CHAPTER X

RULES OF DEBATE

Whenever it is necessary to obtain a decision of the House on any matter, a motion, as has already been explained, has to be made before the House. A motion may be moved by any member and also by the Presiding Officer. When a motion has been moved, there is a 'question' before the House. Although a question may be and is sometimes decided without discussion, usually, on a question being proposed, a discussion or debate in which the members take part is held. In order that the matter in issue may be properly discussed, there are certain rules of debate which are followed in all Legislatures. These rules will be discussed in this Chapter.

Process of Debate

There are three stages in the discussion of every motion: (a) A motion is moved by a member and on the motion being moved, the Presiding Officer proposes the motion before the House as a 'question'; (b) a debate follows and (c) after the close of the debate, the Presiding Officer puts the question to the vote of the House and after ascertaining the opinion of the House, declares the verdict.
Generally, a member formally moves the motion first and speaks after the question has been proposed by the Presiding Officer. But he may speak first and then at the end of his speech move the motion. In the latter case, a member is allowed to speak on the distinct understanding that he would move the motion standing in his name. ¹

Seconding a motion is not necessary in the Indian legislatures except in the case of a motion of thanks to the Head of the State. In England the Select Committee of the House of Commons on Procedure recommended that the seconding of a motion should not be necessary except on ceremonial occasions and under a change in Standing Orders in 1960, a motion now no longer requires a seconder though on formal occasions this may be done if it is thought desirable.

After the speech of the mover of the motion, other members may speak either in support of, or in opposition to, the motion. The mover of a motion has, subject to certain exceptions, a right of reply after the speeches of other members.

After a motion has been moved, amendments may be proposed to the motion. If any amendment is proposed, a new 'question' arises; the main question is for the

¹ May, p.406.
¹a Report of the Select Committee on Procedure 1959.
time being put aside and the debate proceeds on the
amendment. In some Legislatures, there is a practice of
allowing the main motion and all amendments to be moved
together and, after the mover of the main motion has
spoken, of a general discussion taking place. The
inconvenience of such a course has been pointed out in
a previous chapter. The better procedure
is to clinch the debate to a particular amendment then
before the House and after all the amendments are disposed
of one by one to take up the main motion.

Manner of Speaking

The Indian Legislatures have adopted the practice
prevailing in the House of Commons where the members make
their speeches from their places and in doing so address
the Chair. No rostrum is provided and the member speaking
does not address the assembly of members. A member has
to make his speech standing provided that a member disabled
by sickness or infirmity may be permitted to speak sitting.

Catching the Speaker's Eye

If a member desires to speak on any motion before the
House, he rises in his place and the Presiding Officer calls
upon him to speak. If several members rise simultaneously, the
Presiding Officer calls upon the member who first 'catches his
eye'. In practice, however, the names of speakers on a particular subject are pre-arranged between the Whips of the different parties and a list of the names is supplied to the Presiding Officer. The Presiding Officer calls upon members from the list and in order to give a lively and interesting turn to the debate going on, usually calls upon members alternately from each party or group. The fiction of 'catching the Speaker's eye' is, however, maintained and the supply of the list of members is kept an open secret.

In 1872, Mr. Gladstone disclaimed the supply of any such list. In 1911, when the practice of the supply of such a list seems to have been well-established, a member of the House of Commons, Mr. Ginnell, opposed the re-election of Speaker Lowther on the ground that Mr. Lowther as Speaker used to call upon members to speak from a list supplied by the Whips and was therefore unfair to back-benchers.

It is also usual, in the absence of any agreed list, for members who wish to speak to submit their names to the Presiding Officer. The Presiding Officer, however, has absolute discretion in the matter of calling upon

2 May, p. 446
3 H.C.D. 1911, vol. 21, cc. 8-10.
members to speak and as has been observed in May:

This practice (submission of names), while not fettering the discretion of the Speaker, affords to Members who avail themselves of it a better opportunity of "catching the Speaker's eye"; and to the Speaker a means of distributing the available time as equitably as possible between the various sections of opinion. 5

The Speaker has the right to decide the order in which members should speak.6 Members of the Scheduled Castes and Scheduled Tribes were given priority when a debate was proceeding on the rights and problems of such Communities.7 Members coming from an area where rubber is produced were given priority when a Bill relating to rubber production was being debated.8 Members who had not spoken at any stage of a bill were given priority over those who had.9

Maiden Speech

When several members rise to speak, a new member who has not previously spoken is entitled to the courtesy

5 May, p.446.
6 H.O.P.D.(1954) vol.viii, c.825;
7 ibid.(1952) vol.vi, c.2223.
8 ibid.(1954) vol.viii, c.825.
9 ibid (1956) vol.iv, c.7129; ibid.(1956) vol.v, c.9834.
of being called upon to speak in preference to others. This courtesy is extended only to a member who claims it in the first session of the Parliament to which he is returned. 10

Reading Speeches

There is no hard and fast rule in the Indian legislature prohibiting the reading of written speeches. In the British House of Commons written speeches are not permitted except on rare occasions when precision of statements is necessary, e.g., budget statements, statements on Foreign Policy 11, etc. Reading of speeches detract from the cut and thrust of debate, for the speech of a member reading a precomposed speech has often no relation to the arguments put forward by others and such a course should be discouraged, except when important statements involving facts and figures have to be made. 12

The reading of speeches is not encouraged in the Indian Parliament. Mr. Speaker Navalanker said: "Members will realise that if written speeches are permitted, it may mean that some other person writes a speech and the member reads it, - of course, - not in all cases; but

10 May, p. 447
11 May, p. 445
then the speech read will have probably no reference to the speeches made by others in the debate. What is read would have been written previous to the starting of the debate. Therefore if we want really to have a debate with a life in it, without repetitions and with arguments addressed only to the points raised, then I am sure members will all agree with me that written speeches must be discouraged."

When a member persisted in reading a speech although asked by the Speaker not to do so, he was asked to resume his seat.

Written Statement

Members not actually taking part in debate were allowed in the Lok Sabha to submit written statements containing their arguments and views afterwards and the written statements were included in the proceedings as speeches made by the members. This should not be taken as a general rule but was an exception. A suggestion to incorporate written speeches in the Proceedings of the House was made before the Select Committee on Procedure 1959 where the Committee rejected

the suggestion on the ground that the House would have no control through the Chair over the relevance or orderliness of the contents of the speeches.

**Speech allowed once only and Right of Reply**

A member cannot speak twice on the same motion. The mover of a motion has, however, subject to certain exceptions, a right of reply. The exception being that the mover of an amendment to a Bill or a resolution has no right of reply. The reply of the mover of a motion usually closes the debate on the particular motion. In the case of Ministers to whose department a motion relates, exceptions are made by the rules of the Legislatures to the rule against speaking twice and also to the rule regarding the closure of debate. Such a Minister is allowed with the permission of the Speaker to speak after the reply of the mover and he can do so even if he has already spoken once on the motion. The Speakers in India may allow a member to speak more than once, may allow a right of reply to a mover of an amendment to a Bill or a resolution, as exceptions to the general rule above mentioned.

**Personal Explanations**

When during a debate it appears that a member's speech
has been misunderstood by another member or any comment is made against the character or conduct of a member, he is allowed to offer an explanation even though he has spoken on the motion. The time for giving an explanation is at the end of the speech of the member speaking at the time. But it is usual for the member offering an explanation to rise as soon as the statement requiring an explanation is made and if the member in possession of the House gives way, he can explain himself then and there. But if the member speaking does not give way, the explanation can be given at the end of his speech.

In giving the explanation, a member must confine himself only to the relevant matter. He is not allowed to make another speech to elaborate his arguments or to make a reply to the arguments made by another member. More latitude is however allowed when any imputation against the conduct or character of a member is made. If any statement is made regarding a member in his absence, he is allowed to offer a personal explanation.

18 Parl.Deb.(1862) vol.165, c.1032. ibid.(1862), vol.167, c.1216, ibid.(1864), vol.175, c.462. ibid.(1873), vol.242, c.1709.
even after the lapse of several days. In the Indian Legislatures, a personal explanation may be given with the permission of the Speaker even though there is no question and therefore no debate before the House. But in such a case no debatable matter may be brought forward and no debate arises.

The Speaker has allowed in many cases a statement to be made by a member himself but has not allowed any letter or comment of the gentlemen to be read by the member. A member must speak himself and give his own statement about the reference. About reference to past debates exception also has been taken by the Speaker but he has allowed reference inspite of the fact that the reference to past debate would be irregular. In one case (See below), it would be found that the Speaker has himself made a personal statement. There is no rigidity in the practice and it depends on how matter is cleverly put in the House by the Member.

Personal explanations are allowed on behalf of persons who are not Members, whose conduct have been reflected in debate.


19(a) Case of Dr. Beke - Parl. Deb. 1867-68, vol. 190, C. 422; See also Case of Mr. Reed, ibid. 1872, vol. 210, c. 403.
Though permission to make an explanation of this nature has sometimes been refused by the Speaker.

Right of Ministers to take part in Debates

A Minister who is a member of one House, has a right to attend, speak in, or otherwise take part in the proceedings of the other House. Thus he has a right not only to address the House but also to move motions, etc. He has, however, no right to vote except in the House of which he is a member. A Minister can remain in office for a period of six months without being elected or nominated a member of the Legislature. Such a Minister has also the right to address the Legislature (both Houses, where there are two Houses) and otherwise to take part (except voting) in its proceedings.

Statement by Ministers on Resignation from Office

A member on resigning from the Ministry may, with

19(b) (See Parl. Deb. 1882, vol.269, c. 1095; the Speaker himself has also made a personal explanation, H.C. Deb. 1947-48, vol. 445, c. 1205-6).  
20 Arts. 88, 177.
the consent of the Presiding Officer, make a personal statement in explanation of his resignation. A Minister in office at the time such statement is made is entitled to make a statement in reply pertinent to the matter. No discussion is however permissible on such statements. 21 A Parliamentary Secretary has also been allowed to make a statement on resignation of his office. 22 In the House of Commons also, a member is allowed to make a statement on resignation of an office in the Government. 23 Whether anything occurring in Cabinet meetings can be divulged in such statements was raised in the House of Commons in 1952. Mr. Aneurin Bevan made a statement on resignation from office in which he referred to certain things which happened in a Cabinet meeting. Mr. Attlee on the next day protested against this and said that there was well-established rule inhibiting members of a Government from revealing what passed either in Cabinet or in confidential discussions. Mr. Bevan on the next day cited precedents 24 to show that Cabinet discussion have been referred to previously and pointed

23 May, p.364.
out that if it were not so, no resigning Minister could say why he resigned. 25

In the Indian legislatures a copy of the proposed statement or in the absence of a written statement, the points or the gist of such statement must be conveyed to the Speaker and the Leader of the House one day in advance of the day on which it is made. In the House of Commons, the present practice is that a Minister resigning should inform the Speaker that he wished to make a statement and preferably furnish him with a copy although he is not obliged to do so.

Question to Members

If any member desires to ask any question of a member who is speaking, he can do so with the permission of the Presiding Officer. If the member speaking gives way, only then can such a question be put; otherwise not.

Point of Order

If in the course of a debate any question arises as to the interpretation of any rule of debate, e.g. admissibility or relevancy, any member can submit the question for the decision of the Presiding Officer. Such

a question is known as a point of order. A point of order must be raised at the earliest opportunity during the debate and not after the business is over. The member raising a point of order should first formulate his point and thereafter make his submission. As soon as a point of order is raised the member in possession of the House at the time must give way and resume his seat. A point of order shall relate to the interpretation or enforcement of the rules of procedure or such Articles of the Constitution as regulate the business of the House and shall raise a question which is within the cognizance of the Speaker in relation to the business before the House at the moment. A point of order may be raised during the interval between the termination of one item of business and the commencement of another if it relates to maintenance of order in, or arrangement of business before, the House. The member who raises such a point is entitled to make his submissions even though he may have spoken once during the debate but he must confine himself to the specific point raised. The Presiding Officer may

27 H.C.P.D. (1952) vol. v, c. 329.
28 Lok Sabha Rules, Rule 376.
allow other members also to make their submission on the point of order raised. But no member, other than the member raising the point of order, is entitled to speak as of right. A point of order can be raised during a division if it relates to any matter concerning the division.

The decision of the Presiding Officer on a point of order is final and no appeal is allowed to the House as is done in Canada or the United States.

Rulings of the Speaker of the British House of Commons are practically never questioned. It has been said that within living memory, a ruling of the Speaker was only once questioned in 1925 when a motion was put down to the effect:

'That, in view of the express provisions of Standing Order 80. 26 for the protection of the rights of minorities, this House regrets the action of Mr. Speaker on the 25 May 1925, when, contrary to recent precedents, he granted the Closure at 11:45 p.m. on the first day's Debate on the Motion for the Second Reading of the Finance Bill.' It will appear that even then, there was no question of overruling the Speaker's decision.

A member may bring to the notice of the House any matter which is not a point of order by giving previous

notice in writing to the Secretary stating briefly the point he wishes to raise together with reasons for wishing to raise it. If the Speaker gives his consent he can raise the point at such time and date as the Speaker may fix.

A ruling given by the Presiding Officer pro tempore cannot be revised by the Speaker.\(^\text{30}\)

There cannot be any protest against a ruling on a point of order and the member must accept the decision. There cannot be a walk out in protest against the ruling of the Chair.\(^\text{31}\) But walk-outs in protest against the rulings of the Chair have become a common feature in Indian Legislatures and the Presiding Officers do not seem to take any notice of such walk-outs.

**Time Limit**

The Presiding Officer has not authority to impose a time limit other than in case of a Finance Bill.\(^\text{32}\) The limit of fifteen minutes for a speech applies only to non-official resolutions and resolutions for the removal of the Presiding Officer. In the case of adjournment

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\(^{32}\) I.P.B. 21 Sept. 1951, c.2994.
motions, the Speaker is under a duty to fix a time limit for a speech; but the length of time is not mentioned in the rules. The Speaker may fix a time limit in the case of discussion on matters of public importance of short duration and No-Day-yet-named motions. There is no other time limit.

The only occasions upon which a time limit is placed upon the speech of a member in the House of Commons are in regard to motions for leave to bring in Bills and for the nomination of Select Committees at the commencement of public business and upon Committal of Bills - S.O. Nos. 12 and 50. It should be noted however that these time limits are not hard and fast. The phrase used in the Standing Orders is 'brief explanatory statement', and ten minutes is in practice accepted as a reasonable time limit.

Contents of Speeches
Relevancy

The speech of a member must have reference to the subject-matter under discussion. When a member wanders away from the subject, the Presiding Officer often calls him to order; members, however, often exercise considerable

33 Journal of the Society of Clerks at the Table, vol. 11 (1932), p. 67
ingenuity in making their observations relevant - although on the face of them they might appear irrelevant. It therefore devolves upon the Presiding Officer to determine when a member is going to be irrelevant and to restrain him from being so. If a member persists in irrelevance, he may be asked by the Chair to resume his seat.

Reference to Prior Debates

Reference to prior debates on matters other than the matter then before the House is not ordinarily allowed. Reference may, however, be made if a member wants to give any personal explanation or to complain of anything said in the course of the debate. Reference can also be made to prior speeches in order to show that the member is saying something different from what he said previously. In that case, only such portion of a prior speech as is relevant can be referred to. Discussion in a Select Committee cannot be referred

35 H.O.P.D.(1952), vol.i, c.678; ibid,vol.ii,c.2529; ibid,vol.iii,c.4121; ibid(1955), vol.ix,c.56;ibid (1956), vol.vii,c.6097; ibid(1956), vol.x,c.3576.
37 Parl. Deb.(1876), vol.231, c.749; ibid(1878) vol.238 c.1403; H.C.D.(1933) vol.283, c.1258; ibid(1942-43), vol.385, c.1319
38 H.O.P.D.(1953), vol.i,c.1470; ibid vol.iii,c.3561.
Reference to Debates in the Other House

It is one of the rules of debate in the British Parliament that no reference can be made in one House to debates held or speeches made in the other in the current session. The rule had its origin in the fact that previously the Houses did not allow their debates to be published and therefore one was not supposed to know what was happening in the other House. Nowadays, the debates are published daily and the fiction of the prohibition of publication is invoked only in cases of breaches of privilege. Yet, the rule that no reference to any debate in one House can be made in the other is still followed, although not very strictly, for the reason that it prevents the two Houses from coming into conflict with each other and avoids mutual recrimination between the members of the two Houses in the absence of one or the other party.

Nowadays, however, ministerial statements are often made in one of the Houses and the members of the other House are allowed to refer to or criticise such statements.

c.373;H.O.P.B.(1953)vol.ii,c.1674;ibid(1953),vol.ii,
c.1855; ibid(1954),vol.iii,c.4393;ibid(1954),vol.vii,
c.2870; ibid(1956) vol.vii, c.3591.
The above principle of the House of Commons has been embodied in rules of Indian Legislatures which provide that no speech made in one House shall be quoted in the other unless it is a definite statement of policy by a Minister, provided that the Presiding Officer may, on a request being made to him in advance, give permission to a member to quote a speech or make reference to the proceedings in the other House, if the Presiding Officer thinks that such a course is necessary in order to enable the member to develop a point of privilege or procedure.

The principle enunciated above applies to debates in the House whether in respect of a motion or a Bill. But it does not apply to the votes and proceedings of either House or to any reports of committees of either House.

Reading Extracts from Newspapers or Books

There appears to be some misapprehension about the rule relating to the reading of extracts from newspapers or books in the course of a speech by a member. Sometimes objections are taken to the reading of extracts from newspapers, sometimes the member is asked to take responsibility for the facts stated, sometimes he is asked to lay the relevant paper before the House.

42 H.C.D. 1876, vol. 228, c. 1183.
43 May, p. 455.
The rule so far as it is applied in the British House of Commons may be considered in two aspects:

(a) reading of extracts from newspapers, pamphlets, etc., i.e. printed papers; and

(b) reading of extracts from other documents in the possession of the Speaker.

The first can again be divided into two categories:

(1) Heading of speeches or proceedings of the House reported in the newspapers; and

(2) reading of extracts relating to other matters.

**Reading of Speeches or Proceedings in the House from Newspapers**

Reading of extracts from speeches made in the House, or referring to the proceedings of the House, as reported in newspapers is not allowed. As Sir Robert Peel put it:

'It was irregular to refer to a report of a speech appearing in a newspaper, and purporting to have been delivered in the House; for of course hon'ble Members could not be held responsible for anything which they had not themselves formally authorised. Reports appearing in newspapers of speeches made in that House were undoubtedly matters which could not be referred to...
Other Matters

But referring to other matters published in newspapers is not absolutely banned. In the course of the same speech Sir Robert Peel observed:—

'Members, on account of the indecorum and the inconvenience that would result from such practice, should not be at liberty to read newspapers in the House which had no reference to the matter under consideration; but he doubted whether it would not be drawing the rule too tight to say that a member was not at liberty to read an extract from a newspaper as part of his speech. Suppose a public meeting had occurred, the resolutions of which were thought to be of sufficient importance to deserve the attention of the House, and that an hon'ble Member found reading from a newspaper to be the most convenient mode of putting the House in possession of those resolutions, were they to say that such proceeding would be out of order? Could they establish a rule prohibiting such a reference?

The discussion arose when a member of the House of Commons wanted to read an extract from the editorial

44 Parl. Deb. 1840, vol. 52, c.1064
remarks in a newspaper and the Speaker wanted to rule him out of order. Ultimately, the member was allowed to read the extract.

The present practice was indicated by Lord John Russell when he said:

'If, however, an hon'ble Member made an extract, whether printed or written, whether from a newspaper or from a book, a part of his speech, be the strict rule what it might, the practice had of late been to leave such a matter to his own discretion.'

Of course, the extract must be relevant to the subject matter under discussion and must not be an extensive quotation.

Citing Documents

As regards citing documents, the rule observed in the case of Ministers is a little different from that observed in the case of private members. A Minister cannot quote from a despatch or other State paper unless a copy of such despatch or paper is laid before the House. This rule however applies only in the case of public documents, i.e. documents of the Government and not private papers.

45 Parl. Deb., 1840, vol.52, c.1064
documents, if the Minister declares that any document is of a confidential nature and cannot be disclosed without injury to public interests, the production of such a document cannot be insisted upon. If a Minister summarises the contents of a document without actually quoting from it, he is not bound to produce the document. The following illustrations would make the position clear. In the course of a discussion on the cancellation of a proposed talk at the B.B.C., quotations were made from the script of the talk. On objection being taken that the document should be laid before the House it was ruled that the document was not an official document and quotations could be made without producing the document. A Minister was allowed to summarise the proposals of an Enquiry Committee appointed by the Government although the report of the Committee had not been yet presented to the House.

The following observations of the Speaker of the House of Commons will be of interest:

'The general rule of the House is well understood, that if a Minister refers to public documents or

51 ibid, 1944-5, vol. 407, c. 1797.
Despatches he should lay them before the House; but confidential documents or documents of a private nature passing between officers of a Department and the Department, are not necessarily laid on the Table of the House, especially if the Minister declares that they are of a confidential nature. It would be a precedent dangerous to the Public Service to say that they ought to be laid. 52

Opinions given by law officers of the Government are deemed to be confidential and their production cannot be insisted upon in the House of Commons. A Minister, however, can cite such opinions, if he thinks that the House should be informed. 53 But in the Indian Legislatures, if in answer to a question or during debate a Minister discloses the advice or opinion given to him by any officer of the Government or by any other person or authority, he is required ordinarily to lay the relevant document or parts of document containing that opinion or advice, or a summary thereof on the Table.

A private member is in a somewhat privileged position in that he can cite from documents, whether public or private, in his possession without producing them before the House and he cannot even be asked to disclose the

source of the information. In the Indian Parliament a member cited passages from a correspondence between two highly placed Government officials. On objection being taken, it was ruled that he could do so and that it was not open to the Government to ask how he had obtained them. 54

In Indian Legislatures, if a Minister quotes in the House a despatch or other State paper which has not been presented to the House he shall lay the relevant paper on the Table but this rule does not apply to any documents which are stated by the Minister to be of such a nature that their production would be inconsistent with public interest. It is also not necessary to lay the relevant papers on the Table if a Minister gives in his own words a summary or gist of such despatch or State paper; whether a document is a privileged one which need not be laid on the Table is for the Chair to decide. When a Minister contended that a report made to the President under Art. 338 of the Constitution was privileged it was ruled that the report must be laid on the Table. 55

A document or any other paper intended to be laid

54 Ruling of Deputy Speaker Ayyangar, 2 Mar. 1952
55 H.O.F.D. (1957) vol.x, c. 6248.
on the Table cannot be laid without its prior examination by the Chair.

A paper or document to be laid on the Table must be authenticated by the member laying the same. All papers and documents laid on the Table of the House are considered public.

If, in the course of his speech, a member wishes to lay a paper or document on the Table without previously supplying a copy thereof to the Chair, he may hand it over at the Table but it will not be deemed to have been laid on the Table unless the Chair, after examination, accords the necessary permission. If the Chair does not accord the necessary permission the paper or document shall be returned to the member and the fact indicated in the printed debate.

Citing Documents and Official Secrets

Disclosure by member in the course of debates or proceedings in Parliament cannot be made the subject of proceedings under the Official Secrets Act. A disclosure made by a member to a Minister or by one member to another directly relating to some act to be done or to some proceeding in the House, even though it did not take place in the House itself may be held to be part of the business of the House and consequently to

56 Directions by the Speaker, Lok Sabha, Second Edition - Dir. No.118.
be similarly protected. A casual conversation in the House, however, cannot be said to be a proceeding in Parliament and a member who discloses information in the course of such a conversation would not be protected by privilege.

The above principles were laid down by a Select Committee of the House of Commons, when a question of privilege was raised by Mr. Sandys when he was asked to disclose the source of his information about certain confidential matters of which it appeared, from the draft of a question to be put by him in Parliament, that he had knowledge.

**Bringing in Exhibits**

Members are not allowed to bring in material exhibits to illustrate their arguments. This rule seems, however, to be relaxed to a certain extent nowadays. In a recent ruling, the Speaker of the House of Commons observed:

'If it is really necessary for an honourable Member

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to produce an exhibit to illustrate his argument, I see no reason why I should prohibit it in advance. I hope, however, that honourable Members will respect the spirit of our usages which is that our Chamber should not be encumbered with matter from outside that is not relevant to the discussion. In Indian Legislatures members often bring material exhibits in order to support their arguments.

**Singing of Songs**

Singing of songs as a part of member's speech is not permissible. It appears however that in the House of the People a member did in fact sing a song.

**Reflections**

It has already been observed that utterances within the House of Legislature are absolutely privileged; but that does not mean that the members have a licence to say whatever they please in the House. The Legislatures are guided by their own rules of conduct and although no action can be taken outside the House, the House of a

59 H.C.D. 5th series, vol.498, c.2751
Legislature has always the power to enforce these rules which are meant to check the abuse of the privilege of the freedom of speech which the members have. Some of these rules observed in India are embodied in the Constitution, some in the Rules of Procedure and some in the practice and conventions followed which are similar to those followed in the British Parliament.

Reflections are unparliamentary conduct and in a serious case may be visited with punishment for contempt of the House and such punishment may range from admonition to expulsion from the House. 62

Reflection upon the Legislature or any of its Houses

Reflections, that is to say, derogatory references to or criticisms of the Legislature itself or any of its Houses are not permitted. 63 It is quite obvious that the Legislature which makes laws for the people should not be brought into contempt by any utterance of its own members; it is also necessary that the two Houses, where they exist, should not be brought into conflict by any derogatory references to any of them in the other.

Reflection upon Statutes

Reference to a statute in derogatory or abusive terms

62 See cases cited in Nay, p.124, et seq.
Reflection upon Members

Reflections upon the conduct of members or use of abusive or derogatory epithets in regard to them are not allowed. Imputation of improper motives, charges of uttering lies, abusive or insulting language in reference to members, e.g. villain, hooligan, Churchill's jackals, are such reflections. If the Speaker himself is guilty of making any reflection or other unparliamentary conduct, the House can take action against him. In 1770 such a case happened when a motion that 'the words spoken by Mr. Speaker, from the Chair, are disorderly, importing an improper reflection on a member of this House, and dangerous to the freedom of debate in this House' was moved. The motion was however negatived.

Reflections upon Judges, Presiding Officers etc.

The Indian Constitution provides that there can be

65 See cases cited in May, p.459.
66 ibid.
no discussion in any State legislature on the conduct of Judges of the Supreme Court or the High Courts in the discharge of their duties. In the Indian Parliament no such discussion can take place except on a motion for the removal of a Judge. Judges of International Tribunals, e.g. Nuremberg Trials, have been held to come within this rule.

No reflection is permitted against the President, the Governor, or any person whose conduct can be criticised only on a substantive motion. Under the foregoing rule no reflection is allowed to be made on the Presiding Officers of the Legislatures.

No reflection can be made against a Sovereign or Ruler or the Government of a friendly State.

The rules of the Indian Parliament and some Legislatures provide that a member cannot reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms. "Persons in high authority" has been explained to mean persons whose conduct can or should, in the opinion of the Chair, only be discussed on a substantive motion drawn in proper terms. It is not understood what kind

of persons are contemplated by the latter part of the definition as being persons in high authority.

**Matters Sub-Judice**

Debates or comments upon a matter which is *sub judice*, that is pending before a Court of Law, are not allowed in the House on the same principles on which comments on pending proceedings are treated as contempt of Court; the principle is that such comments may, or may tend to, prejudice the fair trial of the matter. As Lord Hardwicke put it, 'There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and to their character.' As far as parliamentary practice in regard to criticism of pending proceedings is concerned the following observations of Mr. Speaker Peel will be of interest:

'I am not aware that there has been any definite and distinct expression of opinion on the part of the House that pending trials should not be alluded to. Nor am I aware of any distinct and definite ruling from the Chair, though I am aware of frequent expressions of opinions

both from Ministers in this House and other Members with regard to the impropriety of alluding to pending trials in such a way as to prejudice a fair trial of the case. With these remarks I shall leave the subject in the hands of the House.' 71

Because no contempt proceedings can be drawn up if comments are made in the House in regard to any matter pending before a Court by reason of the privilege of freedom of expression, the House itself prohibits any such comments, for, it is of paramount importance that 'the stream of justice must be kept clear and pure.' It seems, therefore, clear that only those comments which may amount to a contempt of Court will not be allowed to be made in the House. A matter becomes sub judice as soon as a person is brought before a Court, whether actual trial is taking place or not. 72 A matter is sub judice when a writ petition is pending before the High Court. 73 But a matter decided by a Court but open to appeal is not sub judice unless an appeal has actually been filed. 74

72 51 C.W.N., 400
73 H.O.P.D. (1954) vol.iii, c.4094
It is of essence of the contempt of Court that the proceedings must be pending before a 'Court'. What is a Court is a difficult question which has come up for decision in very many cases but no positive test has been laid down for the determination whether a particular authority or tribunal is a Court or not. It has however been said that if any authority has to act judicially in the sense that it has to act with fairness and impartiality, it is not necessarily a Court. Several such negative propositions have also been laid down in Shell Co. v. Federal Comrns. It is said:

'A tribunal is not necessarily a Court in the strict sense because (1) it gives a final decision; (2) nor because it hears witnesses on oath; (3) nor because two or more contending parties appear before it between whom it has to decide; (4) nor because it gives decisions which affect the rights of subjects; (5) nor because there is an appeal to a Court; (6) nor because it is a body to which a matter is referred to by another body.'

In a Full Bench case of the Calcutta High Court (Khetsi Das v. Land Acquisition Collector) it has been

75 1842 Q.B. 431
76 1931 A.C. 275
77 50 C.W.N. 758
held that it is one of the fundamental characteristics of a Court that its proceedings shall be public and the parties shall be heard and that the authority in question must act in accordance with the established forms of judicial procedure. It was held in that case that the Land Acquisition Collector when acting under the Land Acquisition Act is not a Court although he is required to act judicially, that is to say, with fairness and impartiality.

As regards Government departments such as the Sales Tax Department, the Income-Tax Department or the Income-tax Commission, none of them will be considered to be Courts judged by the above-mentioned tests even though in making assessments they have to act with fairness and impartiality. They exercise administrative functions and not judicial functions. Labour Tribunals suffer from a further infirmity in that its awards have, of themselves, no binding force unless given effect to by the State Government - thus lacking one of the fundamental attributes of a Court of Law. 78

The purpose of the above discussion is to show that if a person criticises or comments on any proceedings

78 In West Bengal, the Board of Revenue has been given the status of a High Court for the purpose of taking proceedings for contempt against itself by an Act, 'Bengal Board of Revenue (Amendment) Act, 1953.'
pending before any of the authorities above mentioned he cannot be proceeded against for contempt of Court.

If criticism or comment by the public cannot be prevented in such cases, there is no reason why discussion of such matters within the House should be prohibited.

In these days various Government departments are being entrusted with quasi-judicial work under statutory rules and administrative law. They lack those safeguards against arbitrary action which attach to Courts of Law such as public hearing, laws of evidence, right of audience and representation by lawyers. This is all the more reason therefore that their action should be open to criticism or scrutiny at least in the Legislature.

**Criticism of Strangers**

That there is absolute freedom of speech in the House of a Legislature does not admit of any doubt; a member may say anything in the course of a debate, however offensive to the feeling or injurious to the reputation or character of particular individuals whether Government officials or members of the public, it may be, without being liable in law for libel or any other action. The debates of every Legislature including the House of Commons abound in instances
where attacks have been made on individuals. Indeed, the claim and the existence of the privilege of freedom of speech itself imply that such attacks can be made without fear of being liable to account. But the existence of the privilege which protects a member from being answerable outside the House, does not, as Anson says, 'involve any unrestrained license of speech within the walls of the House'; and May also has pointed out that cases in which members have been called to account and punished for offensive words spoken before the House are too numerous to mention. Some have been admonished, others imprisoned and some have been even expelled.

That there must be some restraint put upon attacks being made within the House follows as a corollary of the freedom of speech, not because the persons attacked are not before the House to contradict the same but because no action can be taken outside the House for any statement made within. A member ought not to take advantage of his position as a member to make unfounded attacks upon persons outside and it must be ensured that frivolous or scurrilous attacks are not made against persons under the cover of privilege.

But how such restraint is in practice to be put is

79 May, P. 53
the question. It seems clear that no hard and fast rule can be laid down. It seems also clear that attacks cannot be prevented by shutting out references to outsiders. In the case of Government officials, it has been the practice not to refer to the officials by name but by their official designation only. But this rule will not work in the case of members of the public. For, unless names are mentioned, no specific allegations can be made. It appears therefore that if a member chooses deliberately to attack any particular individual by name, he must be allowed to do so, whatever consequences may follow afterwards, Indeed, it is much better that a member should make himself responsible for any charges that he may make and face the consequences and not indulge in irresponsible insinuations or innuendoes against unnamed individuals. If he acts bona fide he will not be liable to any action, even though the allegations may be unfounded, but if he acts mala fide or indulges in scurrilous attacks, the House has always the power to punish him. If this principle is followed, there may be occasional injustice to individuals but as pointed out in 

Wason v. Walter the nation profits by public opinion being thus freely brought to bear on the discharge of public duties.  

81 4 Q.B. 94
Reference to Party Meetings

No reference can be made to what happens in a party meeting. 82

Member to be present to hear Reply

It is a rule of courtesy for a member making charges against the Government or any other member to be present to hear the reply. 83

Closure

When a motion is under discussion, any member, in order to put a stop to the debate, may move that the question be now put. Such a motion is known as a closure motion. It is in the discretion of the Presiding Officer to accept such a motion. 84 if he thinks that the motion has been sufficiently debated and the right of the minority to have a fair part in the discussion of the motion would not be infringed thereby, he may put the question that the question be now put to the vote of the House. There can be no discussion on a closure motion. If the question of closure is agreed

82 I.P.D. 30 March. 1950, p. 2322.
84 H.O.P.D. (1952) vol. iii, c. 3361; ibid. (1952) vol. v, c. 1268; ibid. (1952) vol. vi, c. 1886.
to by a majority, the motion which was being discussed when the closure motion was moved must be put without further discussion. The Presiding Officer has a discretion under the rules of Indian Legislatures to allow the mover of a motion to reply to the debate. In the British House of Commons, it is necessary for the passing of a closure motion that at least one hundred members must have voted for the closure (S.O. 30). The closure has the effect of curtailing the debate and putting a stop to obstructive tactics by the Opposition. A closure motion can not be put, although moved, in the midst of a speech. There can be no discussion when a closure motion has been accepted by the Chair.

It will be seen that this type of closure motion can be effective only when a substantive motion is under discussion before the House. If there are a number of amendments to a substantive motion, a closure will affect only the amendment which is before the House at the moment. In Legislatures, when a substantive motion and all the amendments thereto are allowed to be moved and a debate follows, closure motion will lead to confusion unless it is presumed that the amendment affecting the lattermost part of the motion is to be put. This is also one of the reasons why such a practice should not be

85 H.O.P.D.(1952) vol. vi, c. 1885.
allowed (see p. ). In the House of Commons there is a form of closure known as the Contingent Closure. When a closure motion has been carried and the motion immediately before the House has been put and decided, any member may claim that any further question be put which may be necessary to decide the issue before the House. If such a claim is made, the Speaker may put any further question forthwith without a closure motion being moved and carried. The rules of procedure of the Indian Legislatures do not seem to contemplate any such power. Of course, some of the rules, e.g., of the House of the People (Rule 362) provide that if a closure motion is carried, the Presiding Officer shall put the question or questions consequent thereon forthwith. This can be interpreted to mean that all the amendments and the main motion shall be put forthwith without further debate if a closure motion is accepted at any stage during the debate.

In the House of Commons, the application of the closure is not usually opposed when claimed at the end of a day's debate just before 10 P.M. After the Report and Committee stages of Bills, however, the use of the
Closure could arouse strong controversy. Finance Bills were usually subjected to a lengthy Committee Stage, during which the Closure was normally invoked a number of times. An interesting example of the use of the Closure arousing strong feelings in the House had occurred in February last, when a Ways and Means Resolution connected with an increase in charges under the National Health Service Act was fiercely opposed by the Opposition, and the Government claimed the Closure which the Chair granted. It was, in short, recognised as a necessary instrument, but was one which occasionally stirred up strong party feeling.

Selection of Amendments

There is another device for curtailing debate - selection of amendments. When there are a large number of amendments, the Speaker, the Chairman or the Deputy Chairman in the British House of Commons is given the authority to select new clauses and amendments and to call those new clauses and amendments only. Such a power has been given to the Presiding Officers of Indian Legislatures who can call upon any members to give such explanation of the object of the amendment as may enable them to form a judgment upon it.
Allocation of Time

There is yet another device for the purpose of curtailing debate and finishing business within a fixed time, known as the Allocation of Time Order. A fixed period of time is allocated for the consideration and passing of the different stages of a Bill, e.g., consideration motion, clauses, third reading and so on, and other Government Business. As soon as the time limit is reached, all questions necessary for the decision of the House are put forthwith without further debate. Such allocation of time is made by a motion carried in the House. In Indian Legislatures, such a motion is made on the recommendation of a Committee known as the Business Advisory Committee. Such a motion can be made sometimes with agreement between the parties in the British Parliament.

When a debate becomes unduly protracted, the Speakers in India can, of his own motion without any reference to the Business Advisory Committee and after taking a sense of the House, fix a time limit for the conclusion at any stage or all stages of a motion or Bill and put the question forthwith at the appointed hour.

Putting of Questions

When the debate on a motion is finished, the Presiding Officer puts the question to the vote of the House. The question is put in the form, 'The question before the House is that .......................' (then follows the text of the
... those who are in favour of the motion please say "Aye". At this moment those in favour of the motion cry 'Aye'; then the Presiding Officer says 'those who are against please say "No".' Then the dissentients cry 'No'. The Presiding Officer makes an estimate by the volume of the sound made as to who are in the majority and makes a preliminary announcement, 'I think the Ayes (or Noes, as the case may be) have it.' He pauses for a while and, if there is no challenge, he declares, 'The Ayes (or Noes as the case may be) have it.'

The estimate of the Presiding Officer can be challenged at the time of the preliminary announcement either by saying 'Division' or crying the contrary - if the Presiding Officer says the Ayes have it, this can be challenged by crying 'no' or vice versa. The proper time for challenging the opinion of the Presiding Officer is just after the preliminary announcement is made; if the Presiding Officer proceeds to give his final verdict without a challenge his verdict stands.

If the estimate of the Presiding Officer is challenged the voting is recorded by the process known as Division. There are two lobbies adjacent to and on the two sides of
the Chamber - one is known as the Ayes lobby, the other the Noes lobby. In some Legislatures, the lobbies are not fixed as Ayes or Noes lobbies. Each lobby can be made the Ayes or the Noes lobby as circumstances require. For example, if the voting is on a motion sponsored by the Opposition, the lobby adjacent to the left portion of the Chamber on which the Opposition usually sits is made the 'Ayes' lobby and vice versa for Government motions. On a division being called a bell is rung for a fixed period, usually three minutes, in order to enable all the members who have been outside to assemble in the Chamber. After the expiry of the period the doors of the Chamber are closed and no one is permitted to enter the Chamber. The Presiding Officer again puts the question in the same manner as before and if a division is again claimed on the preliminary announcement, he directs the House to divide and ask the members to proceed to the respective lobbies, 'Ayes' and 'Noes', as they desire to vote. As the members pass the doors and proceed to the lobby the tellers take down the names of the members (usually ticks down the names in a printed list). After all the members have passed the doors, the doors are again closed and after a little time
reopened. In the meantime, the tellers have calculated the number of votes recorded and the result is announced by the Presiding Officer - Ayes so many, Noes so many. Ayes or Noes, as the case may be, have it.

Infirm members are usually allowed to record their votes without leaving the Chamber. As stated above, no one is permitted to enter the Chamber after the doors are closed on the bell ceasing to ring. There have been occasions when members in their enthusiasm to record their votes have entered the Chamber forcibly after the doors have been closed. In such a case, the votes of the offending members have been cancelled.\(^{86}\)

If the Chair thinks that a division is unnecessarily claimed he can ask the members who are for Ayes and those for Noes respectively to rise in their places and on a count being taken, he may declare the determination of the House. In such a case names of voters are not recorded. It is open to the Chair to accept or not to accept the demand for division.\(^{87}\)

In certain Houses electrical voting apparatuses have been installed and members can vote on a Division

\(^{87}\) H.O.P.D. (1955) vol. v, c. 8390; ibid (1956), vol. v, c. 8760.
without leaving the Chamber by pushing buttons fixed on their desks and recording their votes by means of lights (red for Noes, green for Ayes and yellow for neutrals) shown on the board fixed on the wall of the Chamber. A member can speak for a motion and vote against it; but he must "vote according to voice" i.e. if after the question had been put he had said 'Aye', he must vote for the motion and vice-versa.

**Personal or Pecuniary Interest**

In the House of Commons it is a rule that no Member who has a direct pecuniary interest in a question shall be allowed to vote on it. In theory this might be reckoned to be a topic bristling with difficulties, particularly as the House is made up of Members who in most cases work for their living, who often direct companies engaged in contractual work for government departments, and who frequently invest in government securities. In fact, the House has laid down such clear rules, Members understand them too well, and public opinion is so quick to strike down an offender, that virtually no trouble arises in this potentially dangerous field. For example, it is a well-recognised convention that no Member who is made a Minister may continue to
hold any directorship or have any direct pecuniary interest in companies which seek contracts from the government, while back-bench private Members are expected to – and indeed do – reveal their interest before speaking in the House on any subject affecting their commercial activities. For example, if a Minister held shares in any industrial group his interest might be so general and remote as not to be a matter of moment either to him or to the House. And if a private Member holds shares in or directs a brewery, he may – provided it is a public company – first declare his interest and then proceed to speak and vote against a tax on beer. On 28th January a seemingly innocent question by a Labour Member asked the Prime Minister "what conditions govern the relationship of Ministers with firms likely to obtain official contracts." The Leader of the House, Mr. Butler, answering as acting Prime Minister during Mr. Macmillan's absence in Africa, said:

"The general principle is that Ministers must so order their affairs that no conflict arises, or appears to arise, between their private interests and their public duties."

At this point the seemingly innocent question was followed up by a loaded Supplementary aimed at the new and alert
Minister of Transport (Mr. Marples) asking whether he was in fact the senior partner of a firm of contractors which had obtained a government contract worth £250,000, and whether the Minister still held shares in the firm. At the end of Questions the Minister of Transport himself asked leave to make a personal statement to explain his position:

"Before I became a junior Minister, in November 1951, I was managing director of Marples, Ridgway and Partners, and I held a controlling interest in that company. As soon as I became a junior Minister I resigned my directorship and ceased to take any active part in the business.

"When I became Minister of Transport, last October, I realised that there was a risk of a conflict of interest appearing to arise in consequence of my holding a controlling interest in the company. I immediately took steps to effect a sale of my shares. It has taken some time to arrange this as the company is a private one engaged in long-term contracts in civil engineering, but I hope that it will be completed very soon. Then I shall have no financial interest in the company."

Disallowance of a vote on the ground of personal interest is restricted to cases of pecuniary interest only and has not been extended to other occasions when the dictates of self respect and of respect due to the House might demand that a member should refrain from taking part in a division.

88 May p.443.
In the Indian legislatures, if the vote of a member in a division is challenged on the ground of personal, pecuniary, or direct interest in the matter to be decided the Speaker may, if he considers necessary, call upon the member making the challenge to state precisely the grounds of his objection and the member whose vote has been challenged to state his case and shall decide whether the vote of the member should be disallowed or not.

The interest of the member whose vote is challenged must be direct, personal or pecuniary and separately belong to the person whose vote is questioned and not in common with the public in general or with any class or section thereof on a matter of state policy. But voting against reduction of Minister's salary or in connection with members' salary have been allowed.

The same principle applies to the case of voting in Committees.

In India objection can be to the inclusion of a member in a Committee on the ground of personal, pecuniary or direct interest of the member. The Speaker, if any such objection is taken, decides the matter and his decision is final.

89 Parl. Deb(1811) vol.20, c.1001
90 Parl Deb(1839) vol.334, c.732: H.G.D.(1911), vol.29, c. 79.
Errors in Division

If a member finds that he has voted by mistake in the wrong lobby, he is allowed to correct his mistake if he brings it to the notice of the Chair before the result of the voting is announced.\(^\text{92}\)

If there is any confusion or irregularity in the voting, the Chair has the right to put the question again and direct a division de novo.\(^\text{93}\)

Casting Vote

If the numbers in a division are equal, the Presiding Officer has to give the casting vote. In the performance of the duty, he can give his vote like any other member without assigning any reason. But, according to \(\text{R}^\text{94}\), 'in order to avoid the least imputation upon his impartiality, it is usual for him when practicable to vote in such a manner as not to make his decision final and to explain his reasons.'

The principle which guides a Presiding Officer in giving his casting vote was thus explained by Mr. Speaker Addington. On 12 May 1796, on the third reading of the Succession Duty on Real Estates Bill, there having been

\(^{92}\text{H.C.P.D.}(1955)\text{ vol. iii, c. 4153.}\)
\(^{94}\text{May, p. f435.}\)
a majority against 'now' reading the bill the third time, and also against reading it that day three months, there was an equality of votes on a third question, that the Bill be read the third time tomorrow, when the Speaker gave his casting vote with the Ayes, saying 'that upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself - for instance that a Bill do or do not pass - he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded.'

Similarly, on 24 February 1797, the voices being equal on the question for going into committee on the Quakers Bill, Mr. Speaker Addington gave his vote with the Ayes.

The course adopted by successive Speakers, in giving their casting vote, can be traced in the following examples.

On 10 May 1860, the numbers being equal upon an amendment proposed to a Bill, on report, Mr. Speaker
On 12 April 1938, the numbers being equal upon the question of leave to bring in a Bill to extend Palestinian nationality under S.O. No. 12 (at that time No. 10) Mr. Speaker FitzRoy stated that he thought he ought to vote for the introduction of the Bill so that the House could deal with it as the House thought fit.

On 16 September 1938, the President of the Central Legislative Assembly ruled that although in giving a casting vote the maintenance of the status quo ante is a good rule in ordinary cases, it is not an invariable rule. The question arose when in a motion for the omission of a clause in a Bill, the President cast his vote in favour of the motion. He said that in giving his vote he took into consideration not only the clause and the amendment proposed but also the existing law as embodied in the Criminal Procedure Code which was sought to be modified. In the Indian Legislatures, after Independence the Presiding Officers 'have exercised their casting votes to maintain the status quo ante.'

95 May, p. 436.
96 Debates of the Central Assembly, 16 Sept., 1938.
When a member finds it necessary to absent himself and it is anticipated that divisions might be called which would render his vote essential, it is customary to find another member on the other side who may also be under the necessity of being absent and to agree that they two do absent themselves so that the two votes may be neutralised. This is ordinarily arranged by Whips of the different parties.

Other Rules of Conduct

There are certain other rules of conduct which have to be observed by all members who are present in the House.

Members to keep to their Places

Members should keep to their respective places and should not unnecessarily move about. If they have occasion to leave their places or take their seats, it is customary to make obeisance to the Chair. A member desiring to speak or interrupt in a debate should do so from his usual place and not from any other place where he may be at the time. Members should not leave or enter the Chamber while the Presiding Officer is on his
feet. When leaving or entering the Chamber they should do so with decorum.

Members sometimes walk out of the House in protest against something said or done of which they feel aggrieved. Walking-out has become an almost parliamentary form of protest in India and unless accompanied by other unparliamentary conduct such as tumultuous behaviour, is not considered unparliamentary. It appears from a newspaper report that the Poujadist members of the French National Assembly walked out of the Assembly as a mark of protest. But a walk-out as a protest against a ruling of the Chair would seem to be unparliamentary. As pointed out by May, 'it is absolutely necessary that the Speaker should be invested with authority to repress disorder and to give effect promptly and decisively to the rules and orders of the House.' This is the reason why the Speaker's rulings cannot be criticised in debate and must be obeyed. Even if a ruling given by the Speaker is wrong, the ruling must be obeyed for the time being; for, unless this is done, no deliberation can proceed in a smooth manner. If a point of order is submitted for the decision of the Speaker, and a decision is given, it is the duty of the members to submit to the ruling even if it goes against the member raising

the point. No question of protest should arise.
And a walk-out in protest is surely an unbecoming way
of making a protest.

Crossing between the Presiding Officer and Member speaking

A member should not pass between the Presiding
Officer and a member who is speaking.

Reading of Books etc.

Reading of books, newspapers, etc. is not allowed
unless connected with the business of the House, e.g.,
preparing speeches.

Silence

Silence is observed in the sense that if a member
has to carry on a conversation with his neighbours he
should do so in a subdued voice so that there may not
be any noise or disturbance during a debate. 100

Interruptions

Members are not interrupt the business of the House
by hissing, booing or making other kinds of noise. 101 But
often there are disorderly scenes and uproars in the
Legislatures. Some kind of interruptions in mild form
such as crying of 'hear, hear', 'divide', 'order, order',
etc., are tolerated. 102 Although cries of 'shame, shame'
are considered unparliamentary, the rule against such cries is too often disregarded even in the British Parliament.

The above-mentioned rules of conduct are prescribed by express rules of Indian Legislatures which are reproduced below:

Whilst the House is sitting, a member -

(i) shall not read any book, newspaper or letter except in connection with the business of the House;

(ii) shall not interrupt any member while speaking by disorderly expression or noises or in any other disorderly manner;

(iii) shall bow to the Chair while entering or leaving the House, and also when taking or leaving his seat;

(iv) shall not pass between the Chair and any member who is speaking;

(v) shall not leave the House when the Speaker is addressing the House;

(vi) shall always address the Chair;

(vii) shall keep to his usual seat while addressing the House;
(viii) shall maintain silence when not speaking in the House;

(ix) shall not obstruct proceedings, hiss or interrupt and shall avoid making running commentaries when speeches are being made in the House;

(x) shall not applaud when a stranger enters any of the Galleries, or the Special Box;

(xi) shall not while speaking make any reference to the strangers in any of the Galleries.

When the Speaker is on his feet a member cannot remain standing. If he does so, he may be asked to leave the Chamber even though he may be Minister. A member should not stand with his back to the Chair.

Smoking

Smoking is not allowed either in the House or in the Committee. There is no objection, however, to the taking of snuff; as a matter of fact, snuff is provided in a box at the entrance of the House of Commons. There seems to be no objection to the chewing of pan (betel) if done unostentatiously and spitting is not indulged in.

The Speaker of the Jammu and Kashmir Legislative Assembly

103 H.O.P.D.(1952) vol.iii, c.4081; ibid.(1953) vol.ii c.1581; ibid.(1953) vol.iii, c.3445.
105 Guy Eden, The Parliament Book, p.107,
admonished a Deputy Minister for chewing pan and asked him to go out and come back after cleansing his mouth.

**Sticks, Umbrellas, Bags etc.**

Neither sticks nor umbrellas may be brought into the House except when any member requires the help of a stick on account of bodily infirmity. No attache cases or boxes are allowed. But nowadays wallets or portfolios may be brought in. In the British House of Commons the general rule is that no member is permitted to bring in any attache case - exception is however made in the case of Ministers who can bring their papers in despatch boxes. A question arose whether lady-members could bring handbags and Mr. Speaker Morrison ruled that ladies not being provided with pockets in their dress could bring handbags of sizes which were left to the good sense of such members.

**Powers of the Presiding Officer**

The Presiding Officer must have the authority to enforce the rules of debate and order in the House. For that purpose the rules of all Legislatures confer certain

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107 *Journal of the Society of Clerks*, vol. xx, p. 159; *Hansard*, vol. 498, 5th series, c. 2749-2752.
powers upon the Presiding Officer. If a member offends against any rule of conduct, the Presiding Officer calls him to order. But if he still persists in such conduct and disobeys the directions of the Presiding Officer, the Presiding Officer can ask him to withdraw from the House. In the Indian Legislatures, the Speaker may either ask a member to withdraw or name him for grossly disorderly behaviour. The consequence of the first course is that the member is suspended for the remainder of the sitting of that day; and of the second is that a question is forthwith put by the Speaker that the member be suspended for the remainder of the session.\(^{108}\) The House has the power to recall the order of suspension.\(^{109}\) In the British House of Commons the Speaker has the authority to direct the Sergeant-at-Arms to remove a contumacious member forcibly provided that the necessary preliminary steps have been taken under S.O. Nos. 21 or 22 to suspend the member. There is no such express power conferred by any rules of the Legislatures in India. In one instance, the Marshal (corresponding to the Sergeant-at-Arms) of the House of the People was asked by the Speaker to remove a member.\(^{110}\) The power

\(^{110}\) L.S.B. (1952) vol. iii. c. 4086.
has also been used subsequently. In the Uttar Pradesh Assembly, three members were forcibly removed by the Police by order of the Speaker. Thereafter two of them were suspended for the remainder of the session (which however meant only half an hour by which period the session was extended). In the Rajasthan Assembly also, a member was forcibly removed by the Sergeant-at-Arms.

If there is grave disorder in the House, the Speaker has authority to suspend the sitting of the House. Such a situation arose on 25 May 1944 when a member of the Bengal Legislative Assembly attempted to carry away the Mace in order to stop the business of the House which was strongly opposed by the Opposition — as Cromwell did on 20 April 1653 when he ordered the Mace of the House of Commons to be taken away. There were also two other similar incidents in West Bengal Legislature.

The House has however undoubted authority to deal in any way it likes with a contumacious member and would have the same power as the British House of Commons. The punishments that may be inflicted are

(a) reprimand and admonition (b) suspension and it seems also (c) expulsion. In the British House of Commons, the punishment of expulsion is nowadays, as stated by May, 115 'reserved for the punishment of persons convicted of grave misdemeanours, whose seats are not, as in the case of Members convicted of treason or felony, automatically vacated.'

In India, under the Representation of the People Act a person convicted of any offence and sentenced to any term exceeding two years becomes disqualified from retaining a seat in any Legislature. Therefore, the punishment by expulsion for any other cause would seem to be too drastic. In Mudgal’s Case, a motion was made for his expulsion but as the member resigned before the motion could be passed, the motion was amended in the form that he deserved to be expelled. 116

A question may arise as to what steps should be taken when members in a body instruct the business of the House. Should the Speaker remove all opposition members when they en bloc oppose a business and create disturbance in the House disregarding the appeal from the Chair? Should the Chair enforce the penal

115 May, p. 105.
provisions and remove all the members of the opposition or should he adjourn the House in such a case considering it to be a case of grave disorder?

The disciplinary power of the Speaker to punish disorders is exercised in the following cases:

(a) irrelevance and tedious repetition,
(b) minor breaches of order,
(c) use of disorderly or unparliamentary expressions,
(d) obstruction of business of the House otherwise than by disorderly conduct or persistence in irrelevance,
(e) grossly disorderly conduct, and
(f) grave disorder.

Instances of naming a member for grossly disorderly conduct, disregarding the authority of the Chair or abusing the rules of the House by persistently and wilfully obstructing the business of the House are not rare. There are also instances when several members have been jointly named for having jointly disregarded the authority of the Chair. But hardly there has been any occasion before a Legislature for naming all the
members in the opposition when opposing a business simultaneously and en bloc, disregarding the appeal from the Chair asking them to be orderly. The Chair, no doubt, has the authority to enforce penal provisions upon all the offending members. But the question is, should he do so? There is a rule in the Rules of Procedure of all the Legislatures in India empowering the Presiding Officer to adjourn the House or suspend any sitting for a time named by him, if he thinks it necessary to do so in the case of a grave disorder arising in the House. The meeting may be suspended for a time at the first instance and if the disorder continues even after the House is reassembled, the meeting may be adjourned till the next working day. The representative character of a House in a democratic set-up will be lost if all opposition members are asked to withdraw.117

A sitting of the House of Commons was suspended owing to grave disorder and Mr. Speaker observed:

'I have to inform the House that if it will not listen to me, I shall suspend the sitting [Hon. Members: Hear, Hear.] That appears to some honourable members to be a desirable course. I am certainly not going to have the

117 See also ....
Chair put in the position of not being heard in this House of Commons. The Sitting is suspended for half an hour."

Mr. Speaker thereupon suspended the sitting for half an hour and later he said:

"...... But I have to say to the House quite frankly that my sense of my responsibility is so great that if disorder of this kind persists - I am sure that it will not now - I shall have no option but to adjourn the House." 118

Expunging

In Indian Legislature Rules, authorise the Chair to expunge expressions which are in the opinion of the Chair defamatory, or indecent or unparliamentary or undignified. The portions so expunged are marked by asterisks and an explanatory footnote is inserted in the printed proceedings.

On 22 May 1956, during the Debate on the Life Insurance Corporation Bill, the Minister of Finance (Shri C.D. Deshmukh) made certain references to the Comptroller and Auditor General and those reference were not objected to by any Member in the House. Immediately after the session the Comptroller and Auditor General made a representation.
to the Speaker that those references were derogatory
to the dignity and office of the Comptroller and Auditor
General. The Speaker considered the matter and ordered
expunction of certain expressions as being derogatory
to the dignity and office of the Comptroller and Auditor
General. On 13 August 1956, a point of order was raised
whether any person could represent to the Speaker for
expunction of any portions of the Debates had actually
taken place. The Speaker ruled that any person,
especially if the remarks were made about a dignitary
mentioned in the Constitution, could bring such matters
to his notice. Such a representation should be made
immediately, and not long after the relevant Debates have
been held. In such cases, the Speaker exercises his
discretion on the merits of each case.119

In the House of Commons, it has not been possible
to find any instance in which (a) the Speaker has
directed the expunction of anything without an order
from the House or (b) anything has been ordered to be
expunged (either by the Speaker or the House) from the
Parliamentary Debates (Hansard) which contain the full

119 L.S.D. part ii, 22 May 1956, G.9223 and
19 Aug. 1956, C.3087.
reports of proceedings of the House.

The House has directed matters to be expunged from the journal but the words objected to appear in full in the debates. For instance:

(a) A resolution containing an imputation against Sir Robert Peel was moved and negatived. A motion for expunging the resolution from the journal was moved and carried. But the full text of the resolution and the debate thereon appear in Hansard. 120

(b) A member was expelled for using unparliamentary language (liar). A motion for expunging the entry in the journal was moved and carried. But everything including the unparliamentary expression appears in Hansard. 121

On the other hand, it has been ordered that unparliamentary expressions and reflections (even of the Speaker) be taken down so that they may form part of the proceedings. When a member utters any unparliamentary expression or reflection, a specific motion is made that the words be taken down and if the Speaker thinks that the expression or reflection is unparliamentary, he directs the clerk to take it down. The reason for taking

down words is that unless they form part of the record, no disciplinary action can be taken against the member because there would be no evidence as to what the member had said. It is probably for this reason that no part of the proceedings appears to have been expunged. 122

The House can always order the expunging of anything from the records. In that case also, a motion for expunging is a very unusual one and is seldom resorted to except under extraordinary circumstances. 123 May has cited only five instances during the period from 1769 to 1909 where it was ordered that entries from the journal be expunged. 124

It may be pointed out that the question of expunging can only arise if words or expressions sought to be expunged are out of order, i.e. fall within the following categories:

(a) if they are filthy, obscene and unprintable,
(b) if they are considered to be unparliamentary, and
(c) if they cast reflection upon anybody on whom reflection cannot be cast.

As regards filthy or obscene and unprintable words or expressions there can be no doubt that such words or

122 e.g. Parl. Deb. 1879, vol. 247, c. 1380; ibid. 1882, vol. 270, c. 310-4 (the expression 'infernal speech' was objected to and withdrawn. But it appears in the Report); ibid. 1877, vol. 235, c. 1806; ibid. 1882, vol. 272, c. 1561-72 (Reflection against the Chair).
124 May, p. 268.
expressions should be excluded altogether from the proceedings in the interest of public morality.

As regards expunging words or expressions which are considered unparliamentary or which cast any reflection, the following matters call for consideration for deciding whether the Presiding Officer should exercise such power:

1. If words or expressions are expunged, no disciplinary action can be taken against the member, for there will be no record as to what has been said by him.

2. There will be no record for future guidance as to what words are considered unparliamentary.

3. Whether the Presiding Officer should pass an order for expunging in the House or can do so privately without the knowledge of the House. In the latter case any action of the Speaker although justified may be open to unmerited criticism in the House that he has done something without the knowledge of the House.

It may be pointed out that in the House of Commons unparliamentary expressions and reflections have never been expunged from the proceedings of debates. What

have been expunged are entries in the journal. The debates appear in full, but action has been taken against members for using unparliamentary expressions or casting reflections. Members have been asked to withdraw the expressions and apologize. On their refusal they have been asked to withdraw from the House or have been suspended. The Indian Legislatures have got these powers and they may be used in suitable cases. The possibility of disciplinary action against members would be more effective in checking unparliamentary or scurrilous attacks than expunging the utterances of members. For a member may make any scurrilous attack knowing full well that his remarks may ultimately be expunged and no action taken against him but that his purpose would be served by simply making the attack.

The reason why words which are merely ruled as unparliamentary and not vulgar or indecent should not be expunged has already been staged. A statement which contains a charge against a person may amount to defamation if uttered outside. But such statements are privileged under the Constitution. The intention is quite clear; one cannot criticize a person or say anything/against him if one is constantly under the fear of
being hauled up for defamation. If defamatory statements are expunged, the scope of free criticism in the House would be diminished. If reckless statements are made, the House, as has already been stated, can take action. 'Undignified' is a vague term and the test of dignity varies with the time and the individual. A member's conduct may be undignified without being actually unparliamentary.

There is another question as to when, if at all, an order for expunction may be made. The publication of any expression which has been ordered to be expunged is considered a breach of privilege. The Press Commission raised the point that if an order of expunction is made after the report has already been sent to a newspaper office, there would be a breach of privilege unwittingly committed and the Commission recommended that in such cases no action should be taken against the newspaper concerned. It seems also proper that the Chair should not direct the expunction of any word or expression without the knowledge of the House.

Secret Session

During World War II, it had been the practice both in

India and England to hold Secret sessions of the Legislature when it was considered that the members should be taken into full confidence with regard to the prosecution of the war but that information which might be given in the debate should not be available to the enemy.

A motion is made in the form 'that the proceedings be held in secret session'. In the Indian Assembly, however, no motion was made. The Leader of the House made a suggestion that the proceedings of a particular day on which the war situation would be discussed might be held in secret session. The President ascertained the wish of the House and thereafter on the day fixed after the question hour, he directed the galleries except that of the members of the Council of State to be cleared. He also directed that the proceedings would not be taken down.

A note in the proceedings was made to the following effect:

'The remainder of the sitting was in secret session and the Assembly discussed the following motion moved by

127 Cent. L.A.D. 23 Feb. 1942 and 27 Feb. 1942.'
the Hon'ble Mr. M. S. Aney :—

"That the War situation be taken into consideration."

In the British House of Commons also a similar report of the proceedings in a secret session appeared. When a division took place, a division list showing the names of members and how they voted and the form of the question was published. 126

In Indian Legislatures Rules provide for holding a secret session and they are to the following effect:—

On a request made by the Leader of the House, the Speaker shall fix a day or part thereof for sitting of the House in secret.

When the House sits in secret no stranger shall be permitted to be present in the Chamber, Lobby or Galleries:

Provided that members of the Council may be present in their Gallery:

Provided further that persons authorised by the Speaker may be present in the Chamber, Lobby or Galleries.

The Speaker may cause a report of the proceedings of a secret sitting to be issued in such manner as he thinks fit, but no other person present shall keep a note or record of any proceedings or decisions of a secret sitting, whether in part or full, or issue any report of, or purport to describe, such proceedings.

The procedure in all other respects in connection with a secret sitting shall be in accordance with such directions as the Speaker may give.

When it is considered that the necessity for maintaining secrecy in regard to the proceedings of a secret sitting has ceased to exist and subject to the consent of the Speaker, a motion may be moved by the Leader of the House or any member authorised by him that the proceedings in the House during a secret sitting be no longer treated as secret.

On adoption by the House of the motion under sub-rule (1), the Secretary shall cause to be prepared a report of the proceedings of the secret sitting, and shall, as soon as practicable, publish it in such form and manner as the Speaker may direct.

Subject to the provisions of these Rules, disclosure of proceedings or decisions of a secret sitting by any person in any manner shall be treated as a gross breach of privilege of the House.

It is a breach of privilege to divulge matters discussed in a secret session to outsiders. Whether such a matter can be revealed to a member who was not present during the secret session was discussed in the

House and it appears that, although it can be done, it should not be done in such a way as to make the information available to others.\textsuperscript{130}

The members of one House can be present in the other while a session is being held in secret. But the principle of keeping matters secret equally applies to them.

\textsuperscript{130} H.C.D. 1941-2, vol.376, c.2246.