Chapter – IV

LEGISLATIVE PRIVILEGES

The extent of watch and vigil, however perfect it may be, will not
breed operational efficiency to the legislature unless it is free from fear
or favour. Legislative performance without fear or favour is made
possible by the possession of privilege. Just as the judiciary is conferred
an independent status, so also the legislature is accorded privileges.

Generally, the term ‘privilege’ denotes “those that are prima facie
unlawful but allowable in certain circumstances to all or else to a limited
number of persons”¹. In relation to the legislature, it would be
convenient to reserve the term to “... the sum of peculiar rights enjoyed
by each House collectively... and by members of each House
individually, without which they couldn’t discharge their functions, and
which exceed those possessed by other bodies or individuals”². Actually,
privileges are the collective rights of the Houses and its committees only.
In the strict sense, there is nothing to be called individual member’s
rights³. Members can enjoy certain rights inherent in the House, that too
only to the extent to which they are discharging the functions of the
House.

Privilege doesn’t make a member at a higher elevation in relation
to citizens in the matter of enjoyment of fundamental rights. In fact, the
judgement in P.V.Narasimha Rao V State⁴ doesn’t make any sense in
this context: those who voted upon receipt of bribe were exempted while
those who didn’t vote, though received bribe, were made amenable. It
was only an exercise in ‘reductio ad absurdum’ on the part of the Court.
The House is the guardian of its own privileges. Any violation, attack or disregard of privileges, rights and immunities, either of the House, its committees or individual members, subject to discharge of functions of the House, is regarded as a breach of privilege. Contempt, on other hand, denotes any thing that lowers the authority and dignity of the House in the estimation of the public. The distinction between the two is relative. In the former, there is always a specific instance of violation of privilege where as in contempt, there need not be any such violation.

The power of the House to punish for breach of privilege and contempt is the most important privilege of the House. The penal jurisdiction of the House extends not only to its members or offences committed in its immediate presence but also to strangers and beyond its walls.

The rights and privileges of the Indian Legislatures have undergone expansion during the last 80 years. The Government of India Act, 1919, the Government of India Act, 1935 and the Indian Independence Act, 1947 formed certain landmarks in this process. In Kerala, the earliest attempt which paved the way for the establishment of a Privilege Committee dates back to 1950 in the former Travancore Cochin state.

I. Privileges of the Kerala Legislative Assembly.

Divergent sources account for the privileges and immunities of the Kerala Legislative Assembly. They are the following:
1. **Constitutional source**

Art. 194, Clauses (1), (2) and (3) form the constitutional source of the privileges and immunities of the Kerala Legislature.

1.1 **Freedom of Speech**

It is the first and foremost of all the privileges enjoyed by the legislature in a parliamentary democracy. On its importance, it has been aptly said: "Without this freedom, parliamentary scrutiny of the executive would be muzzled and individual member’s defence of the interests of their constituents and others would be severely constrained"\(^\text{10}\).

There shall be freedom of speech in the legislature\(^\text{11}\). But it is subject to two restrictions – (a) provisions of the constitution and (b) rules and standing orders. Thus, freedom of speech is controlled by and subject to Arts. 208 and 211\(^\text{12}\) besides rules and standing orders of the House\(^\text{13}\).

However, it should be remembered that Art. 211 is voluntary and self-imposed in nature. The Hon’ble High Court of Kerala observed: "Evidently this is to insulate the higher judiciary from discussion in the floor of the Legislature and to that extent the freedom of speech is curtailed, though violation of Art. 211 is not actionable"\(^\text{14}\). Thus, liveliness of Art. 211 rests with the speaker.
Under the first part of Clause (2), of Art. 194, a member is exempted from liability in respect of anything said or any vote given in the legislature. This immunity that has been conferred ensures that the freedom of speech that is guaranteed under Clause (1) is absolute and unfettered.

1.2. Publication of Debates or Proceedings.

The latter part of Clause (2) of Art. 194 lays down the right of the House to publish any report, paper, votes or proceedings. From the right of the Commons to exclude strangers and to debate within closed doors arises their right to control publication of proceedings. In India and in the states including Kerala, this is incorporated in the constitution itself.

The scope of the latter part of Art. 194(2) is confined to a publication by or under the authority of the House only. In other words, publication, if to be privileged, should be done either directly by the House or under its authority. Thus, publication of proceedings privately by a member is not privileged; publication of a member's speech separately from the rest of the proceedings of the House is not privileged and publication of expunged portions and questions disallowed are not permitted.

In India as well as in the states, publication of a fair and accurate proceedings of the legislature by a newspaper was not privileged since the publication was not by or under the authority of the House. However, the problem was resolved with the enactment of (The)
Parliamentary Proceedings (Protection of Publication) Act, 1956. But it was repealed during emergency. Again in 1977, the parliament passed (The) Parliamentary Proceedings (Protection of Publication) Act, 1977 which accorded immunity not only to newspapers but also to broadcasts by means of wireless telegraphy. The Constitution (Fourtyfourth Amendment) Act, 1978, however, conferred a constitutional protection by inserting Art.361A.

Art. 194 Clause (3) was amended twice, in 1976\textsuperscript{16} and 1978\textsuperscript{17}. Originally, Art. 194 Clause (3) contained two parts. The first part specified the object as defining privileges by law. Despite, the stated objective, no positive attempt was made\textsuperscript{18}. The reason is clear for once it is defined and if such law would come under Art. 13(2), definitely it would become void\textsuperscript{19}.

The second part contained a reference to the British House of Commons: 'until so defined, it shall be those of the British House of Commons'. Till the Fourty Fourth Amendment Act, this was the position\textsuperscript{20}. However, the Act sought to establish the pre-1976 position in the following manner:

(a) Legislation would be the ultimate source of privilege and

(b) Until such law is made, the pre-constitutional law up to 1979 shall remain the source of privilege. Except the avoidance of a direct reference to a foreign legislature, the Amendment did not make any difference. Thus, the legislature in India inherited almost all the privileges of the British House of Commons at the commencement of the Constitution\textsuperscript{21}.
2. **Statutory Source**

Statutes also form the basis of privileges and immunities of the Indian legislatures, both central and state. In this connection mention may be made of the Code of Civil Procedure which offers exemption from arrest and detention of members of Assembly under civil process during the continuance of any meeting of the House and forty days before its commencement and forty days after its conclusion.

3. **Procedural Source**

Rules of Procedure and Conduct of Business also form another source of privileges of the Kerala Legislative Assembly. The privileges that arise from this source are:

(a) Right of the House to have immediate information of the arrest, detention, conviction, imprisonment and release of a member;

(b) Ban on arrest within the precincts of the Assembly without the permission of the speaker;

(c) Ban on service of legal process without the permission of the speaker within the Assembly precincts; and

(d) Rule as to the disclosure of the proceedings or decisions of a secret sitting of the House or its committee.
4. **Precedental Source**

Precedents constituted a source of the privileges of the legislature in general and Kerala Legislative Assembly in particular. They are the following:

(a) Bar on compulsion upon members or officers of the House to give evidence or produce documents in courts of law relating to the proceedings of the House without the permission of the House; and

(b) Bar on compulsion upon members or officers of the House to act as witness before any other House or Committee thereof without the permission and consent of the member concerned.

A mere narration of privileges is meaningless unless it is capable of being enforced. Therefore, powers, privileges and immunities of the House have come to implicate, as a matter of convention, certain power for its enforceability and protection. These powers are:

(a) To commit persons, both members and non members, for any breach of privilege or contempt of the House;

(b) To compel attendance of witnesses and to send for persons, papers and records;

(c) To prohibit the publication of its debates and proceedings and to exclude strangers; and

(d) To regulate its own procedure and the conduct of its business.
II. The Committee of Privileges And Ethics

The infrastructure that has been evolved by any legislature to protect its rights, privileges and immunities is the Committee of Privileges. Thus the Rules of Procedure of the Kerala Legislative Assembly provided for a Committee of Privileges and Ethics\textsuperscript{27}. If the House is the sole custodian of its privileges, the Committee is the soul arbiter of the House's privileges. Speaker constitutes the Committee at the commencement of the assembly or from time to time, as the case may be, by nomination\textsuperscript{28}. It consist of not more than 9 members.

The Committee has no suo moto jurisdiction. It is at liberty to examine all questions of privilege referred to it. Once the Committee is seized with a matter, it examines the matter in reference to the facts of each case. Once the detailed examination is over, it presents its report to the House. The report may also state the procedure to be followed by the House to give effect to its recommendations\textsuperscript{29}.

Half an hour debate is then permitted by the speaker upon the report of the Committee. No detailed discussion is permitted at this stage. Only such discussion as is required to make out a case for the consideration of the Assembly takes place\textsuperscript{30}. When the motion requiring the consideration of the report is agreed to, the chairman or any other member of the Committee or any other member, as the case may be, may move that the House agrees or disagrees or agrees with amendments, with the recommendations of the Committee contained in the report\textsuperscript{31}. 
II.1. Raising a Question of Privilege

A question of privilege can be raised only by a member of the House, that too with the consent of the speaker of the House. The question should specifically involve a breach of privilege either of a member or of the Assembly or of a committee. Further, the question sought to be raised should comply with three conditions:

(a) The matter sought to be raised as a privilege question should be specific and of recent occurrence;

(b) It should be felt that the matter involved in the question requires the intervention of the Assembly; and

(c) Not more than one question shall be raised at the same sitting.

A written notice addressed to the Secretary, Legislative Assembly is mandatory for raising a question of privilege in the House. Notice should be given on the day the question is proposed to be raised, that too, before the commencement of the sitting. If the question is based on a document, the notice shall be accompanied by the document. If the matter is in order under Rule 154, the member shall raise the question with the leave of the House. If the matter is not in order, the speaker can refuse his consent. But, if the speaker is satisfied as to the urgency of a matter, he may allow a question of privilege to be raised at any time during the course of a sitting after the disposal of questions.
A question of privilege can be introduced in the House only if it is supported by not less than 15 members. However, the speaker is at liberty to refer any question of privilege to the Committee of Privileges for examination, investigation or report.

II.2. A Panchromatic View of Privilege Issues In Kerala

Privileges, either of the individual members or those of the House collectively are susceptible to attack from both members and outsiders. It would be interesting to analyse some of the major questions of breaches of privileges and instances of contempt that have taken place in the state over the years.

2.1. The Press and Privilege

On 24 February, 1969 Shri. E.K. Imbichi Bava, Minister of Transport, raised a question of privilege against 'Janayugam', a Malayalam daily. The news report dated 20 February, 1969 alleged that Shri. K. Karunakaran, a Member of the House made a mention of Kunjan Bava murder case and demanded the resignation of the minister in the Assembly. In the Kunjan Bava murder case the court passed some adverse strictures about the minister's role in shielding the accused. Actually, he neither spoke of the said case nor demanded the resignation of the minister. Therefore, it was stated that the newspaper in publishing a distorted version of the proceedings of the House had committed contempt. However, upon correction of their news report and apology, the Committee decided not to proceed further and the House also agreed.
The next instance of contempt involving the press took place in 1971\textsuperscript{36}. The Malayalam Daily ‘Thaniniram’ dated 18 August, 1971, published an editorial under the caption ‘The Loyalty of the Speaker’ containing aspersions on the speaker. The Committee observed that the offence was grave and the editor’s explanation still worse. Subsequently, as per the recommendations of the Committee he was summoned before the bar of the House and reprimanded.

2.2. Members and Privilege

(a) Misleading the House

In certain cases members themselves have violated privileges of the House or committed contempt. Two such incidents had crept up in the state during 1977, both involving Shri.K.Karunakaran. On 29 March, 1977 Shri.K.Karunakaran in his reply to a question on the floor of the House said that the late Rajan, a student of the Regional Engineering College had never been arrested by the police. Later, in his affidavit filed before the Hon’ble High Court of Kerala, he admitted the same. Thus, on the question of misleading the House a question of privilege was raised by Hon’ble members, T.K. Ramakrishnan and K. Chandrasekharan\textsuperscript{37}.

Shri. K.Karunakarn, however, stated that his speech in the House was made in good faith and on the basis of police reports. But subsequent police enquiry revealed that he was arrested. It was on this second report that he filed the affidavit before the court. Analysing what constitutes misleading, the Committee concluded that Shri. K. Karunakaran did not deliberately mislead the House.
In another incident of a like nature on 7 July, 1977 Shri. Pinarai Vijayan, a member of the opposition raised a question of privilege on a statement made by Shri. K. Karunakaran in the Assembly. The member alleged that on 30 December, 1977 Shri. K. Karunakaran had stated on the floor of the House that the Deputy Inspector General of Police, Northern Range had enquired into the complaint about the police attack on Shri. Viajayan in the Koothuparambu police station and that in the course of such enquiry he had also been questioned. But Shri. Vijayan stated that he was not aware of any such enquiry and that no statement had been taken from him. He also stated that Shri. K. Karunakaran’s statement was based on distorted facts and therefore he misled the House. In the opinion of the Committee, a question of privilege as cited in the instance can arise only if a member or minister makes a false or incorrect statement wilfully, deliberately or knowingly. An autopsy, however, revealed that there was nothing of the aforesaid things and therefore no question of privilege. Hence the speaker declined to give his consent.

b. Casting Aspersions on the Speaker

The chair has always remained the focus of attention as well as attack. In 1996, Shri. M.A. Kuttappan and Shri. E.M. Augusty, Members of the House raised a question of privilege against Shri. Neelalohida Dasan Nadar on the ground of certain statements made by him at a press conference. The whole issue evolved out of allotment of MLA quarters for the Members of the X KLA by the speaker. However, on the basis of unconditional regrets expressed by the Hon’ble member, the Committee finally decided to close the matter.
c. **Casting Reflections on the House**

In the present instance, the question of privilege was raised by Shri. N.I. Devassikutty, Member, Kerala Legislative Assembly, against Shri. K.J. Herschel, another member for a newspaper report that appeared in his name in the Malayalam daily 'Deepika' dated 9 November, 1970. The basis of the newspaper report was a speech that he made at Kottayam on 8 November 1970, in which he said: "...he had high estimation about this House before coming as a member to this House. Now, having come to this House, he is convinced that the Assembly is a place which is used by the members as a forum to insult political parties and their leaders". It is true that his speech contained certain reflections against the House. However, in the light of his written statement, the Committee recommended that he be summoned before it and reprimanded.

2.3. **Citizen and Privilege**

On 3 October, 1997 when Shri. V.C. Kabir, Member Legislative Assembly (MLA) paid a visit to Nelliampathi to enquire about large scale tree felling, he was virtually stopped by the owner of the Sitharkund estate and permitted to pass through the estate only on payment of levy. He experienced the same treatment at the nearby Karuna estate also. Again, on 27 November, 1997 when he visited the same place in connection with the investigation of PAC, the owner of Karuna plantations misbehaved and also threatened to kill him.
Upon raising a question of privilege, the Committee firstly decided to seek explanations from Shri. Jacob Abraham, the Director of Karuna Plantations. Since the explanation was found unsatisfactory, he was asked to appear before the Committee. However, the Committee closed the matter upon himself tendering an unconditional apology.

2.4. Officials and Privilege

In the meeting of the Estimates Committee held on 31 January, 1997 at Trichur, Shri. M.J. Baby George, the District Employment Officer, while adducing evidence before it behaved disrespectfully and arrogantly. The Committee felt the instance as an affront to its status and dignity. When it heard him in person and upon his regrets the matter was closed.

In another incident Shri. G. Sudhakaran, MLA raised a question of privilege against the then District Collector, Alappuzha. It was alleged that in the meeting held on 17 January, 1997 under the auspices of the Onattukara Development Agency, the Collector trespassed all the norms and rules of protocol. The Privilege Committee to which it was referred subsequently concluded that the act of the District Collector badly affected the privileges of the member. However, on expression of regrets the Committee closed the matter.
The third incident in the series occurred in 1998. Shri. Thomas Chazhikkadan, MLA met the Deputy Secretary, PSC at his office at Kesavadasapuram to fetch old question papers. It was alleged that the Deputy Secretary spoke and behaved in such a manner that the Hon’ble Member found his privileges violated. The matter was referred to the Privileges Committee by the speaker on 20 April, 1998. Since his explanation was unsatisfactory, he was called upon to appear before it. However, upon his apology before the Committee, the matter was allowed to rest there.

On the basis of news report appeared in the name of Shri.K.G. Adiyodi, the former Vice Chancellor, University of Science and Technology, Cochin, Shri. Nalakathu Sooppi, MLA brought a notice of privilege on 18 November, 1996. The article was captioned ‘minimum qualification needs to be decided to the Education Minister’, Shri. Sooppi, contended that this article had a reference to the former Education Minister Shri.E.T. Muhammed Basheer who also happened to be a member of the House at the material time. The question rasied by Shri.K.G. Adiyodi before the Privileges Committees was that himself being a member of the Union Public-Service Commission (UPSC), the House had no authority to take action against him. After a through examination of the issue on the basis of his explanation that he never dreamed of making any attack on the rights and privileges of either of the House or of its members, the matter was finally closed.
On 8 October, 1991 Shri. B. Raghavan, MLA raised a question of privilege in the assembly involving Shri. James Joseph, Assistant City Police Commissioner, Eranakulam. The fact material to the question was that the Assistant City Police Commissioner missbehaved with Shri. S. Sharma and Shri. B. Raghavan, Members of the Assembly, while they were in the Cochin University Campus to conduct an interview. Speaker referred the matter to the Privileges Committee. Upon examination and corroboration, the Committee found that he had committed contempt. On his expression of regrets in person on 11 June, 1993 the matter was allowed to end.

In another case Shri. M.C. Cheriyan, MLA raised a question of privilege against the Sub Inspector, Circle Inspector and the District Superintendent of Police, Pathanamthitta. It was alleged that the accused while conducting vehicle inspection on May, 1992 stopped the member’s vehicle and misbehaved towards him even after he revealed his identity. The matter was taken to the Committee which reported it as a serious infringement of member’s privileges. Finally, all of them appeared in person before the Committee and tendered their apology.

A similar issue occurred on 17 January, 1994 when the Committee on the Welfare of Women and Children met at the conference hall of the Kollam Collectorate. It was stated that Shri. Rajesh Diwan, DSP, Kollam caused obstruction to the meeting, misbehaved with the members and left the meeting before the Committee concludes the process of taking evidence.
The matter finally ended with the expression of regrets by him in a joint meeting of the Committee on Welfare of Women and Children and the Committee on Privileges which took place on 20 June, 1994.

Perhaps, the most controversial and much publicised question of privilege was the one that had crept up on 2 October, 1996. The whole issue centred around a speech made by the late Shri. Krishnan Nair, the former Director General of Police. In the alleged news report he was seen to have stated that the extension was granted to him to complete the vigilance enquiry against the Sanskrit University and the missing files therein. He further commented that if he were permitted extension and the vigilance enquiry completed, what was beneath the job of a VIP's wife in the university would have come up. Therefore, a notice of privilege was given by Shri. Chandran MLA.

As directed by the speaker, Shri. Krishnan Nair submitted his explanation on 8 November, 1996. Since the explanation was found unsatisfactory, the matter was referred to the privileges committee. On 10 November, 1998, he was called upon to appear. However, accepting his submission, the Committee decided not to pursue the matter.

2.5. Questions on the Floor and Contempt

The Kerala Government Secretariat Women's Welfare Society in its executive meeting held on 1 December, 1984, criticised a specific question raised in the Assembly. Not only that they also passed a
Resolution condemning such act and sent it to the Legislature Secretary for favour of necessary action. Thereupon Shri. P.C. George, MLA raised a question of privilege. The Committee found that there was grave disrespect on the part of the office bearers. However, at the instance of unconditional apology in person by those involved, the Committee wound up the matter.

Similarly, on 29 June, 1998 Shri.C.M. Sundaram, a member of the House, raised an unstarred question in relation to the denial of minimum wages to the employees of the ‘Swadeshi’ newspaper owned by Shri.Cherus. On this basis, the concerned officers inspected the press and collected evidence. Annoyed at this, it was alleged that Shri. Cherus threatened and slapped him. When this was brought to the attention of the Assembly, the speaker found a prima facie question of privilege and referred the matter to the Committee. After examination the Committee found that there was a grave instance of contempt. Therefore, it decided that he should be brought before the bar of the House and reprimanded.

2.6. Production of Papers/Files in the Custody of the House/Committee.

Whether papers or files tabled before the House constitute proceedings of the House? Whether the original papers or files can be given back to the government for production before the court? Is there any question of privilege? The Committee on Privileges of the Kerala Legislature was called upon to decide these issues many a times.
Smt. Leila Rahiman, a private party requested the House that she may be given a certified copy of the proceedings dated 1 February, 1989 of the House to produce before the II Additional Munsiff Court, Trivandrum. Since the proceedings were not published, the speaker referred the matter to the Privileges Committee on 12 June, 1990. The Committee permitted to issue certified copy to which the House also agreed.

On another occasion the Vigilance Department requested for the original and signed minutes of the III Subject Committee meeting held on 16 May, 1995. Upon reference to the Committee on 22 March, 1998 it recommended that the original should be given only when requested by the Court. The Department should satisfy itself with a certified copy.

When the Food and Civil Supplies Department had tabled it’s file No: 10028/C2/91 relating to palmolin import before the IX K.L.A, the Vigilance Department had made a request to hand over the same. The speaker directed the Department to prepare notes from it. On 25 November, 1997 the Additional Chief Secretary repeated the same request for original files to be produced before the Court. The Privileges Committee recommended that in the interest of justice, it should be handed over.
2.7. **Member as witness**

The question whether a member of the House can be made a witness in a criminal proceeding on the bases of disclosures made by him in the House was considered by the Kerala Legislative Assembly in 1972. The matter actually came up for consideration in the Rajya Sabha in 1968. The Rajya Sabha then laid down a procedure. The then Chief Minister, Shri. E.M. Sankaran Naboodiripad observed that the state of Kerala should also do something in this regard. Therefore, the matter was referred to the Privileges Committee.

The Committee held that if any disclosure is of direct evidentiary value to the investigating officer, he may make a report to the Home Minister. If the minister is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member though the speaker to meet him. If the member agrees to meet him and to give information, the minister will use it in a manner which will not conflict with any parliamentary right of the member. If the member refuses the matter shall rest there.

The Kerala Legislative Assembly on many occasions resorted to the exercise of penal jurisdiction to deal with persons who committed offences in its presence. The category of offences for which punishment was awarded by the House mainly confined to interruptions and disturbances to the proceedings of the House. Punishment ranged from simple imprisonment 'till the House rose for the day' to simple
imprisonment for two months. But on the ground of this detention, so far no untoward crisis has emerged. Thus at the functional level there is the probability of this Committee contributing to certain conflicts and confrontations. But, so far no untoward situation has arisen in the state. Organisationally, since the Committee is discharging a very crucial function, its status should be enhanced from that of a nominated committee to a proportionately elected one. Once it is made to encompass the true spirit of the House, definitely its organisational capability shall improve.

Analytically, all the privilege issues mentioned can be classified into seven categories in terms of their source and nature: those caused by (a) the press, (b) members themselves, (c) citizens, (d) officials, (e) question related, (f) production of purpose regarding, and (g) disclosures by members in the House relating. But it is interesting to note that privileges are not codified in India.

The question as to disclosures by members in the House is settled forever since 1972. The question relating to production of papers is also finally settled. So far, what is generally agreed is that in case the demand comes from investigating authorities, it is enough to wind up the matter with certified copies. Whenever the demand arises from the court, original should be supplied in the interests of justice.
Another perplexing feature is that contempt by officials is more in number than contempt by citizen. In respect of application of privileges, the standard is found to be not at all uniform, especially when it deals with its own members and when it is called upon to administer parliamentary law in regard to citizens. In the former case, it adopted a somewhat flexible standard in order to wind up the matter as early as possible without much fact finding, corroboration and deductions. The two alleged instances of misleading the House by the Hon'ble member, Shri.K. Karunakaran himself is enough to prove this.

The press is always caught red handed and punished in the wake of privilege issues. But the Privilege Committee has not so far made any attempt to corroborate the nexus between the news as such and what was beneath it. In otherwords, the question whether the news has any relevance in relation to public opinion is always left unconsidered, that too by the legislative department. Practically speaking, public opinion is the base of parliamentary infrastructure. It is this public opinion expressed in the form of consent that forms the basis of legislature.

Another major issue noticed in this enquiry is the untimely and unnecessary claim for privileges by members of the Legislative Assembly of Kerala. This mainly arises out of their ignorance and vanity and pride (see Table 4.1). In the survey, out of the sample, 20 percent held the opinion that privileges were meant to protect the dignity of the members; 26.67 percent expressed that it is meant to protect House's dignity. But the majority (53.33 percent) were of the view that it was meant to protect both House's and member's dignity.
Table 4.1.

Response in Regard to Purpose of Privilege

<table>
<thead>
<tr>
<th>Sl.No.</th>
<th>Purpose</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dignity of a member</td>
<td>6</td>
<td>20 %</td>
</tr>
<tr>
<td>2</td>
<td>Dignity of the House</td>
<td>8</td>
<td>26.67%</td>
</tr>
<tr>
<td>3</td>
<td>Dignity of both the Member and the House</td>
<td>16</td>
<td>53.33%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>30</td>
<td>100</td>
</tr>
</tbody>
</table>

These figures invariably show that 46.67 percent of the total sample are really unaware of the exact purpose of privilege. Within this group itself the opinion expressed by 6 persons is dangerous. What they earnestly believe and honestly practice will be detrimental to the smooth working of democracy. A clear picture is obtainable only if this background is weighed against the realities of certain privilege questions that had been discussed earlier.(See the issues associated with Shri. G. Sudhakaran, MLA and Shri. Thomas Chazhikadan MLA)

Out of sheer individual vanity and pride of our representatives and their mistaken belief as to the individual possession of privilege, there arise a feeling that they are above rule of law. The foundation of this belief is further strengthened by the judgement of the Hon’ble Supreme Court in P.V. Narasmiha Rao V State. A recent incident reported as occurred at Panoor is more than enough for a perusal of the researcher’s foregoing conclusion. It was reported that the Marxist party (CPI[M])
leader Shri M.V. Jayarajan, MLA allegedly threatened the Circle Inspector and Sub Inspector of the Pannor Police station inside the police station itself. The Panoor police with the permission of Additional Chief Judicial Magistrate, Tellicherry, has registered a case against him and investigations are going on. The issue arose when the MLA went to the police station to enquire about the police torture on CPI (M) workers in the wake of their SP Office march on the Adivasi issue. Table 4.2 will help to clarify and illustrate these points.

In an effort to assess the appreciability of the decision in P.V. Narasimha Rao V State, the question presented to the legislators - Do you agree with the ratio in Narasimha Rao’s case – 18 out of 30 constituting 60 percent responded positively.

**Table 4.2.**

**Attitude Towards Basic Issues on Privilege**

<table>
<thead>
<tr>
<th>Sl. No</th>
<th>Issue</th>
<th>Number</th>
<th>No Answer</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Privileges place the members above rule of law</td>
<td>Yes: 14 (46.67%)</td>
<td>No: 16 (53.33%)</td>
<td>-</td>
</tr>
<tr>
<td>2.</td>
<td>Approvability of the ratio in Narasimha Rao’s case</td>
<td>Yes: 18 (60%)</td>
<td>No: 11 (36.67 %)</td>
<td>3.33</td>
</tr>
<tr>
<td>3.</td>
<td>Corruption to be excluded from privilege</td>
<td>Yes: 9 (30 %)</td>
<td>No: 21 (70 %)</td>
<td>-</td>
</tr>
<tr>
<td>4.</td>
<td>Possibility for legislative - judicial conflict on ground of privilege</td>
<td>Yes: 14 (46.67 %)</td>
<td>No: 16 (53.33%)</td>
<td>-</td>
</tr>
</tbody>
</table>
To the question whether privilege places them above rule of law, 14 out of 30 answered positively and 16 responded negatively. Therefore, practically a near majority (46.67%) still believes that by virtue of privilege they are above rule of law. No rationale could be seen behind this except the common sense reading that privilege was inclined to be misused.

Corruption is another major factor which tend to vitiate the exercise of privilege by members. In view of the significance of Narasimha Rao's case, the question of exclusion of corruption from privilege was surveyed. An absolute majority of the respondents (70%) are found against such an exclusion. Only 30% stressed the need for separating corruption from the purview of privilege. Thus, the analysis clearly indicated that most of the members are desirous of misusing privileges. They take recourse to privilege as a shield to cover up their wrong and corrupt deeds.

The possibility for a legislative -- judicial confrontation on the question of privilege was foreseen by 46.67% percent only; such a probability is not seen by 53.33 percent. This clearly shows the low orientation of legislators to practical realities. The possibility for confrontation lies and lasts so long as the exercise of privilege comes at logger heads with the provisions of the Constitution. A recent situation reminiscent of a legislature – judicial confrontation arose in the state over the question of non-production of papers relating to the swearing in ceremony of Shri. Umesh Challiyil, MLA. Concerned papers were
actually in the custody of the House. But the Hon'ble High Court directed the Legislature Secretary to produce it. However, for God's sake, the issue seemed to be over with his new swearing in.

M.S.M. Sharma V Shrikrishna (1959), Reference under Art. 143. (1965), State of Kerala V Sudarsana Babu (1983), M.R. Parashar and Others V Dr. Farooq Abdulla and Others (1984) and P.V. Narasimha Rao V state (1998) were some of the cases found mentionable in this context. Nothing material emerged from these cases either in the sense of a uniform law adjusting privileges and fundamental rights or a common principle demarcating the spheres of legislative privileges and judicial domain. In Narasimha Rao's case the court followed a literal interpretation of the relevant provisions of the Constitutions in an effort to avoid a direct confrontation. Apart from this, the constitutional status of a body or authority may also invoke such a confrontation. Of late, there arose such a controversy between the Kerala Legislative Assembly represented by its Committee on the Welfare of Scheduled Caste and Scheduled Tribes and the Kerala Public Service Commission.

To sum up, the meaning attached to the concept of privilege is more often misunderstood than understood. At the application level both the House and the Committee of Privileges and Ethics in Kerala are found keen to evolve double standards. Similarly, misuse of privilege by Members of the Assembly is also felt seriously. Freedom of the press is occasionally affected by the contextual exercise of privilege by the House. At the root of all these lie lack of proper orientation on the part of members.
Notes and References


4. (1998) 4 SCC at p.626. "The alleged bribe takers entitled to immunity under Art. 105(2), the alleged conspiracy and acceptance of bribe being 'in respect of' or having nexus with the vote against no confidence motion'. Constitutionally, the same standards are also applicable to Art. 194.


7. Section 72 (D)(7) of the Government of India Act, 1919 provided certain immunities in respect of speech and vote.

8. Sections 28 and 71 of the Government of India Act, 1935 provided for exemption from liability for anything said or any vote given in the legislature or in a committee thereof.

9. Sections 28(3) and (4) of the Government of India Act, 1935 relating to central legislature were deleted while retaining section 71 (3) and (4) relating to provincial legislatures.


13. Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly, (Secretariat of the Kerala Legislature, Trivandrum, 1994 Rules 26; 32(1); 36(2), (j), (r) and 45(2)).


15. See Suresh V Punit, AIR 1951 Cal 176.


19. See (i) Search Light Case, AIR1959, SC, pp. 395-422.
20. Section 34 (in relation to Art. 194) and Section 21 (in relation to Art. 105) of the Constitution (Forty Second Amendment) Act, 1976, were not given effect.


23. Supracited note 13, Rules 161 and 162.

24. Ibid, Rule 164.

25. Ibid, Rule 165.


27. Formerly, this committee was known as the Committee of Privileges. In 1999, the name of the Committee was changed to the Committee of Privileges and Ethics.


38. See *Privileges Digest*, Vol XXIV, April 1979, pp. 10-11.


40. See Deepika Daily (M), Kottayam, dated 9th Nov. 1970.

41. Supracited Note 36, First Report, pp.6-7.

42. Supracited Note 39, Seventh Report, pp. 1-12.


45. Initially the Speaker entrusted the matter to be enquired into by the Principal Secretary, Agriculture. But he didn’t respond even after a month.


47. The Deputy Secretary Subsequently gave a press note that the MLA asked for question papers of the examination yet to come.

48. See Madhyamam Daily, (M) Trivandrum, dt. 6th November 1996.


51. Ibid.
52. Ibid.; pp. 234-235.

53. See (i) Malayala Manorama Daily (M), Trivandrum dt. 2\textsuperscript{nd} October 1996; (ii) Kerala Kaumudi Daily (M), Trivandrum dt. 2\textsuperscript{nd} October 1996. Shri. Krishana Nair was due to retire on 30\textsuperscript{th} September 1996. The proposal for six months extension was opposed by Shri. G. Karthikeyan, Leader of the Congress Legislature Party. It was alleged that he caused his speech to be published as a retaliatory measure.


55. Op.Cit., Kerala Legislature Yesterday and Today, p.235: Shri P.C. George MLA, raised an unstarred question (question No. 748) in relation to certain unattended files in the General Education (H) Department. The head of this particular section happened to be the office bearer of this organisation.

56. Ibid.

57. Ibid. p.236.

58. Ibid. see also Supracited Note 39, Tenth Report.


60. See Supracited Note 4.

61. The Malayala Manorama Daily (M) Trivandrum, dt. 28\textsuperscript{th} March 2003.

62. Ibid, dt. 30\textsuperscript{th} January 2003.

63. Kerala Kaumudi Daily (M), Trivandrum dt. 22\textsuperscript{nd} November 2002.