CHAPTER XVII

PARLIAMENTARY PRIVILEGE

Articles 105 and 194 of the Constitution of India deal with the powers, privileges and immunities of the Legislatures of the Union and the States and of their members and committees. The Articles themselves provide for certain privileges, namely, freedom of speech in the legislatures, immunity of members from any proceedings in any court in respect of anything said or any vote given by them in the legislature or any committee thereof and also immunity from liability in respect of publication by or under the authority of the legislature of any report, paper, votes or proceedings. The Articles further provide that the legislatures may by law define the powers, privileges and immunities in respect of matters other than those specifically mentioned in the articles, and that until so defined the privileges, etc., would be those of the British House of Commons and of its members and committees at the date of the commencement of the Constitution.

Privileges under the Government of India Act, 1935

The Government of India Act, 1935, provided (a) that there should be freedom of speech in the Legislature,
(b) that no member should be liable for anything said or any vote given by him in the Legislature or in any Committee thereof, and (c) that no person should be liable in respect of the publication, by or under the authority of the Legislature, of any report, paper, votes or proceedings. The Legislature was empowered to make laws defining the privileges of the members of the Legislature in other respects. This power, however, qualified by the provision that the Legislature could not confer upon itself or upon any committee or person, the status of a Court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing any rule or standing order or otherwise behaving in a disorderly manner. The Legislature was also empowered by the Government of India Act, 1935, to provide by legislation for the punishment of any person refusing to give evidence or to produce any document before any Committee of the Legislature. But the power to punish was to be exercised by the Court and not by the Legislature and the Governor had the right to make rules for safeguarding confidential matters from disclosure if Government officials were called as witnesses. It was also provided that until legislation regarding privileges was passed, the
privileges of the members would be such as were enjoyed by them immediately before the commencement of the Government of India Act, 1935. No Act appears to have been passed by any Legislature excepting Singh and Orissa either defining the privileges or for enforcing the attendance of witnesses. The Bill which was passed by the Orissa Assembly was returned by the Governor General twice and thereafter the Bill was not proceeded with. In 1956, an Act - the Parliamentary Proceedings (Protection of Publication) Act, 1956 - has been passed by the Indian Parliament affording protection to publication of proceedings in newspapers. In 1959 a private member sponsored a Bill entitled 'The Parliamentary Privilege Bill' in the Lok Sabha with a view to include Members' letters to Ministers or presiding officer of the House and replies thereto within the meaning of the term "Proceedings in Parliament", so that privilege could be claimed in respect of such correspondence. The decision of the British House of Commons in the Strauss' Case where the House disagreeing with the report of its Privilege Committee, decided, though by a slender majority, that such communications between a Member of Parliament and a Minister were not proceedings in Parliament, was

1 H.C. Deb. (1957-58) vol. 591, cc. 208-346
the immediate provocation of this Bill. The Bill was, however, rejected by the Lok Sabha.²

Privileges under the Government of India Act, 1919

As we have already seen, the Government of India Act, 1935, preserved all privileges that attached to the Legislature of its members or committees at the date of its commencement. It is therefore necessary to enquire what, if any, those privileges were. It appears that it was by the Government of India Act, 1919, that (a) freedom of speech in the House, and (b) immunity from liability for publication of any matter in the official proceedings were for the first time ensured by Statute. By an amendment in the Civil Procedure Code in 1925, members of Legislatures were exempted from arrest or detention under civil process during the continuance of any meeting of the Legislature or of any of its committees and for fourteen days before and after such meeting. By a similar amendment in the Criminal Procedure Code, members were exempted from serving as jurors or assessors.

It does not appear that before the Government of India Act, 1919, there was any statutory recognition of any privilege of Legislatures except that of the Bengal Council (Witnesses) Act, 1866. It does not also appear that the

² L.S.Deb. vol. XXV (2nd series), 20.2.59, cc.2241-2304.
question of privilege arose in any legal or other proceeding before the Act of 1919. The question whether the publication of any statement of speech made in the House in any manner other than in the official proceedings was privileged arose in the Central Legislature on at least two occasions and it was decided by the House that no privilege could be claimed in respect of such publication. The point whether the privilege of the freedom of speech given by the Government of India Act, 1919, applied to questions put by members and whether it was absolute or qualified by reason of the use of the words 'subject to the rules and standing orders' in the relevant section, arose in a case in Burma and it was argued, firstly, that a question was not a speech, freedom of which had been guaranteed and, secondly, that if any speech offended against, or was not in conformity with any rule or standing order, such a speech could not be privileged. A Full Bench of the Rangoon High Court repelled both these arguments and held that the privilege was an absolute one.

Frivileges after the Government of India Act, 1935

So that we find that at the date of the commencement of the Government of India Act, 1935, the privileges

enjoyed by a legislature and its members and committees and recognised by Statutes were the following:

(a) Freedom of speech in the House;
(b) immunity from liability for any publication in the official proceedings;
(c) exemption from arrest and detention under civil process during the continuance of any meeting of the House or of any Committee and for fourteen days before and after any such meeting;
(d) exemption from serving as jurors.

Certain other privileges have been claimed by the Legislatures as matters of convention. For instance, it was considered a breach of privilege:

(a) to publish or to give for publication, any question, resolution or motion before they are admitted by the Chair;

(b) to publish reports of Select Committees or minutes of dissent before they are presented to the House;

(c) to publish inaccurate reports of proceedings of the House;

(d) to molest a member outside the House for his conduct in the House;

5 I.L.A.D., p.2655, 27 Mar. 1933;
8 Ibid. vol. LIII, no. 6, p.39.
(e) to cast reflection on the House or the Chair.  

It appears however that there was no power in the Legislature to punish any breach of privilege, whether committed by a member or a stranger except expressing displeasure by a resolution; in the case of strangers, e.g., newspapers, they might be excluded from attending the House for the purpose of reporting the proceedings. It does not appear that the House had any power to suspend any member who committed a breach of privilege. Under the rules of some Legislatures, a member could be asked by the Speaker to withdraw only when his conduct was grossly disorderly and if a member was asked to withdraw a second time, he could be suspended for the remainder of the session.

Arrest or Detention of Member

Another matter which had been exercising the minds of legislators was whether the arrest and detention of a member without trial was a matter of privilege and what steps, if any, might be taken to secure the attendance of members detained during the session of the Legislature. It was ruled by Mr. Speaker Azizul Haque that when a

10 ibid.
member was arrested or detained, the fact of the arrest or detention should be immediately communicated to the Speaker. 11

In the British House of Commons, the fact of the arrest or conviction of a member has to be communicated to the House. This is ensured by several statutes and even in cases which are not covered by any statute, this practice is followed. The detention of a member without trial came to be considered in several cases before the House of Commons and it was decided that no privilege could be claimed against such detention. 12

Constitution of India, 1950

This was the state of things when the Constitution of India came into force and whatever might have been their privileges before, the Legislatures now enjoy all the powers, privileges and immunities of the British House of Commons as they existed at the date of the commencement of the Constitution. Clause (3) of Article 105 and also of Article 194 are couched in very wide terms and would appear to attract not only the privileges and immunities but also the powers, including, for instance, the power to enforce attendance of persons or

to punish for contempt of the House of Commons. It was held in *Keilly v. Carson*\(^\text{13}\) that the power to commit for contempt which the House of Commons had, was not inherent in the House as a body exercising legislative functions but was derived from the power it had as the High Court or Parliament and that this power was not necessarily enjoyed by any other body exercising legislative functions as inherent in itself. Where, however, all the powers, privileges and immunities of the House of Commons are vested by a specific enactment, as for instance, by the Constitution of India, or by Acts of the British Parliament, as in the cases of some Dominion Constitutions, the case would be different. It would be interesting to note in this connection that the Government of India Act, 1935, while conferring on the Indian Legislatures the powers to legislate regarding privileges, specifically excluded the power to assume to themselves any penal jurisdiction. Whether the intention of the framers of the Constitution was to confer such wide powers on the Legislatures we do not know; but under the languages of the Articles, it would seem that the Legislatures have

\(^\text{13}\) 4 Moore P.C., 63.
been vested with very wide and drastic powers.

It will not be out of place here to refer to the decision of the High Court of Australia in the Queen v. Rechards; Ex-Parte-Fitzpatrick and Browne better known as Bankstown Observer Case. The House of Representatives of Australia held the proprietor and the editor of the weekly newspaper 'Bankstown Observer' guilty of breach of privilege for publishing an article intended to influence and intimidate a member of the House and committed them to the custody of the Chief Commissioner of Police, Canberra. The offenders' application for writ of Habeas Corpus came up before the High Court of Australia. In his judgment, dismissing the application for writ, the Chief Justice referred to section 49 of the Commonwealth of Australia Constitution Act:

"The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each of the House shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and Committees, at the establishment of the Commonwealth."

He also pointed out that Parliament had not declared

by law their powers, privileges and immunities.

As regards the question whether the law as obtaining in the United Kingdom applied under Section 49 of the Constitution to the House of Representatives, the Chief Justice stated as follows:

"If you take the language of the latter part of Section 49 and read it apart from any other considerations, it is difficult in the extreme to see how any other answer could be given to the question than that that law is applicable in Australia to the House of Representatives...... The language is such as to be apt to transfer to the House the full powers, privileges and immunities of the House of Commons."

It was also argued that the Australian Constitution was based upon separation of powers and the judicial power reposed exclusively in the judicature. It restricted the legislature to the legislative power. It was urged that the House of Representatives in issuing a warrant for the arrest of two persons exercised judicial power which it did not possess.

In reply to the above argument his Lordship observed as follows:

"The consideration we have already mentioned is of
necessity an answer to this contention, namely, that in unequivocal terms the powers of the House of Commons have been bestowed upon the House of Representatives. It should be added to that very simple statement that throughout the course of English History there has been tendency to regard those powers as not strictly judicial but as belonging to the *legislature*, rather as something essential or, at any rate, proper for its protection."

The offenders petitioned the Judicial Committee of the Privy Council for special leave to appeal against the decision of the High Court. The Privy Council was of the view that the judgment of the Chief Justice of Australia was unimpeachable and leave to appeal was refused.

The language of the Articles 105(3) and 194(3) word by word follows the language used in section 49 of the Commonwealth of Australia Constitution Act. It would therefore be correct to presume that the intention of the constitution makers of India was to vest very wide powers in the legislatures, so that they could, like the Australian Parliament, take penal action against offenders for breach of privilege or contempt of the legislature.
Be that as it may, we shall now consider what actually are the privileges, etc., of the House of Commons. They are of ancient origin and there are historical reasons for their emergence and growth. It is not necessary for our purpose to probe into past history, but it may perhaps be profitable to enquire what is the fundamental basis on which these privileges are founded. Redlich has defined the privileges of the House of Commons as "the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary Courts of Law and the special rights of the House of Lords."\(^1\) This is not exactly a definition but explains the nature of the privilege by reference to their historical origin. The fundamental fact, however, which emerges on a consideration of the origin and nature of the privileges is that these rights do not attach by reason of any exalted position of the House or its members but are rights which are absolutely necessary for the proper and effective discharge of the functions of a legislative body. As has been said by Erskine May:—

\(^1\) Redlich, vol. 1, p. 46.
character. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and vindication of its own authority and dignity. 16

Even as long ago as in 1675, the reason for the existence of privileges was given by the House of itself as 'that the members of the House of Commons may freely attend the public affairs in that House without disturbance or interruption.' 17 Certain special rights are therefore enjoyed by the House of Commons and its members which are not enjoyed by other individuals or bodies and these rights are in their nature in derogation of the ordinary law of the land.

Another important fact in regard to privileges is that no new privilege can be created by either of the Houses of Parliament. It was agreed as long ago as in 1704 'that neither House of Parliament hath any power by any vote, or declaration, to create to themselves any new privilege, that is not warranted by the known laws and customs of Parliament'. 18 This declaration was necessitated by the fact that each House of Parliament claimed to have exclusive right to declare what its privileges were. But this restriction is applicable only to declarations of privileges by resolutions which must be distinguished from the legislative authority which

16 May, p. 42-43.
the Parliament as a whole undoubtedly has to declare or amend the law relating to privileges. In fact, such legislation has been made in the Parliament and the Parliamentary Papers Act, 1870, may be cited as an example whereby protection was given to the official publication of parliamentary proceedings.

As a necessary corollary of the existence of certain special rights and immunities, the House of Commons claims the exclusive right to punish any person for interfering with the privileges or for the vindication of its own authority and dignity. The right is analogous to the right of the superior Courts to punish for contempt of court, and, in fact, was justified in early days by a reference to the mediaeval conception of the Parliament as the highest Court in the land. The right to declare the lawfulness of its own proceedings, it was said, flowed from the power to punish for contempt. It is natural that this claim of exclusive jurisdiction by the Parliament should form the subject-matter of controversy between the Parliament and the Courts of law. There have been several leading cases which, although the conflict seems to remain unresolved, appear to have laid down certain general principles. These principles have been summarised

19 Burdett v Abbot, 14 East I; Stockdale v. Hansard, 3 St. Tr. (n.s.) 925; Bradlaugh v. Gosset (1884); 12 Q.B.D., Rex v. Graham Campbell (1935) 1 K.B. 594.
by May as follows:—

'(1) It seems to be recognised that, for the purpose of adjudicating on questions of privilege, neither House is by itself entitled to claim the supremacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the King and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.

(2) It is admitted by both Houses that neither House can by its own declaration create a new privilege. This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the Courts. ....

(3) That the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.

(4) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal’. 20

It is also agreed that the law of Parliament is

20 May, p. 173.
part of the law of the land, and that the judges are bound to take judicial notice of privilege.

Penal Jurisdiction of Legislative Bodies

As has already been stated, the penal jurisdiction of the House of Commons was not inherent in it as a legislative body but was derived from the jurisdiction it had as the High Court of Parliament. In the Legislatures of the British Dominions and Colonies, some Legislatures have taken power for themselves to punish for contempt by express enactment. 21 But the trend of modern opinion seems to be that the power to punish should be left to the Courts of Law rather than be assumed by the Legislature itself on the ground that the prosecutors should not also be the judges. In a case in America, 22 which arise out of contempt proceedings and commitment by the House of Representatives, the Supreme Court held that the House had no power by its own action, as distinct from such action as might be taken under the criminal laws, to arrest or punish a person for writing and publishing a letter which was held by the House to be defamatory, insulting and as tending to bring that body into public

21 Western Australia, 5 4 Vict. no. 4 of 1891; Tasmania Parliamentary Privileges Act, 1853; Victoria Act, 1705, 20 Vict., no. 1; Quebec Act, 53 Vict. C. 3; Queensland Constitution Act, 1867; South Africa, Powers and Privileges of Parliament Act, 1911; British Columbia, 35 Vict. C. 4, 36 Vict. C. 4, 36 Vict. C. 3, C. 42; Ontario, 1876, C. 9, Manitoba C. 12, 1876, Nova Scotia C. 22, 1876, Ontario, C. 6, New Brunswick and Prince Edward Island; Alberta, 1904, C. 2; Saskatchewan, 1908, C. 4, South Rhodesia, no. 4 of 1924.

contempt and ridicule. Chief Justice White observed:

'No express power to punish for contempt was granted to the House of Representatives save the power to deal with contempts committed by its own members. The possession by Congress of the commingled legislative and judicial authority to punish for contempts which was exerted by the House of Commons is at variance with the view and tendency existing in this country when the Constitution was adopted, as evidenced by the manner in which the subject was treated in State Constitutions, beginning at or about that time and continuing thereafter. Such commingling of powers would be destructive of the basic constitutional distinction between legislative, executive and judicial power and repugnant to limitations which the Constitution fixes expressly; hence there is no warrant whatever for implying such a dual power in aid of other powers expressly granted to Congress. The House was implied power to deal directly with contempt so far as is necessary to preserve and exercise the legislative authority expressly granted. Being however a power of self-preservation, a means and not an end, the power does not extend to infliction of punishment, as such; it is a power to prevent acts which in and of themselves
inherently prevent or obstruct the discharge of legislative
duty and to compel the doing of those things which are
essential to the performance of the legislative functions."

It would be interesting to note that the Government of India Act, 1935, as already stated, expressly laid down that the legislature could not confer upon itself or upon any committee or person, the status of a court of any punitive or disciplinary powers other than the power to remove or exclude persons infringing any rule or standing order or otherwise behaving in a disorderly manner.

Privilege of the House of Commons

Having discussed the general principles governing the privileges of the House of Commons, we shall now consider the privileges in detail. At the outset it would be useful to draw a distinction between privileges proper, and the right to punish any person or body who interferes with such privileges or offends the authority and dignity of the House. The latter is more or less in the nature of the jurisdiction of the Courts of law in contempt proceedings.
Freedom of Speech

Freedom of speech was guaranteed to the House of Commons by the Bill of Rights (section 9) in the following words:

"That the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament".

This privilege protects not only members but also strangers in certain circumstances. We shall take up the question of members first.

Freedom of Speech of Members

It will be noticed that not only 'speeches' and 'debates' but also 'proceedings in Parliament' are mentioned in the Bill of Rights. The Select Committee of the British House of Commons on Official Secrets Acts (1939) in their Report at para. 3 observed:

"While the term 'proceedings in Parliament' has never been construed by the courts, it covers both the asking of a question and the giving written notice of such question, and includes everything said or done by a Member in exercise of his functions as a Member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business."

23 H.C. Paper 101 (1939)
In a recent case (Strauss' Case) the question arose whether a letter from a Member to a Minister about the administration of a nationalised industry, could be treated as or included within the scope of 'Proceedings in Parliament'. As questions relating to day to day administration of nationalised industries could not be asked in the House a practice had grown whereby Members of Parliament addressed letters to the Minister if they wanted to elicit information about the working of any nationalised industry. One such letter was written on 8th February, 1957, by Mr. O. R. Strauss to the Paymaster General about the day-to-day maladministration of the London Electricity Board and for this he was threatened by the Chairman and Solicitors of the Board with legal action. He thereupon raised a question of privilege, the essence of which was whether the letter by him to the Minister was covered by the term 'proceedings in Parliament'. As the question and speeches in the House were considered to be within the scope of this term, it was contended that a letter from the Member of Parliament to the Minister should also stand on the same footing. The Privileges Committee came to the conclusion that the letter was well covered by the term 'proceedings in Parliament'. But after a good deal of debate the House

disagreed with the conclusion of the Privilege Committee and on the 8th July, 1958, resolved that Mr. Strauss' letter was not a 'proceeding in Parliament'. 25

Although this privilege is confined to what is done or said within the House, it has been suggested that it might extend to cases where acts are not done in the immediate presence of the House but are so related to proceedings pending in the House that they might be held to be constructively done in the House. For instance, if a member communicates to a Minister or another member the draft of a question which he intends to put, he may claim privilege for any statement made in it. On the other hand, not all things which are done within the House are protected. A casual conversation between two members on any subject not connected with any matter pending in the House would not be privileged. Relevant clauses of Article 105 and Article 194 of the Constitution lay down that 'there shall be freedom of speech in the Legislature' and amplify the statement by saying that no member 'shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature.'

It will be noticed that the term 'proceedings in Parliament' which is in the Bill of Rights and on which

stress is laid for the extended interpretation of the privilege by the Select Committee of the House of Commons is absent in this Article. It was held in the case of Khin Maung v. Au Eu Wa that the expression 'by reason of his speech' occurring in section 72D of the Government of India Act, 1919, protected questions by members; it would be interesting to note that in the Government of India Act, 1935, the expression 'by reason of his speech' was changed to 'by reason of anything said' thus covering a wider field and the latter expression has found a place in the Constitution.

Having regard to the fundamental purpose for which freedom of speech is guaranteed, the correct position seems to have been laid down in the case of R. v. Bunting that a member is not liable in ordinary court for anything he may say or do within the scope of his duties in the course of parliamentary business for in such matters he is privileged and protected by lex et consuetudo parlamentari. Reference may be made to two other American decisions, Kilbourn v Thomson and Coffin v Coffin which also appear to lay down that a member would be protected for anything done in the execution of his duties as a member whether done in the House or out of it.

27 1834-5, 7 Ontario, 563.
28 103 U.S. 168.
29 4 Mass. 1.
The privilege of freedom of speech is absolute so far as outsiders are concerned, but the House of Commons has the right to enforce its own discipline upon members, and rules of debate adopted by the House provide for the proper exercise of the right of free speech and against the unrestricted licence in the use of unparliamentary language or unparliamentary conduct. This right of the House is derived from the Bill of Rights which lays down that freedom of speech ought not to be questioned in any court of place 'outside Parliament'. Although under the Constitution the freedom of speech is absolute, the same restriction seems to have been contemplated by the words 'subject to the rules and standing orders regulating the procedure of the Legislature'. As has already been stated, it was held in the case Khin Haung v Au Eu Wa that the privilege of members was absolute and the words 'subject to rules and standing orders' conferred a right upon the House to control its debates and did not mean that if any speech offended against any rule or standing order, the privilege could not be claimed.

Members and Official Secrets Act

A question arose in the House of Commons as to how
far a member disclosing official secrets in the House was protected by the privilege of Parliament and the matter arose in this way. Mr. Duncan Sandys put down for answer by the Home Secretary a question which showed that Mr. Sandys was in possession of certain official secrets. Mr. Sandys was summoned to appear before a court of enquiry so that he might be interrogated as to the source of his information of the secrets. He raised the matter in the House of Commons as a matter of privilege and the matter was referred to a Select Committee. The Select Committee gave it as their opinion that 'disclosures by members in the course of debate or proceedings in Parliament cannot be made the subject of proceedings under the Official Secrets Acts.' As regards whether a member can be interrogated for divulging the source of his information, the Select Committee thought that it was a question of some difficulty. The Select Committee however observed that as no evidence could be given in relation to any debates or proceedings in Parliament except by the leave of the House, it might well be that the prosecution would be unable to show that the member had information relevant to the investigation of an offence or suspected offence unless they could give evidence of his statement in Parliament.

As regards the solicitation of the disclosure or reception of information hit by the Official Secrets Act, the Select Committee says:-

'Your Committee are of opinion that the soliciting or receipt of information is not a proceeding in Parliament, and that neither the privilege of freedom of speech nor any of the cognate privileges would afford a defence to a member of parliament charged with soliciting, inciting or endeavouring to persuade a person holding office under the Crown to disclose information which such person was not authorised to disclose, or with receiving information knowing, or having reasonable grounds to believe, that the information was communicated to him in contravention of the Official Secrets Act.'

The Select Committee further observes:—

Although the legal position with regard to the solicitation of the disclosure by, or the receipt of information from, a person holding office under the Crown is as stated in paragraphs 16 and 17, official information, as the debates of the House show, is frequently obtained by members of Parliament from persons who are not authorised to disclose it. Members' sense of responsibility and discretion have, Your Committee believe, prevented them
making use of any information thus obtained in a manner detrimental to the interests of safety of the State. Indeed, the information, though technically confidential, often does not relate to matters affecting the safety of the State. But as the Official Secrets Acts do not distinguish between the solicitation or receipt of information the disclosure of which would be prejudicial to the interests or safety of the State and the solicitation or receipt of information the disclosure of which is merely unauthorised, the Acts, if strictly enforced, would make it difficult for members to obtain the information without which they cannot effectively discharge their duty. Any action which, without actually infringing any privilege enjoyed by members of the House in their capacity as members, yet obstructs or impedes them in the discharge of their duties, or tends to produce such results, even though the act be lawful, may be held to be a contempt of the House.

Publication of Speech

So far we have been dealing with the actual utterances of members. Now we shall come to the question of publication of speeches or utterances. As a consequence of the claim of privileges of freedom of speech, the House of Commons has the right to exclude strangers from the House, to
prohibit the publication of its proceedings or of reports of, or evidence given before, Select Committees before they are presented to the House. The right to prohibit publication of its proceedings is not enforced in practice unless the report published is inaccurate. The privilege asserted in fact is that no inaccurate report of parliamentary proceedings should be published but when there is a breach of the privilege, the form in which such breach is taken notice of, is, for historical reasons, that the publication infringes the privilege that no publication should take place at all. So far as publication of reports of, or evidence given before, Select Committee is concerned, that right also is not in practice exercised when the public are admitted before such Committees.

In India a question of privilege was raised in the House by Shri Frank Anthony, a Member of the Lok Sabha regarding misrepresentation of his speech delivered in the Lok Sabha on the 25th August, 1956, in a news item appearing on the front page of the daily newspaper 'Hindustan Times'. In view of the regret expressed by the Joint Editor of the newspaper, the House did not

take any action. In another case in the Rajya Sabha, Shri Shupesh Gupta, M.P., raised a question of privilege for "wilfully unfair and mendacious reporting" of the proceedings of the House in the weekly journal "Thought". The matter was referred to the Privileges Committee which recommended that in view of the explanations offered and the regrets expressed by the Editor of "Thought" no further time should be occupied by the House in consideration of the matter. The recommendations of the Committee were accepted by the House.33

Official publication of debates, etc., is protected under the Parliamentary Papers Act, 1840, passed after the decision in the case of Stockdale v Hansard34 which had held that there was no protection for the publication of any speech outside the House. Publication of extracts from official report, if made bona fide and without malice, is also protected under this Act. The publication of a fair and faithful report of debates otherwise than in official papers has been held to be a qualified privilege of the analogy of the publication of proceedings in courts of law and is not actionable. But the publication of a single speech apart from the rest of the debate would not be privileged.35

34 3 St. Tr. (n.s.), 861.
35 Wason v. Walter, 4 Q.B. 94.
Articles 105 and 194 of the Constitution give protection to the publication of all reports, papers, votes or proceedings under the authority of the House, that is to say, to official publications only.

Before the passing of Parliamentary Proceedings (Protection of Publication) Act, 1956 newspapers did not enjoy any privilege and it was held by the Calcutta High Court in Suresh Chandra Banerji v. Punit Goala that the case of Mason v. Walter was not applicable in India. But the position has changed after the passing of the abovementioned Act. Section 3(1) of this Act which provides that "no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament, unless the publication is proved to have been made with malice", protects substantially true report of the proceedings of the Parliament. Section 4 of the Act extends this privilege to broadcasts from broadcasting stations situated within the territories to which the Act applies. It is interesting to note that this Act protects publication of proceedings of the Indian Parliament.

36 A.I.R. (38) (1951) Cal. 176
37 1869, 4 Q.B. 73
and excludes publication of the proceedings of the State legislatures from its scope. Recently the State legislature of Orissa has however passed a law on the same lines as the Central Act to give protection to publication of substantially true report of the proceedings of the Orissa legislature.

**Budget Disclosure**

Budget proposals are treated as secret until they are placed before the House. But any premature disclosure of such proposals is not deemed to be a breach of privilege of the House although the House has the power to take action otherwise in any manner it chooses. In England, two such disclosures took place in recent times - one in 1936 and the other in 1948. In the first case, a tribunal was appointed under the Tribunal of Enquiry (Evidence) Act, 1921, to enquire into the disclosure alleged to have been made by Mr. J.H. Thomas. In the second case, a Select Committee of the House was appointed to enquire into the circumstances leading to the disclosure of the budget by Mr. Hugh Dalton. In India, a budget disclosure took place in 1860, and Sir Charles Trevelyan, Governor of Madras,

40 The Civil Service in Britain by C.A. Campbell, p. 27.
was held responsible for the disclosure although it appears he was subsequently absolved. Another disclosure took place in 1956 and Mr. Speaker Ayyangar of the House of the people clarified the position by his ruling which was as follows:

'The powers, privileges and immunities of the House are such as were enjoyed by the House of Commons in the United Kingdom at the commencement of our Constitution....

So far as I can gather only two cases occurred in which the House of Commons took notice of leakage of the budget proposals. They are known as the Thomas case and the Dalton case. In neither of these cases was the leakage treated as a breach of privileges of the House nor were the cases sent to the Committee of Privileges for inquiry. The prevailing view in the House of Commons is that until the financial proposals are placed before the House of Commons they are an official secret. A reference of the present leakage to the Committee of Privileges does not therefore arise.

Though the leakage of Budget proposals may not constitute a breach of privilege of the House, the Parliament has ample power to inquire into the conduct of a Minister in suitable proceedings in relation to the leakage and the circumstances in which the leakage
occurred. In the two English cases aforesaid, matters were brought to the notice of the House of Commons by a resolution or a motion for appointment of Special Committees or tribunal to inquire into the matter and report the facts thereon to the House.

In the Dalton case, Mr. Dalton, who was the Chancellor of the Exchequer, admitted that he did not think of the consequences at the time of the disclosure and in the Thomas case, it was alleged that he disclosed the budget secrets, which he got to know as a Cabinet Minister. It is neither alleged nor even suggested in the case before us that the Finance Minister was himself responsible for an unauthorised disclosure of the financial proposals.¹⁴¹

On another occasion in 1959, Mr. Speaker Ayyangar after quoting his ruling of 1956, observed:-

"So far as the other matters are concerned — the appointment of a Committee, etc. — there is no proper resolution here as was the case in the House of Commons. It is unnecessary for me to proceed further. Not a word has been alleged that there is any fault on the part of the Hon. Minister. Various persons get into speculation. Possibly this may be or may not be a case of speculation. It is not necessary for me to pronounce one way or the other. So far as the breach of privilege motion is

concerned, I withhold my consent to raising the matter as there is no breach of privilege." 42

Extension of Privilege to Strangers

The qualified privilege of publishers of debates, etc., has already been mentioned. Witnesses who appear before the House or any of its Committees to give evidence, persons who present petitions to the House, Counsel who appear to argue on behalf of clients, are not liable for any statement made in the evidence, petitions or arguments. This has been made further clear by the (Eng.) Witness (Public Inquiries) Protection Act, 1892, of Great Britain. Although clause (2) of Article 105 and also of Article 194 of the Constitution affords protection to members only, the privilege of witnesses, etc., may be said to be involved in the general provision in clause (1) that there shall be freedom of speech in the Legislature.

Criminal Acts

It has to be remembered that the protection given is in respect of words only and the utterance of words or publication of such utterances, however, criminal or actionable they may be in common law, is privileged.

No privilege can, however, be claimed in respect of criminal acts within the House. As Mr. Justice Stephen put it in *Bradlaugh v. Gosset* 43, 'he knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice.' But a distinction has to be made for cases when the criminal act complained of is in the discharge of parliamentary duties. In the case of *Bradlaugh v. Erskine* 44, the Deputy Sergeant-at-Arms who was charged with committing an assault when he tried to exclude Bradlaugh from the House was held to be justified on the ground that he was taking part in the proceedings of the House.

**Freedom from Arrest and Molestation**

The privilege of freedom from arrest involves two different things: (a) freedom from arrest under process of law and (b) freedom from illegal detention or molestation. The second one is not actually a privilege but is calculated to prevent a breach of privilege and to punish an infringement thereof. This aspect will be considered in connection with the principles which govern the cases of contempt of the House.

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43 12 Q.B.D. 284
44 ibid. 276.
The reason for allowing the privilege has been stated by Hatsell as follows:

'The members, who compose it (i.e., the Parliament), should not be prevented by trifling interruptions from their attendance on this important duty but should for a certain time, be excused from obeying any other call, not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties, and not considered as liable to some legal processes, to which other citizens, not intrusted with this most valuable franchise, are by law obliged to pay obedience.'

Arrest under Process of Law

Freedom from arrest under process of law extends only to arrest under civil process. A member of the House of Commons is exempt from arrest under civil process during the continuance of a session and for forty days before the commencement of a session and for forty days after prorogation or dissolution. When

a member is under detention at the time the privilege accrues, it appears he has to be released.

In India, under section 135A of the Civil Procedure Code, 1908, a member of a Legislature is not liable to arrest or detention in prison under civil process during the continuance of any meeting of the Legislature or of any committee thereof and during fourteen days before and after such meeting. Under that section, if a meeting is called when a member is under detention he is to be released but he is liable to be re-arrested and detained after the period of privilege is over.

Keeping in view the provisions of articles 105 and 194 of the Constitution of India which place the privileges of Members of Parliament/State Legislatures on the same footings as in the British House of Commons where Members are exempt from arrest under civil process for forty days before the commencement and for forty days after prorogation or dissolution, it can be argued that the period of 14 days provided in section 135A of the Civil Procedure Code does no longer hold good.

**Subpoena as Witness**

If a member of the House of Commons is summoned as a
witness in any suit or proceeding, he can resist the summons to attend the Court by claiming privilege. But this privilege is now normally waived on the ground that non-attendance of a witness would interfere with the administration of justice. On the other hand, it appears, members are granted leave of absence for attending Courts as witnesses. Should a subpoena be served frivolously, such leave may be refused, (see incident described in the Table, vol. XXII, pp. 129-30). In ancient times privilege of exemption from being impleaded as a party in a civil action was also claimed. But this privilege has been taken away by later statutes.

Under section 133 of the Civil Procedure Code, 1908, the Chairman of the Council of States, the Speaker of the House of the People, the Speakers of the State Legislative Assemblies and the Chairmen of the State Legislative Councils are exempted from personal appearance in Civil Courts. The Orissa Legislative Assembly (Powers and Privileges) Act, 1948, exempts members from personal attendance in Civil and Revenue Courts during the session of the Assembly and for ten days before and after a session.
Evidence as to Proceedings in House

No member or officer of the House can give evidence as to the proceedings in the House without the leave of the House. This principle has been established by case law in England.

May says:—

'The practice of the Commons regarding evidence sought for outside the walls of Parliament touching proceedings which have occurred therein also conforms to Art. 9 of the Bill of Rights. This fact is well recognised by the courts which have held that the evidence of members of proceedings in the House of Commons is not to be received without the permission of the House unless they desire to give it; and the usage of Parliament according to which no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament except by leave of the House of which he is a member has been held to apply to officers and officials of either House.'

The Indian Parliament has adopted almost similar procedure for production of documents connected with the proceedings of the House before courts of law. In 1957 the Lok Sabha Secretariat was requested to produce documents relating to the proceedings in the House and also to send an officer to give evidence in the court.

46 Chubb v. Salomons, 3 Car. & Kir.75; ruling of Mr. Justice Hilbery in re Braddock v. Tillotson's Newspaper Ltd., 29 Oct. 1948.
The Privileges Committee of the Lok Sabha made the following recommendations:-

"... the Committee are of the opinion that no member or officer of the House should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House or any other document connected with the proceedings of the House or in the custody of the Secretary of the House without the leave of the House being first obtained.

"When the House is not in session, the Speaker may in emergent cases allow the production of the relevant documents in Courts of Law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it reassembles. In case, however, the matter involves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, he may decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.

"Whenever any document relating to the proceedings of the House or any Committees thereof is required to be produced in a court of Law, the Court of the parties to the legal proceedings should request the House stating
precisely the documents required, the purpose for which they are required and the date by which they are required. It should also be specifically stated in each case whether only a certified copy of the document should be sent of an officer of the House should produce it before a Court of Law.

"When a request is received during sessions for producing in a Court of Law, a document connected with the proceedings of the House or Committees or which is in the custody of the Secretary of the House, the case may be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House."48

When a similar case arose in the Rajya Sabha in Biren Roy's case, the Privileges Committee arrived at the same conclusions about the procedure to be adopted for production of documents connected with the proceedings of the House before Courts of Law and the House agreed.49

Privilege can be claimed with regard to proceedings in the House. But it may be argued that the evidence which was called for in Biren Roy's case was not in regard to any proceedings in the House but was in regard to certain contracts of installation of machineries in the Chamber.

Exemption from Jury Service

Under the Juries Act, 1870, members of Parliament and the officers of the House are exempt from serving as jurors whether during or out of session of the Parliament. Under the Indian Criminal Procedure Code, 1898, members of Legislatures are exempt from service as jurors. Officers in the civil employ of the Government above the rank of District Magistrates and therefore presumably the officers of the House are also exempt.

Criminal Offences

The privilege of freedom from arrest and detention, however, is limited to civil cases and cannot be claimed in respect of criminal cases on the ground that 'Privilege of Parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth.' Originally, the privilege was not claimable.
in respect of arrest on charges of treason, felony and breach (or surety) of the peace. But the principle has been applied not only to cases of indictable offences but also criminal cases in general, statutory offences, preventive detention and contempt of court.

Section 10 of the Orissa Legislative Assembly (Powers and Privileges) Act, 1948, provides that if a member is accused of a bailable offence and is arrested or detained in connection therewith, he shall be released on his personal recognition to attend any meeting of the Assembly.

Contempt of Court

The immunity from arrest and detention cannot be claimed in respect of contempt of court which is of a criminal nature. What is contempt of a criminal nature cannot be laid down in general terms and each case would depend upon its particular facts and circumstances. There have been cases both in the Parliament and in courts and a few instances may be cited as examples:

1. Privilege cannot be claimed in respect of commitment for contempt of court for publishing certain articles calculated to prejudice the course of justice. Gray’s case. 50

50 C.J. 1882, 487.
(2) Similarly in respect of imprisonment for contempt in appropriating money received by a member as Receiver, Davis's case.\(^{51}\)

(3) Privilege was allowed in a case which the alleged contempt was the refusal to comply with an order of the court for payment of certain moneys and documents to the liquidator of a company. Harrison's case.\(^{52}\)

**Preventive Detention**

No privilege can be claimed in respect of arrest or detention without trial in cases under Preventive Detention Acts or Ordinances. In the case of Captain Ramsay in 1939, the Committee of Privileges of the House of Commons declared the law as follows: -

'The precedents lend no support to the view that Members of Parliament are exempted by privilege of Parliament from detention under Regulation 18B of the Defence (General) Regulations, 1939. Preventive arrest under statutory authority by executive order is not within the principle of the cases to which the privilege from arrest has been decided to extend. To claim that

\(^{51}\) C.J. 1888, 488\(^{52}\) 14 Ch. D. 533.
the privilege extends to such cases would be either the assertion of a new parliamentary privilege or unjustified extension of an existing one. 53

Preventive detention was treated as something of the nature of an arrest on a criminal charge and the reasons which appeared to have weighed with the Committee seem to be, firstly, that the purpose of both is the protection of the community as a whole and, secondly, that such a power of arrest can be exercised by the executive only when Parliament has itself conferred the power and required its exercise in accordance with conditions laid down by itself and that therefore the executive is subject to parliamentary control. Regarding the suggestion that the Executive in possession of these powers could in effect avoid parliamentary control by interning all those members who might be likely to challenge its actions, the Privilege Committee pointed out that on a writ of Habeas Corpus in the above-mentioned case, the Home Secretary had to swear an affidavit that he had carefully considered the information at his disposal and that in his opinion the detention was justified. The Committee

53 H.C. Paper 164, 1940.
further pointed out that if the real ground of internment was that the member was likely to prove an embarrassment to the Executive in Parliament no such affidavit could be sworn without the commission of gross perjury. It was made clear by the Committee that no arrest or detention under such power could be effected for anything said or done by a member from his place in Parliament; if that be the case, a breach of privilege would be committed.

Arrest and Service of Process within the Precincts of the House.

The general question whether a member is immune from arrest under the Preventive Detention Act or enactments of similar nature has been answered, as has already been stated, in the negative both in India and in the British Parliament.54

Whether a member can be arrested within the precincts of the House has been asked in certain quarters.

There is one case referred to in May’s Parliamentary Practice, Lord Cochrane’s Case, where Lord Cochrane, a Member of Parliament, was taken into custody by the Marshal of the King’s Bench while he was sitting on the Privy Councillor’s bench in the House of Commons. The House was not sitting at that time. This case, however, is not in

point as it was not a case of serving or executing a process. Lord Cochrane had been convicted of an offence and had escaped from prison and he was retaken into custody. In these circumstances, the observation of May seems to be correct that 'the House will not allow even the sanctuary of its walls to protect a member from the process of criminal law."

The present question is rather similar to the question whether the service of a criminal process within the precincts of the House is a breach of privilege.

A warrant of arrest under provisions of law similar in nature to the Preventive Detention Act has been held to be in the nature of a criminal process in *Capt. Ramsay's Case* referred to above. This view has been taken also by the law courts. Derbyshire C.J. observes in the case of *In re Niharendu Dutt-Majumdar* :-

"If it were necessary for me to decide what it (viz., arrest and detention under Regulation III of 1813 similar to the Preventive Detention Act) was, I should hold that it was something *sui generis* more akin to criminal process than civil process because it is a restraint on the freedom of the subject imposed by the State purporting to be for the safety of the State, which is one of the chief features of arrest on criminal process."

55 47 C.W.N., 854.
With regard to the same point, Mitter J. observes:

'I may add that it is not a civil process for the reason that the essence of a civil process is that it is set in motion at the instance of a private person for the enforcement of his rights against another private person.'

Although whether the arrest of a member on a criminal process is a breach of privilege or not has not been specifically raised, the question whether the service of a criminal process within the precincts of the House is a breach of privilege has been raised on several occasions.

It may be said that if the mere service of a criminal process is a breach of privilege, an arrest on a criminal process which stands on a higher footing must certainly be a breach of privilege.

As long ago as 1888, a Select Committee of the British House of Commons expressed the opinion that to attempt to serve a summons upon a member within the precincts of the House, whilst the House was sitting without the leave of the House first obtained, was a breach of privilege.\(^56\)

It also appears that there is a Police Order in force in England since 1889 which is as follows:

'Criminal process may not be served or executed

\(^56\) H.C. Paper 411, 1888.
on any Member of Parliament within the Palace Yard
without the leave of the House; and no action whatever
will be taken by Police in such cases without the special
instruction of the Commissioner.'

This question was thoroughly considered by the
Committee of Privileges of the House of Commons in 1945
and the Committee held that the service of process
within the precincts of the House while the House was
sitting would be a breach of privilege. The Committee
also expressed the opinion that the execution of process,
e.g., arrest pursuant to a warrant, would stand on the
same footing. The Committee observes:--

'While it is not necessary for your Committee to
express any opinion with regard to the execution of
process within the precincts of the House, it may be
convenient if they say that in their view the principles
which apply to service of process are equally applicable
to execution of process.'

The Privilege Committee approved of the view taken
by the Select Committee in 1888 in the following words:--

'Although the Report (i.e. of the Select Committee
of 1888) was not adopted by the House, your Committee are
of the opinion that it may be accepted as a correct,

57 H.C. Paper 31, 1945
though not necessarily an exhaustive statement of the law of Parliament. The failure of the House to adopt the Report does not appear to have been due to any disagreement with the finding that a breach of privilege had been committed. Moreover, in Australia, where the law and custom of Parliament have been applied by Statute, the opinion of the Committee was accepted as a correct statement of the law.

The reason why the service of process within the precincts of the House is considered to be a breach of privilege is according to the Committee, not that such a service is an insult to the member but that it is deemed disrespectful to the House. For a stranger admitted within the parliamentary precincts with the permission, express or tacit, of the House, to presume to serve the process of an inferior tribunal in the presence, actual or constructive, of the House, is clearly an abuse of the privilege of admission to the House and a violation of the dignity of the High Court of Parliament.

As regards what should be the precincts of the House and what should be the time during which the House would be considered to be sitting, the Committee observes as

As regards service of process within the precincts on sitting days, it would be impracticable to limit the time during which it would constitute a breach of privilege strictly to the hours during which the House was sitting. It must be extended for at least a reasonable time before the meeting and after the rising of the House. It will clearly include periods when the sitting of the House is suspended, e.g., on the first day of a session after the House returns from attending the King in the House of Peers, when the House is constructively still sitting.

Indignities offered to Committees of the House are resented as indignities offered to the House itself. It will, therefore, be a breach of privilege to serve process whilst the Committees are sitting, even though the House itself is not sitting at the time. The breach of privilege could not be limited to service of process in the actual view of a Committee, and unless each case is to be decided on its particular facts, it is difficult to see how the area within which protection will be afforded by the dignity of the Committee can be restricted to anything less than the precincts of the House.

The House has jurisdiction to keep order and maintain decorum within its precincts including the curtilages...
and may make rules with respect to the conduct of strangers admitted to those precincts, as well during the intervals between its daily sittings as during the sittings themselves, and your Committee are of opinion that the simplest rule to lay down is that service of process within the precincts of the House on a day on which the House or any Committee thereof is to sit, is sitting or has sat, will constitute a breach of privilege.*

It may be argued that the immunity from service of process, etc., may result in a failure of justice; the Committee furnishes the following answer to this argument:

'Your Committee cannot think that the immunity from the service or execution of criminal process which, in their opinion is conferred by the law of Parliament upon all persons within the parliamentary precincts, temporary in its duration and liable to be withheld whenever the House saw fit, could paralyse the arm of the law or obstruct the course of criminal justice.

An immunity wider than that claimed by the Committee of 1888, in that it is not limited to the time while the House is sitting, has been enjoyed by Members of Parliament under a Police Order for over fifty years.

If a stranger were to resort to the Palace of
Westminster in order to avoid arrest, it would be competent to the Speaker to direct him to be removed from within the precincts. As it would be permissible to serve or execute process within the parliamentary precincts on days on which the House was not sitting, no officer of the House could for long evade arrest or the service of process by living continuously within those precincts. Moreover in such a case application could always be made to the House for leave to serve or execute the process. As regards persons who reside within the Palace of Westminster, the Service of Process (Justices) Act, 1933, enables a summons to be effectively served upon a defendant at his last or usual place of abode by registered post. It is not likely that the service of execution of process would often be a matter of such urgency that to wait until the leave of the House had been obtained to serve or execute it would defeat the ends of justice. If it was feared that such a result would follow, application could be made to the Speaker who would doubtless authorise the process to be served or executed relying on the House to ratify his action.
There is no immunity when the House is not in session. The Committee observes:

'It is clear that service of process even upon a Member within the precincts of the House during a prorogation or during any periodical recess, or even on a day over which the House had adjourned is not a breach of privilege. To hold that it is would be to confuse what the House is with where the House is.'

The Police Officer on duty has of course the power to arrest strangers who commit criminal offence or are about to do so. The Committee says:

'The protection from service or execution of process afforded by the dignity of the House in no way affects the right of police officers on duty within the precincts to arrest strangers who, having been admitted to the Palace of Westminster, commit criminal offences or are thought to be about to do so, subject to this that they must refrain from entering the House itself while it is sitting unless they have previously received its permission.'

Rules of Legislatures in India prohibit the arrest of, and service of summons on, any person within the precincts of the House.
House to be Informed of Arrest

In England, various statutes require that when a member is arrested or detained in custody, the fact of the arrest or detention must be communicated to the House. In cases not covered by statutes, it is a privilege of the House to be informed of the arrest or detention. Blackstone has stated the position as follows:-

'The chief, if not the only privilege of Parliament, in such cases, (i.e., in case when immunity from arrest cannot be claimed) seems to be the right of receiving immediate information of the imprisonment or detention of any member with the reasons for which he is detained.'

Where a member is convicted for a criminal offence, the Court informs the Speaker of the offence and the sentence passed. When a member is arrested and after conviction released on bail pending an appeal or otherwise released, such fact shall also be intimated to the Speaker. It appears that if a person is already in prison under a sentence of Court when he is elected a member, there is no duty to inform the Speaker. But it also appears that


60 Rule 230 of the Rules of Procedure and Conduct of Business in Lok Sabha.
such communication has, in fact, been made.

A claim of privilege of being informed of the arrest on detention of a member was made in Bengal before the Constitution came into force.\textsuperscript{62}

In India a question of privilege was raised in the Lok Sabha by Shri Kansari Haider regarding an attempt to handcuff a Member of Lok Sabha arrested on criminal charge. The Committee of Privileges\textsuperscript{63} to which the question was referred reiterated the stand taken by it in the Deshpande Case wherein they observed as follows:–

'It has to be remembered that the fundamental principle is that all citizens including 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 laws."

The Committee on being ordered by the Speaker, reconsidered the whole issue and observed that the Police Rules/Manuals of the various States and the executive instructions issued by the State Governments provided

\textsuperscript{61} C.J. 1922, 345; H.C.D.(1917-18) q3, c.1786.
\textsuperscript{63} Fourth Report of Committee of Privileges (Second Lok Sabha) p.7, para 11.
that prisoners whether undertrials or convicts should not be handcuffed as a matter of routine and that "that use of handcuffs should be restricted to cases where the prisoner is a desperate character or where there are reasonable grounds to believe that he will use violence or attempt to escape or where there are other similar reasons." The Committee further recommended that the Ministry of Home Affairs may be requested to stress upon the State Governments the desirability of strictly complying with the above Rules especially in the case of Members of Parliament, in view of their high status. 64

Privilege extended to Strangers

As in the case of freedom of speech, the privilege of freedom from arrest and molestation has been extended to witnesses summoned to attend before the House or any Committee thereof, to persons in personal attendance upon business in Parliament, e.g., petitioners or Counsel when coming, staying or returning and also to officers of the House in immediate attendance upon the service of Parliament. And the same principles as in the case of members apply to them.

64 Fifth Report of Committee of Privileges (Second Lok Sabha) p. 46.
Contempt of House

We have discussed the specific privileges which the House of Commons in its collective capacity and the individual members of the House enjoy. Now there must be some means for the protection of these privileges or for the prevention of any breach of them. A privilege may be considered in two aspects, a negative and a positive. In its negative aspect, a privilege may be set up as a defence, e.g., in an action for libel for words uttered in Parliament, a defence of privilege may be pleaded; or if a member is arrested under a civil process, he may claim to be released forthwith. In its positive aspect, any person violating or infringing any of the privileges may be met with punishment. In this latter aspect of privileges, the House of Commons is vested with a penal jurisdiction. But this penal jurisdiction is exercised not only in respect of breaches of specific privileges but also in respect of any act which, though not a breach of any specific privilege, is calculated to hamper the due administration of parliamentary business or to offend against the authority or dignity of the House. Such acts although generally called breaches of privilege are really of the nature of contempt of the House.
Acts constituting Contempt

Cases of contempt are decided by the House of Commons as and when occasions arise and it would be difficult to enumerate all the acts which have been construed to be contempt of the House. The general principle in such cases has been stated by Kay as follows:

'... 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. ...' 65

A breach of privilege or an act of contempt again may be committed by a member or a stranger. We shall give some examples illustrating the above principle classifying them in two categories, those committed by members and those committed by strangers. These are by no means exhaustive but are given only as illustrations.

Misconduct of Members

(1) Acceptance of bribe to influence him in his conduct as a member or of any fee, remuneration or reward

65 May, p. 109.
for anything done by him in his capacity as a member.

A member was expelled for receiving £500 from the French Merchants for business done in the House; 66 entering into an agreement with a person for money to advocate the claim of such person in the House. 67

A Committee of Enquiry appointed to investigate into the conduct of Mr. H.G. Mudgal, a member of the Indian Parliament, found that he was to receive certain monetary benefit in exchange of services which included putting of questions in Parliament, moving amendments to certain Bills and arranging interviews with Minister, etc.; it was resolved by the House that the conduct of the Member was derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its members and that he deserved expulsion from the House (the member having previously resigned). 68

(2) Publication of any report of or evidence given before Select Committees before they are presented to the House. 69

68 Mudgal's Case; proceedings of 24 Sept. 1951.
The Committee of Privileges to which the matter of the disclosure of proceedings of a Parliamentary Committee was referred to, in the Lok Sabha, interalia recommended:

"It is in accordance with the law and practice of the Privilege of Parliament that while a Committee of Parliament holding its sittings from day-to-day its proceedings should not be published nor any documents or papers which may have been presented to the Committee or the conclusions to which it may have arrived at referred to in the Press." 70

(3) Acceptance of payments for the disclosure of information obtained from other members in regard to matters to be brought before Parliament, although not constituting strictly a breach of privilege, has been held to be dishonourable conduct deserving to be severely punished. 71

(4) Giving evidence before any Court or in any other House in regard to debates or proceedings in the House of which he is a member without the permission of the House. 72

70 Report (Para 11, P.2) of the Sundarryya Case, 1952, Lok Sabha.
In Biren Roy's case the Committee of Privileges recommended that "no member or officer of the House should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House." On another occasion the Committee held that the permission of the is necessary for giving evidence by a Member before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof.  

Misconduct or Contempt by Strangers

The following are some instances of misconduct of strangers :-

(1) Any disorderly conduct in the House or riotous behaviour to hinder the passing of any Bill or other matter pending in the House. Invading the Legislature with a large mob, creating noise and disturbance round it, and picketing and preventing the ingress and egress of members is a breach of privilege.

73 First Report of Committee of Privileges (Second Lok Sabha) p. 4, para 8.
74 Sixth Report of the Committee of Privileges (Second Lok Sabha) pp. 5-6.
76 Report of the Privilege Committee of Madhya Pradesh Legislature, 10 Aug. 1951 (Kumbhare's Case); Contempt of House Case in Hyderabad P.C. Report, 10 June 1953; (Case of V.B. Kaju and others), Anti-Communist Demonstration, Punjab L.A., 18 July, 1952; Bhooswami Demonstration, Rajasthan Assembly, 10 April 1956.
(2) Refusal by witness called to answer questions, to sign statements or to produce any documents. 77

(3) Disobedience to summons to attend as witness. 78

(4) Obstructing the execution of any order of the House. 79

(5) Giving false evidence before the House or any Committee. 80

(6) Speech or writing casting reflection on the House or its members.

A question of privilege was raised in Lok Sabha on 10th February, 1959 regarding certain remarks made.

78 C.J. 1772-4, p. 465; ibid. 1878-9, p. 366.
79 ibid. 1851, p. 152; ibid. 1714-18, p. 46.
80 ibid. 1842, p. 198; ibid. 1947-8, p. 22.

A Government official was admonished for producing a fabricated document, attempting to tamper with a witness and trying to conceal truth from the Committee of Privileges, U.P.L.A.D. 20 Dec. 1954.

81 Parl. Deb. 1857-8, vol. 150, c. 1022; ibid. 1836, vol. 35, c. 167; ibid. 1893-4, vol. 20, c. 112; ibid. 1879, vol. 247, c. 1866; Daily Mail Case, C.J. 1901, p. 359; Daily Mail Case, C.J. 1926, p. 95; the World Press News, C.J. 1947-48, pp. 22, 23; H.C.D., vol. 301, c. 1545. In this case a letter was written to certain members of the House of Commons by the Secretary of the League for the Prohibition of Cruel Sports in which the following sentences appeared: "If we do not hear from you, we shall feel justified in letting your constituency know that you have no objection to cruel sports"; Times of India Case, Bombay Legislative Assembly Report dated 13 April 1953.

82 "But the ever mounting tendency in our Parliament and our Press to attack public servants without caring to verify facts is having devastatingly demoralising effect. Under such deplorable conditions very few self-respecting persons will care to enter Government service or public life."
by Shri Mathai in his letter to the Prime Minister. The matter was referred to the Committee of Privileges which found that such remarks which cast aspersions and attribute irresponsibility to Parliament or its Members tend to diminish the respect due to Parliament but recommended that the House would best consult its dignity if it ignored such improprieties.

Certain reflections were made against members of the Mysore Legislature by a newspaper Satya. It was argued that a person had a fundamental right of freedom of speech under Article 19(1) of the Constitution and the right would not be abridged except on the grounds mentioned in Article 19(2); as the privilege of a Legislature was not one of the subjects mentioned in Article 19(2), a person had a right to criticise a member of the Legislature in whatever language he liked and could not be punished for contempt. Article 194, it was said, should be read subject to Article 19(1). This view however did not find favour with the Privilege Committee appointed to hear the case of Satya.

In a recent case the Supreme Court held that the provisions of clause (2) of Art. 194 indicate that the

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83 Art. 19
84 Satya's Case, Report of the Committee of Privileges of the Mysore Legislative Council, 13 July 1953.
freedom of speech referred to in clause (1) is different from the freedom of speech and expression guaranteed under Article 19(1) and cannot be cut down in any way by any law contemplated by clause (2) of Article 19. It was also held that the provisions of Article 19(1)(a) which are general, must yield to Article 19(1) and the latter part of its clause (3) which are special.85

A letter addressed by an official to the Minister in charge of his department alleging that certain statements made by a member in the House regarding the official were maliciously false was read in the House by the Minister concerned. The matter was referred to the Committee of Privileges. The Committee on being assured that there was no intention to impute malice to the member, found that there had been no breach of privilege but deprecated the reading of such letters in the House.86 A letter from the Chief Secretary, Vindhya Pradesh, alleged to be intimidating a member and containing reflection upon him, was referred to the Committee of Privileges.87

The Chairman of the Stock Exchange of Sydney wrote to Mr. Speaker complaining of a speech made in the House by a Member. The member concerned raised a question of privilege in connection with the action of the writer of the letter and moved a motion that in writing a letter reflecting on the motives and action of a Member of the House and in writing a threat, the Chairman of the Stock Exchange was guilty of contempt. Debate ensued on the motion which set out that an individual whose conduct had been criticised in statements made under cover of Parliamentary Privilege had a right to defend himself, and that the House was of opinion that the remarks of the Chairman of the Stock Exchange were not a breach of privilege but were a defence to charges made against him under cover of privilege. The House, however, considered that in addressing this letter to the Speaker instead of direct to the Member the Chairman was in error.

Reflection on the conduct of a member imputing certain motives to him in asking supplementary questions was held to be a breach of privilege.

On 15th April 1961 a despatch from the correspondent of the *Blitz* was published in that paper under the

89 In the matter of the *Times of India*, Report of the Committee of Privileges of the Bombay Assembly, 13 April 1953.
heading 'the Kripaloony im-peachment, bad, black, bold lies' in which a strong criticism was made of a speech of Acharya Kripalani in Lok Sabha. This matter was referred to the Committee of Privileges which reported interalia as follows:

"In the light of what has been stated above the Committee have come to the conclusion that the impugned despatch read as a whole including its heading and the photograph of Shri J.B. Kripalani, M.P. with the caption 'Kripaloony' underneath in its tenor and content libels Shri Kripalani and casts reflections on him on account of his speech and conduct in the House. The language of the despatch is such that it brings Shri Kripalani into odium, contempt and ridicule by referring to him in a contemptuous and insulting manner by using foul epithets in respect of him'.

The Committee, therefore, found R. K. Karanjia Editor of the Blitz and A. Raghaban the New Delhi Correspondent of the Blitz 'guilty of committing a gross breach of privilege and contempt of the House'.

The House agreed with the report of the Committee on 19th August, 1961. The Speaker then summoned R.K. Karanjia to the Bar of the House on 29th August, 1961."
R.K. Karanjia was brought to the Bar of the House by the Watch & Ward Officer and was formally reprimanded by the Speaker (seated in his Chair).

A criticism of a member for his speech or conduct in the House, however strong need not necessarily be a breach of privilege. The law of Parliamentary privilege should not be administered in a way which would fetter or discourage the free expression of opinion or criticism. It will always be a question of fact in each case whether particular comments fall in the category of libel upon a member on account of his speech or conduct in Parliament or are merely a bonafide criticism but strongly worded. In the Blitz case the Committee of Privileges considered this aspect of the matter in their report and came to the conclusion that the comments were libel.

(7) Reflection upon the Presiding Officers. 90

90 Conybeare's Case, Parl. Deb. 1887, vol. 313, c. 371; ibid. 1888, vol. 329, c. 48; Atkinson's Case, ibid. 1890-91, vol. 356, c. 419; Wedgwood and Ginnell Case, H.C.D. 1911, vol. 21, c. 1435; Daily Worker's Case, C.J. 1937-8, p. 213, H.C.D. 1937-38, vol. 334, c. 1317; in this case certain reflections upon the Speaker were held to be gross breach of privilege of the House but no further action was taken on the ground that there should not be too much made of the matter. A similar course was adopted in the case of the Jugabani in West Bengal; Report of the Privilege Committee, 9 Nov. 1953; Case of the Daily Herald, H.C. Paper 98, 1924; Case of the Evening News, C.J. 1928-9, p. 50; Parl. Deb. 1874, vol. 219, c. 752; See also the case of Blitz of Bombay, U.P. L.A.P.; See also Malavali's Case (Second Report) Committee of Privileges, Travancore-Cochin, Oct. 1955.
Publication of false or inaccurate reports of debates. Putting misleading headlines to reports of proceedings.

Suppressing speeches of particular members.

Publishing a proceeding ordered to be expunged by the House.

On 10th June, 1957, a Member of Bihar Legislative Assembly raising question of breach of privilege submitted that in spite of the orders of the Speaker expunging references to the ex-Industries Minister, the "Search Light", a local daily published all the references which were ordered to be expunged. The motion was moved and the matter was referred to the Committee of Privileges which resolved that the Editor, the Printer and the Publisher of the "Search Light" be called upon to show cause why appropriate action be not taken against them by reason of the commission of a breach of privilege in respect of the Speaker of the Bihar Legislative Assembly and the Assembly itself, by publishing a perverted and

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94 Case of the Albion and Evening Advertiser, Lords Journal, 1801-2, p. 104.
unfaithful report of the proceedings of the Assembly relating to the speech, expunged portions of which were also published. The Supreme Court before which the matter came on a petition under Article 32 of the Constitution, held that "the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part of Article 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the States. Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its Members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret
the Constitution but to re-make it." 95

(11) Premature publication of any report or other paper.

A question of breach of privilege was raised in the Lok Sabha regarding an article "Story of the Merchant Shipping Bill" in the daily newspaper "Hindustan Standard" dated the 15th August 1958. It was contended that the Joint Committee on Merchant Shipping Bill considered the report on August 18 and the report along with the minutes of dissent was presented to Lok Sabha on the 21st August, 1958 and the article in question referred to the decisions of the Committee taken on July 22 and July 24, 1958. The matter was referred to the Committee of Privileges which found that the publication of the article constituted a breach of privilege as it involved a premature disclosure of the proceedings of the Joint Committee on the Merchant Shipping Bill, 1958. 97 But having regard to the unqualified apologies offered by the Editor of the "Hindustan Standard" no action was taken by the House.

On another occasion a question of privilege was raised in the Lok Sabha regarding the publication by the Press Information Bureau of an Answer to a Question before it was given on the floor of the House. Keeping in view the assurance given by the Press Information Bureau that there would be no repetition of such a lapse in future, the matter was, however, dropped.

(12) Serving of criminal or civil process within the precincts of the House while the House is sitting.

(13) Causing arrest of member otherwise than in execution of criminal process.

(14) Molestation of members for their conduct in the House or in going to or coming from the House.

(15) Offering bribe or any gratification to a member for influencing his conduct in the House.

(16) Intimidation of members to influence their conduct. But to say that the member could not get support in his election in the future if he pursued certain rules of conduct would not be a breach of privilege.

Complaint of Breach of Privilege of one House against Members of the other House.

There have been occasions in England when one House has complained that a member of the other House has, by words or acts, committed breach of privilege of the other House. Some instances are given below:

The House of Commons sent a message to the Duke of Buckingham asking him to explain his conduct as Lord Admiral in relation to the staying of a ship. There was a conference between the House of Lords and the House of Commons regarding this message, at which conference the Lords asked whether the message was a summons to Lord Buckingham to make answer. The Commons replied that the Clerk had made a ship in making our the order which had since been corrected.

103 Plimsoll's Case, Parl. Deb. 1873, vol.214, c.733
105 Hatsell III, 48.
It was reported to the House of Commons that the Earl of Suffolk had, in conversation with a member of the House of Lords, said that Mr. Selden, a member of the House of Commons, deserved to be hanged for erasing a record. The Commons immediately sent a message to the Lords to complain of the conduct of Lord Suffolk.

Sir John Eppesly, a member of the House of Commons, was forbidden by the House to answer a petition filed against him in the House of Lords. The House of Commons sent a message to the House of Lords requesting them to inform the House of Commons whether certain words were spoken by Lord Digby in the House of Lords regarding the House of Commons. The matter was referred to a Committee.

A member of the House of Lords complained of certain words spoken about him by a member of the House of Commons in that House. The House of Lords was of opinion that as the person complained against was a member of the other House and the words were said in that House, the House of Lords could not take any cognisance of what is spoken or done in the House of Commons 'unless, 'it be by themselves in a parliamentary way made known to this House'; neither could the person complained against be called to give reparation without

106 Hatsell III, 49.
107 Hatsell III, 49, 51.
breach of the privilege of Parliament unless the House of Commons consent to it. 108

From these and other similar cases Hatsell has deduced the following principles:

"The leading principle, which appears to pervade all the proceedings between the two Houses of Parliament is, that there shall subsist a perfect equality with respect to each other; and that they shall be, in every respect, totally independent one of the other. From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other; but, if there is any ground of complaint against an act of the House itself, against any individual Member, or against any of the officers of either House, this complaint ought to be made to that House of Parliament where the offence is charged to be committed; and the nature and mode of redress, or punishment, if punishment is necessary, must be determined upon and inflicted by them. . . We see, from the several precedents above cited, that neither House of Parliament can take upon themselves to redress any injury, or punish any breach of privilege offered to them by any Member of the other House, but that, in such cases, the usual mode of

108 Hatsell III, 51.
proceeding is to examine into the fact, and then to lay a state of that evidence before the House of which the person complained of is a Member.  

A case arose in which a member of the House of Lords was accused of casting reflection on members of the House of Commons. Lord Mancroft was reported in a newspaper to have said:

'Unlike them (M.Ps) I am not paid a thousand a year for larking about in the Division Lobbies at night with Bessie Braddock and the rest of the girls. I have to earn my living.'

It should be noted that these remarks were made not in the House as in the above-mentioned cases but outside.

The matter was raised in the House of Commons as a matter of privilege and Lord Mancroft wrote a letter to the Speaker apologising for and withdrawing the remark.

Mr. Speaker ruled that a prima facie case had been made out. The apology was accepted by the House with some reluctance.

In the course of the debate Mr. Ede observed:

'We are in a great difficulty in dealing with a Member of another place because we cannot call him

109 Hatsell III, 61, 65.
110 H.C.D. 1952, vol. 499, c. 880-1
before the Committee of Privileges. What we should have to do if we proceeded further with this matter, according to Erskine May and subject to your Ruling, would be to appoint a Committee to inquire into the matter and, if we thought a prima facie case had been established, we should have to send our report to the Lords and ask them to deal with the person we regarded as an offender.*

It may be observed that the procedure laid down by Hatsell was thought to be applicable to the case where remarks had been made not in the House but outside.

The two Houses, are, however, agreed that each would respect the privilege of the other. When a message was sent by the House of Commons to the House of Lords 'desiring the Lords to have a regard to the privileges of this House therein', the Lords returned an answer 'That the House of Commons need not doubt but that the Lords would have as due regard to their privileges, as they had to their own'.

A similar question was raised in the House of the People when a Minister who was a member of the Council of States was asked by the House of the People to explain his conduct. There was some controversy between the two Houses but ultimately no decision was reached.*111

111 C.S.D. 1st May 1953.
Subsequently, the question of the procedure to follow in such cases was referred to a Joint Committee of the two Houses.

The Committee prescribed the following procedure:

1. When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, he is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.

2. Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof.

3. The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised a report about the inquiry, if any, and the action taken on the reference.

It is the intention of the Committees that if the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which
the question of privilege is raised or the Presiding Officer of the other House to which the reference is made, no further action in the matter may be taken after such apology is tendered. 112

Contempt of one Legislature by Member of Another.

If a member of the Central legislature commits contempt of any State Legislature, if a member of a State Legislature commits contempt of the Central Legislature or of another State Legislature, can such a member claim any privilege from being proceeded against by the Legislature contemned and what should be the procedure to be followed in such a case? Such a contempt may be committed in two different circumstances:

(1) by something said within the House of which the contemner is a member; and

(2) outside such House.

Contempt committed inside the House.

As regards the first point, it will be seen that under Articles 105 and 194 of the Constitution, there is freedom of speech inside the legislature and no action can be taken in any Court for anything said

or done within the House. Although legislatures are expressly not mentioned, it may be taken that the immunity extends against action by other legislatures also; for otherwise there would be meaning in having a freedom which can be set at naught by another legislature. It can therefore be said that a member can claim privilege for anything said or done by him within the House although his speech or action may amount to a contempt of another legislature. But it should not be assumed that the member, if he is guilty of contempt, would be able to go away scot-free. The immunity given by Articles 105 and 194 is subject to the rules of the House. In every legislature, there is a rule that no member while speaking shall cast any reflection on any other legislature. If such a reflection is made by a member, the presiding officer has the authority to pull him up. If he persists in the act, he may be dealt with for disobedience of the presiding officer and disciplinary action may be taken against him by admonition, suspension or expulsion according to the circumstances. If any reflection escapes the presiding officer, a complaint may be made by the legislature and disciplinary action, if necessary, can certainly be taken against the
offending member for having committed an offence. A member is amenable to the jurisdiction of the House for any offence committed within the House. Therefore, so far as a contempt committed within the House is concerned, there should not be any difficulty and the following propositions may be laid down.

(1) A member of a Legislature can claim privilege in regard to anything said or done by him within the House of which he is a member and no action can be taken against him for his conduct by any other Legislature.

(2) The immunity, however, extends only to any action taken by another Legislature. The member would be liable to be dealt with under the disciplinary jurisdiction of the House of which he is a member if he is guilty of contempt of another Legislature with suo moto by the House or on complaint made by the Legislature contemned.

Contempt committed outside the House

As regards the second point, that is to say, when a contempt is committed outside the House, there would be a great deal of difficulty. This point may be considered in three aspects:

(a) whether any privilege can be claimed;

(b) if it cannot be claimed, what would be the procedure to deal with the contemner; and

(c) if it can be claimed, what would be the remedy
Whether Privilege can be claimed

The power to punish for contempt of the Legislature is 'akin in nature and origin to the power possessed by the Courts of Justice to punish for contempt', and therefore a contempt of a Legislature may be taken to be similar in nature to a contempt of court. Where there is a cause of conflict between two Legislatures on a question of contempt, a parallel may be found in a case where a member of the Legislature is alleged to have committed contempt of court and let us see whether a member can claim privileges of Parliament in such a case. There have been a number of cases in the House of Commons and, as stated by May, 'it was for some time doubtful how far privilege would extend to the protection of a member committed for contempt.' In recent cases, members committed for contempt of court have failed to establish any privilege. It seems to be settled now that 'in case of quasi-criminal contempt, members of either House may be committed without an invasion of privilege.' That is to say, no privilege can be claimed by a member committing a quasi-criminal contempt. It may be mentioned here that a reflection on a court

113 May, p. 89
114 ibid. p. 82.
115 ibid. p. 83.
of justice is a criminal contempt and not a civil one (e.g. disobedience of court's order).

If therefore the analogy of contempt of court is taken, it would seem that a member cannot or at least should not be allowed to claim privilege if he casts any reflection upon another Legislature outside the House.

Remedy, if Privilege cannot be claimed

If this position is accepted, the next question is how to deal with such a member. It goes without saying that such a member would be treated just as an ordinary citizen who commits a contempt of the Legislature.

It is, however, necessary here to consider the extent of the penal jurisdiction of a Legislature. There are two fundamental propositions of International law laid down by Ulric Hubert:

(1) The laws of a State have force only within the territorial limits of its sovereignty.

(2) All persons who, whether permanently or temporarily, are found within the territory of a sovereign are claimed to be his subjects and as such are bound by his laws.
From these, it may be deduced that the penal jurisdiction of a Court extends only within the limits of the territory of the State but not outside and that within such limits all persons resident within the State, even though subjects of a foreign State, are amenable to such jurisdiction. Although States in India are not sovereign States, the principles of the penal jurisdiction of the courts would be the same. It may be mentioned however that section 45 of the Criminal Procedure Code lays down that a warrant of arrest may be executed anywhere in India. But for this provision, a warrant of arrest from one State would not have run into another State. The same principle would apply in the case of the penal jurisdiction of Legislatures and it may be taken that the penal jurisdiction of a Legislature is coextensive with its legislative jurisdiction, that is to say, it extends only within the territory of the State concerned. In that case, a warrant of arrest issued by the Legislature of one State would not have any extra-territorial validity and such a Legislature would not be able to take any action against a contemner unless he voluntarily submits to its jurisdiction. This question arose in the case
of Blitz which came up before the Supreme Court but no decision was given on this aspect of the case. This point might have arisen also in a case before the House of Commons. Mr. D.N. Pritt was committed for contempt of court by a court in Kenya for some statement alleged to have been made by him to certain M.Ps. The matter was raised on a question of privilege. But the specific issue was not decided as the Speaker ruled that the proceedings for contempt had been taken not on the statement made to the M.P. but for the publication of the same in a newspaper in Kenya. With regard to this case, Sir Frederic Metcalfe, the then Clerk of the House of Commons writes:

'If such a conflict (between the House of Commons and the Supreme Court of Kenya) had occurred, the question must have arisen whether the House of Commons can exercise jurisdiction outside this country and in the colony of Kenya. What steps the House could take to protect a person who was being penalised by an overseas court has not yet been settled, for in the circumstances the threatened conflict did not arise.'

Here again, cases on contempt of court may be of interest. There was a divergency of judicial opinion on the question whether a High Court could take

cognizance of an offence of contempt of court when such contempt was committed outside the jurisdiction of the High Court or by a person resident outside such jurisdiction. The Contempt of Courts Act, 1952, has however conferred jurisdiction on the High Court to try for contempt even though the contempt may be committed outside the jurisdiction of the High Court or by a person residing outside such jurisdiction.

But the contempt of a Legislature is not an offence (until made so by law passed by the Legislature) of which cognizance can be taken under the Criminal Procedure Code. Therefore, no Magistrate or other authority would have any power or would be under any duty to execute a warrant issued by a Legislature for the arrest of any person even within the State, far less outside the State. It seems therefore that unless the contempt of a Legislature is made a criminal offence punishable according to the procedure laid down by the Criminal Procedure Code, a Legislature is not capable of taking effective steps against any person resident outside the State concerned.

But there appears to be no doubt that a Legislature would have the power to commit any person guilty of
contempt of the House, if he is within the jurisdiction of the State Legislature which would be its legislative jurisdiction, i.e., the territorial limit of the State. For under Articles 105 and 194 the Legislatures in India have got all the power of the House of Commons. Under a section similarly worded in the Commonwealth of Australia Act, it has been held that the Australian Parliament can send a person to jail for contempt.\textsuperscript{117} It has been stated above that legislation would have to be undertaken in order to make the contempt of a Legislature outside the jurisdiction of the State concerned an offence. It may, however, be stated that such legislation cannot be passed by the State Legislatures for no law made by a State Legislature would have extra territorial validity. In order to have extra-territorial validity such legislation would have to be undertaken by the Central Legislature, for the Central Legislature has no authority to legislate regarding such powers, but as a matter of ordinary criminal law of the land. In that case a contempt of a Legislature would have to be made triable by ordinary courts of law.

As regards contempt of the Central Legislature, it appears that the Central Legislature would have the power to punish for its own contempt a person wherever he may be residing, for its penal jurisdiction would extend to the whole of India, the sphere of its legislative activity.

Procedure if Privilege can be claimed

Now we come to the question what would be the procedure if a Privilege of Parliament can be claimed by a member. An analogous case is that a member of one House committing a breach of privilege of the other House of the same Legislature. It has been stated that a solution has been found by agreement in the Indian Parliament. Such a course can also be adopted in the case of different Legislatures by agreement, that in the case of contempt of a Legislature by a member of another Legislature, the Legislature contemned may report to the other Legislature and that Legislature shall take action against the offending member. But here also there may be some difficulty. The penal jurisdiction which has been conferred by Articles 105 and 194 is with respect to contempt of the Legislature which takes action and not of another Legislature.
Whether by virtue of Article 194 a State Legislature would have the power to punish a person guilty of contempt of another Legislature is a difficult question. If a member is sent to prison, the action may be challenged by a writ of Habeas Corpus and the action may be declared ultra vires. It appears that in the Kenya Legislative Council certain derogatory reflections were made about a member of the British House of Commons without any question of their admissibility being raised.118

Reflection against Committees of another Legislature

Reflections against Committees of another Legislature stand on the same footing as reflections against the Legislature itself and need not be separately dealt with because such reflections would be treated as contempt of the House itself.

Reflection against members of another Legislature

In the case of reflections against members of another Legislature also any act which obstructs or impedes any member in the discharge of his duty is treated as a contempt of the House itself and the same considerations would apply. But in the case of a reflection made outside the House, a member may have

118 52 Kenya. Hansard, 50
an additional remedy if no privilege can be claimed by the contemner. He may sue for defamation or libel if the reflection is of such a nature as would be taken cognizance of by a Court of Law.

Penal Jurisdiction

The penal jurisdiction of the House of Commons is exercised in enforcing the attendance of persons by causing them to be arrested and brought before the House and by punishing, if necessary, any disobedience. The civil power has to aid the officers of the House in enforcing the orders. The punishments which may be inflicted by the House of Commons are, (a) reprimand and admonition, (b) fine, (c) imprisonment, (d) suspension, and (e) expulsion. The period of imprisonment, however, cannot go beyond the session and any person imprisoned by an order of the House of Commons, if not released earlier, must be released from custody on prorogation. When the breach of privilege or the alleged contempt is also an offence under the common law, the Attorney-General has in some cases been directed to prosecute the

119 The Rajasthan Assembly punished certain persons (strangers) who were found guilty of riotous behaviour to imprisonment for 15 days and directed the persons to be sent to the Central Jail; Rajasthan Assembly Proceedings, 10 Apr. 1956.
offender in the ordinary Court.

Codification of Privileges.

The question of codifying the privileges of Parliament has been raised occasionally and particularly by the Press Commission in its report in 1954. The Constitution has in clear terms conferred the powers etc. of the House of Commons on the Indian Legislatures. The powers and privileges of the House of Commons are well understood and the English people have done quite well without any legislation. If they have succeeded without any codification, there is no reason why the Indian Legislatures should not also succeed without it. The Press Commission has raised two contentions in favour of codification; firstly, that conditions are different in India and the powers etc. of the House of Commons cannot be engrafted in India without some modification; and secondly, that the privilege etc. as conferred by Art. 194 may conflict with other provisions of the Constitution and the Press.

120 C.J. 1889, 363; ibid. 1857, 355; ibid. 1860, 258; ibid. 1866, 239.
Commission has cited Art. 19 and Art. 22 with which Art. 194 may be in conflict.

As to the first contention, it may be observed that the relevant point of time in which the contention that conditions in India are different and the privileges of the House of Commons cannot be adopted in India in toto should have been raised when the Constitution was framed. If the framers of the Constitution in their wisdom thought it fit to confer on the Indian legislatures all the privileges of the House of Commons, they must be presumed to have taken into consideration all the factors and to have decided that the privileges of the House of Commons were the surest guide to go by. The Indian legislatures of course have been given the power to pass laws defining this privilege but that provision is only permissive and does not compel the legislatures to pass any law unless actual necessity arises. The relation between the legislature, a political body and the public or the Press is liable to be adjusted as time goes on and it would not be in the interest of the growth of healthy relationship between them to frame rigid laws.

It is true that some legislatures have tended to be over-sensitive, as stated by the Press Commission in
Para 1120. It is also true that the Press has sometimes thought itself to be a privileged body like the Courts and the Legislatures and has claimed higher rights than the general public can do. None of these positions is supportable and it is believed that these would be adjusted in course of time if mutual good will and understanding prevails.

As regards the second contention, passing of any law would not make the position any the better. If the provision of the Constitution itself can be challenged, as it was in the Blitz case, any law passed by a Legislature would be liable to greater attacks on the ground of ultra vires and repugnance to the Constitution. Any legislation by a Legislature would surely be of an inferior potency than the Constitutional provisions. If the position is left as it is, any conflict that may arise may be solved by the Courts as was done in the case of Blitz. If the conferring of all the powers of the House of Commons upon the Indian Legislatures by the Constitution has been of any avail, no amount of legislation can help them. No legislation can exhaustively define the circumstances in which a breach of privilege may occur. As regards the specific points raised about publication of reports etc. the Press Commission seems
to be of opinion that the existing state of things have not in any way inconvenienced the Press. Even under the general law, the Press has to take some risk when they publish things which may be defamatory seditious or likely to come under the purview of the Penal Code.