ajit Group) MPs. However, he has voted in favour of No-Confidence Motion, therefore, no nexus can be derived between the alleged motive of Ajit Singh for voting in favour of No-Confidence Motion and his motive relating to conspiracy in question and acceptance of illegal gratification.
Thus, in my view, immunity under Article 105(2) cannot be extended to him. It may not be out of place to mention that after judgment of Constitution Bench was pronounced, Ajit Singh admittedly filed a review petition in Honourable Supreme Court. He admittedly took the plea in his review petition that he has actually voted in favour of No-Confidence and he has been denied immunity by the judgment of Constitution Bench on misconception of the fact that he did not vote on No-Confidence Motion. Said review petition was admittedly dismissed by Honourable Supreme Court. Mere fact that Honourable Supreme Court dismissed the review petition even after the fact of vote given by Ajit Singh on No-Confidence Motion was brought to their notice, makes it clear that as per Apex Court, Ajit Singh is not entitled to the immunity under Article 105(2) of the Constitution. Reason is obvious. The motive of vote given by Ajit Singh in favour of No-Confidence Motion is entirely different from the motive of his having allegedly accepted the bribe. Thus no nexus could be drawn between the motive of Ajit Singh voting in favour of No-Confidence Motion and his motive of entering into
alleged conspiracy and taking illegal gratification. Thus, no immunity under Article 105 (2) of the Constitution.

(vii) The act of abetment by alleged bribe takers has a direct nexus with their having accepted illegal gratification pursuant to the abetment as well as the motive behind the vote given in the Parliament. Therefore, in view of the majority view of the Constitution Bench, of Apex Court immunity under Article 105(2) of the Constitution also extends to the alleged act of conspiracy and abetment.”

(viii) “In view of my discussion above. I conclude that all the applicants except Ajit Singh are entitled to immunity under Article 105(2) of the Constitution in relation to charges under Section 120-B IPC read with Sections 7, 12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act. 1988, but prosecution of accused persons Suraj Mandal. Shibu Soren and Simon Marandi shall proceed for offence punishable under Section 193 IPC. I further conclude that applicant Ajit Singh is not entitled to immunity under Article 105(2) of the Constitution and his trial on charges framed against him shall proceed. As a result of above
said conclusion, accused Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Charan Das, Abhay Pratap Singh and Haji Gulam Mohammed Khan are hereby discharged and all the charges except under Section 193 IPC against accused Suraj Mandal, Shihu Soren and Simon Marandi are dropped.”

In a case Alledged derogatory remarks against Members of Parliament in a newspaper. On 22nd December, 2000, Shri Suresh Pachouri, Kapil Sibal and Balkavi Bairagi, Members of Rajya Sabha gave a notice of question of privilege against Dr. Pravin Bhai Togadiya, General-Secretary, Vishwa Hindu Parishad (VHP) for making certain derogatory remarks against opposition MPs as reported in the ‘Lokmat Samachar’ dated 19 December, 2000. The members alleged that Dr. Togadiya through his statement had declared opposition MPs as Pakistanis or behaving like Pakistani Members. The members further contended that Dr. Togadiya, through his reported statement, challenged their patriotism and denigrated their prestige before the Nation.

Dr. Pravin Bhai Togadiya, General Secretary, VHP was requested to furnish his comments in the matter. Dr. Togadiya, vide his comments stated that “every citizen has a right to free expression”. As regards his statement in the
press, Dr. Togadiya, *inter alia*, stated that some political
departments had adopted a hostile posture towards Hinduism
and he had only criticized the opinion of those political
departments and did not question their patriotism. A copy of the
comments of Dr. Togadiya was forwarded to the members
who had given notice of breach of privileges against him.

Shri Pachouri and Shri Sibal, were not satisfied with
the comments of Dr. Togadiya They stated that Dr.
Todgadiya, in his reply to the privilege notice, did not deny
the allegations levelled against him. The Members further
requested that proceedings for breach of privilege be
initiated against Dr. Togadiya. On 25 February, 2001 the
Chairman, Rajya Sabha referred the matter to the
Committee of Privileges under Rule 203 of the Rules of
Procedure and Conduct of Business in the Rajya Sabha for
examination, investigation and report.

**Findings and Recommendations of the Committee**

The Committee of Privileges, after hearing in person
Dr. Pravin Bhai Togadiya, in their Forty-Ninth Report,
presented to the House on 24 August, 2007, recommended
*inter alia* as follows:—

(i) “The Committee is surprised to note that though

Dr. Togadiya during his evidence before the
Committee categorically denied having made the impugned statement yet he did not do so in his comments. In his reply he rather accepted that he had criticized the opinion of some of the Members which he found a little difficult to accept and that he had criticized the opinion of certain political parties and not questioned their patriotism. The Committee is of the view that to avoid any misgivings which had arisen from his reported statement, Dr. Togadiya should have taken up the matter with the concerned newspaper and refuted his impugned statement dated 19 December, 2000.”

(ii) “The Committee, while accepting the statement of Dr. Togadiya that he had never questioned the patriotism of any Member of Parliament and that he fully respected their patriotism, which he had made both in his written reply as also in the oral evidence, would like to observe that in democracy people have the freedom to scrutinize the actions of their representatives and criticize them provided such a criticism does not transcend the limits of fair comments. Nothing should be done with *mala fide* intentions or causing affront to the dignity of a Legislature or its members.”
(iii) “However, in view of the categorical denial of Dr. Togadiya about having made the impugned statement to the press, the Committee feels that no useful purpose will be served in pursuing the matter further and, therefore, recommends that the matter be closed.”

On 23rd December, 2005 Shri Isam Singh, a Member, gave notice of a question of privilege against the Star News Channel stating, inter-alia, that in the programme ‘Operation Chakravyuh’ which was telecast by the channel on the 19th December, 2005, it was shown that Shri Isam Singh had neither demanded any money nor any commission was paid to him in recommending works under the Member of Parliament Local Area Development (MPLAD) Scheme but he also did not decline the commission offered to him. According to Shri Isam Singh, the fact was that he had also declined to accept the commission which had not been mentioned in the programme by the channel. He alleged that the Star News Channel had indulged in character assassination and attempted to tarnish his image in public, by distorting and concealing facts.

The Chairman, Rajya Sabha on the 20th December, 2005 referred the matter to the Committee on Ethics for examination, investigation and report.
The Committee on Ethics in its Eighth Report relating to the ‘Operation Chakravyuh’, presented to the House on the 24th February, 2006 and adopted on the 21st March, 2006 observed, *inter-alia*, that the actions of the investigating agency and the broadcaster amounted to tarnishing the image of the Member in the public eye without adequate cause due to which incalculable damage had been done to his reputation. The Committee expressed the view that the Dedicated Investigators Guild (DIG) and the Star News might have committed breach of privilege and contempt of the House and of its Members and recommended that the Chairman, Rajya Sabha may consider referring the complaint of Shri Isam Singh to the Committee of Privileges for further examination and report.

The other issue of breach of privilege and contempt of the House arose from the non-furnishing of certain information desired by the Committee on Ethics by the representatives of the Star News and the DIG. The Committee of Ethics while examining the issues referred to it by the Chairman relating to the telecasting of ‘Operation Chakravyuh wanted to have information about the middlemen/contacts with a view of breaking the nexus between the corrupt middlemen and politicians but the two
agencies i.e., the Star News and DIG had allegedly declined to share the specific information with the Committee on Ethics. The Committee, therefore, in its report had, *inter alia* observed that DIG and Star News seemed to have committed contempt of the House by not disclosing information to it relating to ‘contact’ in respect of one Member. The Committee had, therefore recommended that the Chairman, Rajya Sabha might consider referring this aspect also to the Committee of Privileges for further examination. The matter was sent to commit for its report.

**Findings and Recommendations of the Committee**

The Committee of Privileges, after hearing in person representatives of Star News and DIG in the matter and assessing both unedited and edited versions of the video CDs of the programme as well as audio transcript of the same, in their Fiftieth Report, presented to the House on 24 August, 2007 recommended *inter alia* as follows:

(i) “When the Committee first considered the instant matters of privilege, a view emerged that Shri Isam Singh’s case was not essentially a privilege case, rather, it was more in the nature of a case of defamation for which remedies lie under the law. The Committee felt more so because the allegation levelled against Shri Isam Singh did not concern his
character or conduct in actual transaction of the business of the House. The Committee, however, felt that since the matter in its entirety was not limited to Shri Isam Singh only, rather it affected the House as a whole, it was better to examine the concerned witnesses of Star News and DIG”

(ii) “The Committee observes that Shri Isam Singh, in his privilege notice had, *inter-alia*, contented that he had declined to accept the commission but this was not mentioned by the Star News Channel in the programme. After viewing the unedited VCD of the programme and audio transcript of the same, the Committee, however, does not find any categorical denial from him except some indirect references to his character traits or earlier actions in giving funds for supporting educational activities which go to suggest that he did not ask for any commission.”

(iii) “The Committee is of the opinion that when there was no proof or evidence suggesting that Shri Isam Singh accepted or demanded the commission, the statement given by the anchor in the programme that he had also not denied (the commission) only reflects the over-enthusiasm of the news channel resulting in undermining the image of a Member of
Parliament in particular and dignity of the House in general”

(iv) “The Committee feels that if the public had an opportunity of seeing the unedited programme, the impression about Shri Isam Singh would have been totally different from what has been created by the anchor in the telecast version. Resorting too much of coaxing and inducement, casting reflection on the integrity of other Members of Parliament and trying to entrap someone by fabricating false stories is not the way to expose wrongs in the parliamentary system. However, in view of the regrets expressed by Shri Uday Shankar of the Star News and his acceptance of Committee’s view that there were other ways also for showing the programme which would have sent a different message about Shri Isam Singh, the Committee is of the opinion that the matter may not be pursued further and recommends that the matter may be allowed to rest here.”

(v) “The Committee is fully in agreement with the views expressed by the Committee on Ethics in that the time has come for enacting a suitable law for regulating sting operations.”

(vi) “The Committee notes that the Committee on Ethics in its eighth report had, *inter-alia*, observed that the
representatives of DIG refused to disclose the name(s) of the source/contract they used for approaching Members and, therefore, that Committee found the attitude of DIG uncooperative. That Committee had also observed that the raison d'erre for DIG’s sting operation, namely, public service fell flat on its face because they were unwilling to cooperate with it in unravelling the truth behind the nexus of middlemen/contacts with the elected representatives of the People.”

(vii) “The Committee notes that the information about a middleman in respect of Shri Isam Singh was given to it by the representatives of the Star News and the DIG. This information was shared by them with the Committee on Ethics also. About other such middlemen, as they had submitted, they did not have full information and, therefore, did not give their names when the other Committee had desired them to do so. However, before this Committee, they gave names of such middlemen and explained the reasons as to why they were reluctant in disclosing their names. The Committee is convinced with the submissions of the CEO, Star News in this regard that they were not sure about the identity of these middlemen
(viii) “On the basis of the oral evidence given by the representatives of the Star News and DIG, the Committee is of the view that the question of non-disclosure of information pertaining to a contact to middleman in respect of one member by the Star News and DIG before the Committee on Ethics perhaps might have arisen due to some communication gap. The Committee feels that if the representatives could give information about one such middleman contact in respect of Shri Isam Singh, they could well have given such information in respect of other member also in case they were in a position to do so.”

(ix) “Notwithstanding the above observations, the Committee would like to recall a well established convention in respect of parliamentary privileges. It is a gross breach of privilege and contempt of the House to deliberately not provide the information sought by a Parliamentary Committee and to disobey the legitimate orders of that Committee. The Committee expects from all concerned coming to depose before any Committee to come fully prepared with all the necessary information on various aspects of the matter under consideration and to place that information before the Committee
concerned, if so directed. This will not only facilitate Committees in achieving their objectives but also help in eradicating problems in the system of governance and consequently, in further strengthening of democracy.”

**Action Taken by the House**

No further action was taken by the House on the matter.

**Breach of The Privileges and Contempts :**

It is pertinent, first, to give definition of the breaches of privilege and contempt and to point out the difference between the two. It is be stated that the privileges are finite and they have been specified the Constitution. The same have been discussed in the earlier chapter Contempts, on the other hand, cannot be specified.

Broadly speaking, contempts are offences against the authority dignity of the House. They include situations which cannot specifically claimed as breaches of the privileges of the House. May states as under:

“Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon
itself, its officers or its Members. Such actions though often called “breaches of privilege” are more properly distinguished as “contempts”.

He goes on:

“It would be vain to attempt an enumeration of every act which might be construed into a contempt, the power to punish for contempt being in its nature discretionary. It may be stated generally that any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.”

As already mentioned it is not possible to categorize or to delineate may fall under the definition of contempt.

Briefly speaking, all breaches of privileges are contempts of the House, but not all contempts are

necessarily breaches of privilege. A contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a member, it merely has to have the tendency to produce such results. Matters ranging from minor breaches of decorum to grave attacks against the authority of Parliament may be considered as contempts.

However, in recent years a tendency has developed to call both kinds of acts as 'breaches of privilege.' If we examine recent cases where persons have been punished for breach of privilege, it will appear that in many cases no breach of any specific privilege was alleged, but the acts had tended merely to obstruct either the House or individual members of a House in the exercise of their constitutional functions. These latter kind of acts were formerly called contempts but since long they have been termed as 'breaches of privilege. Thus, this distinction has no importance in modern times.