CHATER-IV

FREEDOM FROM ARREST

The right to freedom from arrest is yet another major privilege enjoyed by the person as a Member of Parliament. Except on Criminal charges, under Preventive Detention Act or under Defence of India Act in the interest of public safety, it is considered breach of privilege or contempt of the House to arrest or to cause the arrest of a Member of Parliament in civil cases during its session or during forty days preceding and forty days following a session. It is supposed that "Members should not be prevented by trifling interruptions from their attendance on their Parliamentary work. The privilege of freedom from arrest evolves two things,

1. freedom from arrest under process of law, and
2. it is not actually a privilege but calculated to prevent a breach of privilege and to punish an infringement thereof.

The privilege of freedom from arrest or molestation of Members of Parliament, which is of great antiquity, was of proved indispensability first, to the service of the Crown and now to the functioning of each House. L.D white said "In connection with most early amblies that were in any way identified with the King,
is to be found some idea of a royally sanctioned safe-conduct, the Kings peace was to abide in his assemblies and was to extend the Members in coming to it and returning from it. Naturally these royal sanctions applied to Parliament. But as the time went on, molestation of Members was more likely to be through some process of law than through direct bodily injury or restraint. Unless Parliament could keep its membership intact, free from outside interference whether or not the interference was with the motive of embarrassing its actions, it could not be confident of any accomplishment.  "

Hansel stated "It is peculiarly essential to the court of Parliament, the first and the highest court in this Kingdom that the Members who compose it should be prevented by trifling interruptions from their attendance on this important duty but should be excused from obeying any other call, not so immediately necessary for the great services of the nations. 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 process to which other citizens

not instructed with his most valuable franchise are by law obliged to pay obedience." Today the privilege of freedom from arrest is not of great value as it applies to civil process only, where as the imprisonment in civil process has been practically abolished. But it is of great historical importance since it was in connection with it that the Commons first gained the right to determine and enforce matter of privilege. Before the Tudor period questions of privileges were decided by the King and the Lords.

**Retrospective Views:**

The immunity of freedom from arrest originated in the ancient protection afforded by the King to persons travelling to and from his court. When the Commons began to come to Parliament this protection was extended to them. It was provided that persons should not be hindered by arrest from coming to Parliament. In the fifteenth century the Commons began to claim freedom from arrest except for treason, felony or breach of peace. But King and Lords though willing to release a particular individual at the request of the Commons as a matter of grace, would not concede copy right.

In 1404 on the petition of the Commons for the punishment
of the assailant of Richard Cheddar, servant of a Member attending Parliament, the Commons claimed the special protection of the King for themselves and their servants in “coming, remaining and returning,” and it was enacted that in this and in similar cases for the future the assailant should pay double damages besides fines and ransom to the King. The same penalty was imposed by a general statute on assault on Members of either House coming to Parliament. A statute of Henry VI, C.11 in 1433 gave some sanctions to this privilege. It was he who assaulted a Member attending Parliament was to pay double damages.

The privilege of freedom from arrest was somewhat wider, not only the Member did claim that they were not only to be arrested for words spoken in the House but they claimed a general immunity from ordinary law as the situation was grave. Not only in criminal cases but in civil cases to a debtor against whom a judgement had been obtained could be imprisoned until he paid the debt, he could be taken into execution. A defendant in a civil action could generally be imprisoned as soon as the action was began unless he found bail for his appearance in court. However Lords used to enjoy a considerable immunity from arrest except on criminal charges. The representatives of the
Commons also claimed the similar liberty during the session of Parliament and for certain times before and after the session necessary for their coming and going. Exemption from arrest upon criminal charges at least in case of treason, felony or breach of the peace was not claimed. In 1453-54 Speaker Thomas when imprisoned for not paying a fine, the judges while recognizing the freedom from arrest, ruled that determination and knowledge of that privilege belonged to the Lords of the Parliament and not to the justices. Until the reign of Henry VIII, the Commons did not get the right to determine and enforce matters of privilege. However they had been obliged to petition for a writ out of chancery in order to obtain the release of an arrested Member.

In 1543, George Ferrors, Burgeses for plymooth, was arrested for debt during the time of Parliament and the Commons took the matter up to the Lords. They, judging the contempt to be very great, referred the punishment thereof to the order of the House of Commons. The Commons proceeded to order their serjeant to require delivery of the burgess without any writ or warrant and when the Lords chancellor offered to grant a writ they refused. In 1573 he delivered Smalley a Member's servant arrested for debt. In 1585 orders were enlarged and set at liberty James Digg,
servant to the Archibishop of Canterbury, by virtue of the privilege of the court. In 1597 the servants of Lords and Archibishop of Canterbury, the officers who had arrested the prisoners were committed by the House. During seventies this privilege grew to huge dimensions and became almost impossible to get any justice out of a Member of Parliament. Sir Thomas Shirley who was arrested for debt in 1603 was released, resulting in the enactment of an act which gave statutory sanction to the existence of the privilege, yet made provisions for the benefit of the creditor. Since imprisonment in civil cases was very common, debtors were imprisoned by way of execution thus the privilege became an important matter and was carried to great length. The Members not only claimed it for themselves but for their servants too, and claimed that their property should be immune from execution. But statute of Anne and George III, 1770, carried that the servants and property of the Members were no longer be privileged, nothing was left but the freedom from arrest for Members themselves.

By the statute of James I, the freedom of Members from arrest in civil cases has become a legal right rather than a parliamentary privilege. The arrest of a Member in civil cases is therefore irregular as initio, and he may be discharged
immediately as in 1707 the serjeant was sent with the mace to the warden of the Fleet who obeyed its orders of the House and discharged Asgill - a Member then in execution. In 1831 the committee of privilege reported that the "privilege is not claimable for any indictable offence" the principle regarded by the House of Commons as being covering criminal contempt of Court therefore, in Long Wellesleys case, 1839, they did not ask for the release of a Member who had been committed by the Court of Chancery for taking out one of its words out of the jurisdiction.\footnote{Hood Philips, Constitutional and Administrative Law, Sweet and Maxwell, London, 1962, p.182.}

It was decided in Goudy V. Duncombe Case (1847) that the immunity lasted during a session of Parliament and forty days before and forty days after it. It applied equally when Parliament was dissolved or prorogued and it could be claimed by any one who was a Member of the old Parliament but had not been elected to the new.

History shows that its scope is very narrow as it was not protected from proceedings under the Bankruptcy Act, neither probably from arrest on a criminal charges for a non indictable offence nor from proceedings for contempt of court. There is no protection in cases of refusal to give surety to keep the peace or
security for good behaviour and all those cases which are not strictly of criminal nature but partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with Lord in 1641 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.” In 1807 Mill who had been arrested on mesne process, afterward elected for legislature, the House determine that he was entitled to privilege and ordered him to be discharged out of the custody of the Marshall of the King bench. Similarly Christie Burton, 1819, who was elected from Beverly but being in custody on execution and unable to attend parliamentary proceedings, the House ordered his discharge from the custody since he was entitled to this privilege. By 1869, the imprisonment for debt was abolished but there were still some cases in which a person may be imprisoned as for not paying trust monies which he had been ordered to pay by the court of justice.\(^5\)

**Recent Trend:**

Presently too, the immunity is granted to civil cases only but its duration is extended. A Member of Parliament is exempted from arrest in civil cases for a period of forty days before and

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forty days after a meeting of Parliament in order to make them able to perform their duties in Parliament without let or hindrance. The old rule was that the persons of the peers are always sacred and inviolable further, Irish and Scottish peers who had no seats in the House of Lords enjoyed this privilege thus, it was rather a privilege of peerage than a privilege of Parliament. William Anson denied this and confined it within the usual times of privilege of Parliament.'

The main objective of this privilege is "to secure safe arrival and regular attendance of Members on the scene of their parliamentary duties." It does not protect from arrest on a criminal charges for an indictable offence nor from preventive detention by order of the executive authority under statutory powers, e.g. regulations made under defence Act in times of war. 6

However, the Parliament has a right of receiving immediate information of the imprisonment or detention of any Member, together with the reasons for his detention. Provisions are made that before a Member was committed or detained there must be obtained the consent of the House of which he was a Member.

When a Member of Parliament commits any crime he is

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arrested like an ordinary citizen and if he is convicted, the Judge notifies it to the speaker of the House. The Member is usually expelled from the House after being laying of the papers on the table at their request. If the arrest or molestation of a Member is made with mischievous and malicious intent and is protected from attending the proceedings of the Parliament or any State Legislature then the arrested person is entitled to compensation for the loss it has faced. In case of Bhim Singh, the court observed that:

"Article 21, 22(2) and 32 under Constitution of India, if a person is arrested with mischievous and malicious intent, the victim can be compensated by awarding suitable monetary compensation in appropriate cases. Arrest of Member of legislative Assembly while enroute to seat of Assembly and his deprivation of right to attend impending assembly constituted breach of privileges."

He was compensated with Rs. 50,000/- for the gross violation of right of not being produced before the magistrate within the requisite time.

Even if a person is arrested by an order of speaker of the House but not produced before the magistrate, which in normal cases is done as a part of the procedure, is also considered a breach of privilege as in case of Gunupati Keshavram Redddy, a petition under Article 32 alleged that "a was arrested in Bombay

on the 11th March, 1952, taken into custody to Lucknow to be produced before the speaker of the U.P. Legislative Assembly to answer a charge of breach of privilege. He was not produced before the magistrate within twenty four hrs. of his arrest and was in detention in the speaker's custody at Lucknow even at the time of petition." The chief Justice founded it a clear breach of provision of Article 22(2) of the Constitution of India which is quite peremptory in its terms:

"No such person shall be detained in custody beyond the said period without the authority of a Magistrate," making the said petitioner entitled to release.

**Period of Immunity:**

Members in the U.K. are exempted from arrest in civil cases for forty days on either side of the commencement and dissolution of Parliament and after a prorogation but no immunity is available for bankruptcy and insolvency. Similar position is applicable in India, A Member is liable to be arrested in criminal charges and under Preventive Detention Act. This immunity of freedom from arrest even under Preventive Detention Act is available in Pakistan for fourteen days before and fourteen days after a session except when preventive detention is for reasons of

state connected with defense, external affairs, security of Pakistan or any part thereof. Same immunity is available in Israel. Members of Bundestage in the Federal Republic of Germany enjoy immunity from arrest in criminal cases along with civil cases. In Thailand too, the immunity is available in criminal cases and prosecution. No Member can, during a session, be arrested or detained or summoned by a warrant in a criminal case unless permission of the House of which he is a Member is obtained or he is arrested in flagrante delicto. But such arrest must be communicated to the President of the House concerned who may order the release of the arrested Member. In Lebanon and Italy Members enjoy immunity on criminal charge only. Immunity is also available to the Members of Italian senate from the arrest under preventive detention. The immunity is available in all the civil cases during membership only whether the case relates to the period before or after the election of a Member, but in execution of a sentence passed in a criminal case against a Member before or after his election is not suspended for the duration of his membership. In some other countries the position is different, for example in Egypt, if the sentence has began

before election it can not be suspended but if it has not commenced then Assembly's permission is required for its execution. In the U.K. not even the warrants and civil process may be served on Members within the precinct of the House when the House is sitting. It is a contempt to cause or effect the arrest serve even on criminal charges on a Member of the House of Commons during and forty days before and forty days after the session. Usually a Member who is already in custody or pending trial is generally not entitled as a matter of privilege to attend sessions of Parliament and can not be released or have his trial suspended to enable him to attend session. However, it is possible to produce a Member imprisoned on a resolution of the House. The court can also, at its descretion, release a Member who is in custody to attend the session.\(^{10}\)

**Position in India:**

Here, this exemption from arrest and detention under civil process was conferred in 1925 on the Members of Legislative body by the Legislative Members Exemption Act, 1925, Section 3, which inserted Section 135 A in the Code of Civil Procedure, 1908, which was subsequently adopted by the Adaptation of Law Order, 1950, issued under Article 372 (2) provides that a Member

\(^{10}\) Ibid., p.93.
of a Legislature is not liable to arrest or detention in prison under civil process during the continuance of any meeting of the House of the Legislature or its Committee thereof, of which he may be a member and during fourteen days before and fourteen days after such meeting. Legislature Members Exemption Act, 1925 is based on the recommendations of the Reforms Enquiry committee headed by Mudiman, provided that no person was liable to arrest or detention in a civil case" if:

1. he was a Member of a legislative body constituted under the Govt. of India Act, 1919, during the continuance of any meeting of such a body.

2. he was as Member of any committee of such body, during the continuance of any meeting of such a committee, and

3. he was a Member of either chamber of the Indian Legislature during the continuance of joint sitting of the Houses, or of a Joint Committee etc. of which he was a Member and during the fourteen days before and fourteen days after such meeting or sitting.

Before independence, cases of detention of political offenders were brought to the notice of the House in the shape of notice of

11. Legislative Assembly & Council Rule, Standing Order 28(2) and 29(2) by the decision of the Chair.
adjournment motion. In case of a Member of Legislature S.C. Mitra who was detained and prevented from attending the House, Nehru moved an adjournment motion which was adopted by 64 votes against 46 votes as a protest against the violation of the Member's privilege. Similar motion was passed on 22nd January, 1935, for protesting against preventing S.C. Bose from attending the Assembly session.

With the enforcement of the Constitution on 26 January, 1950, the scope and duration of the privilege became the same as obtaining in U.K. i.e. forty days before and forty days after the session of the House and not merely for fourteen days which was provided in section 135 A of the Code of Procedure, 1908. The same view was also expressed on May 5th, 1952, by the Ministry of Home affairs, Govt. of India, in their letter no. 91/51 Police 1, addressed to the Secretary govt. of the Erstwhile Madhya Bharat State. The Madras High Court in Case of Venkatesh held:

"there is immunity extending for a period of forty days prior to the meeting and forty days subsequent to the conclusion of the meeting for a Member of Parliament from being arrested for a civil debt; that is if there is a decree against him, or, if he is sought to be arrested before judgement, he can certainly claim the immunity and freedom from arrest. It is also clear that such

immunity can not extend or be contended to operate where the M.P. is charged with an indictable offence."''

If a person is arrested in civil cases during the parliamentary session he is entitled to his release since he is exempted from such arrest which otherwise, is considered a breach of law.

**Preventive Detention:**

This immunity is not extended to preventive detention cases. If a Member is charged and detained under the Act or for any criminal act he is not liable to be released or any permission to attend the proceeding of the House because the liberty is provided to the welfare of the state and not to endanger the state. In 1939, when captain Ram say - Member of Legislative Council was booked under preventive detention under Regulation 18B of the Defence Regulations, 1939, by which the Home secretary had the power to certify that he had reasonable cause to believe that a person had been recently concerned in acts prejudicial to public safety or the defence of the realm or in the preparation of such acts, and that by reasons thereof, it was necessary to exercise control over him. No Criminal charge was involved but committee viewed that Home secretary's action was not a breach of privilege, and captain Ram say was not released.

untill 5 years later. In case of Ansumali Majumdar, the Calcutta High Court observed:

"under such existing law persons returned as Members of State Legislative Assembly or the Council of State can not claim immunity from arrest for preventive detention and therefore they can be detained under the provisions of the Preventive Detention Act whilst their membership of the Assembly or the Council of State continues."

On May 27th, 1952, N.C. Chatterjee, a Member of the Lok Sabha, gave a notice of privilege motion on the arrest of a Member-Deshpande as it constituted a breach of privilege of the House since the House was in session. The speaker received the information of the same from the District Magistrate, Delhi, that he has been arrested under section 3 of Preventive Detention Act of 1950 as he was among others who took part in organising and directing meetings and demonstration over the intended celebration of an inter-communal marriage which led to a breach of peace and therefore, it was considered necessary to detain him in the interest of maintenance of public order. The committee of privilege found that "the arrest of V.G. Deshpande under the Preventive Detention Act did not constitute a breach of privilege of the House." Therefore no more action was taken by the House.

15. Hood Philips, op. cit. p.182.
Similar views were observed by the committee in case of Dashratha Deb, Member of Parliament who was arrested on 12th June, 1952, that "when a Member is arrested in the course of administration of criminal justice, immediately released on bail, it is under the law and practice of privilege of the House, give necessary information to the speaker. It is being clear that such an arrest does not in itself constitute a breach of privilege of the Hose," therefore no further action was taken by the House. Kunjan Nadar, a Member of legislative assembly, asked for writ of mandamus when arrested under preventive detention but the High court of Cochin observed as:

"When a Member of Legislative Assembly has been arrested and detained and his detention is legal and under due process of law, he cannot claim that his detention should be subordinated to his right to attend the proceedings of the Legislative Assembly. He cannot therefore pray for writ of Mandamus directing the state govt. to enable him to attend the session of the Legislative Assembly, there is no statutory provision granting such privilege or immunity";

In the same way the Supreme Court rejected the petition of K. Ananda, Namblar, who was detained under Preventive Detention Act and observed:

"Under the Defence of India Rules, 1962, R 30 (1) (b) a Member can not claim any special status higher than that of an ordinary
citizen in so far as a valid order of detention is concerned and is as much liable to be arrested and detained under it as any other citizen.\textsuperscript{18}

**Exemption From Arrest within the Precinct of the House:**

Generally Members are quite safe within the precincts as no legal process is served on them while they are in. The Govt. Of India issued instructions on 7th Oct., 1958, by a letter no. 35/2/57 P.11, to all the concerned authorities of State Govt. and Administration that no person should be served by any legal process, civil or criminal, by court of law through the speaker or secretariat. Concerned Members should be served outside the precinct of Parliament directly at their residence or any other place. No help either from speaker or Lok Sabha secretariat or any agency thereof, the court sought to inform the Member about the issue of legal process or in the execution of legal process-civil or criminal against Members. The Govt. of India also directed the police and administration through the state govt. that arrest within the precincts even after the permission of speaker should not be made as a routine matter. Such arrest is made by obtaining speaker's permission only in case of emergency when the matter cannot be delayed. The request is supposed to be signed by not below the rank of Deputy Inspector General of
police, spelling out the reasons for the immediate arrest. In case, the House is not in session even then the permission of speaker is required to execute warrant.\textsuperscript{19} In 1959, Punjab Vidhan Sabha held a policeman guilty of breach of privilege since he attempted to execute arrest warrant on the Member without obtaining the leave of the House. Who later on regretted and offered unqualified apology.

The employees of legislative secretariat are kept away from this privilege. The speaker of the Kerala Legislative Assembly observed that “the prohibition against making arrest without obtaining the permission of the speaker from the precinct of the House is applicable only to the Members of the Assembly. It is not desirable to extend this privilege to the staff of the secretariat since it would have the effect of putting unnecessary restrictions and impediments in the due process of law.”\textsuperscript{20}

**Intimating the House About Arrest - And Its Nature:**

1. Though the Members of legislature are immune from arrest within the specified period but if they are arrested or detained, it is necessary on the part of the concerned authority to intimate the House about the arrest or detention. The information is supposed to be routed through the Ministry of Home affairs as:

\textsuperscript{19} Rule of the House. 232 and 233.

\textsuperscript{20} P.D., 1973, p.34.
a. The House should be informed about the arrest, detention, imprisonment or even release. For instance, the then Deputy Superintendent of Police informed the House through speaker by telegrams on 29 February, 1960, regarding the arrest of Nath Pai in Belgaum as:

"Shri Nath Pai, Member-Lok Sabha, restrained under section 69 of the Police Act by Police Sub Inspector- Belgaum city Police station in Khade Bazar Police station limits today at 1140 hr. for refusing to conform the police station."21

b. The place and duration where detenue is kept shold also be mentioned. On 3rd of March, 1960, the Sub Inspector of Police- Khanapur, informed the Speaker through a wireless message that:

"Shri Nath Pai, Member Lok Sabha, arrested on 3rd is remanded to seven days magisterial custody. Remanded and sent to central prison, Hindalga."

c. The reasons for the arrest should also be communicated. The House was informed on 4th May, 1974, through a telegram from the Suprintendent of Police, Birbhum - West Bengal regarding the arrest of a Member as:

*In the early hrs. (at about 3hrs.) of May 3rd, 1974, the officer-incharge, Nethali Police Station, went to a place in Nethali Police Station area for arresting some prisoners under Section 151 Cr.

P.C., Seven persons found at the place. A few of these persons did not disclose their identity at the time therefore, all of them were brought to Nethali Police Station for interrogation and for establishing their identity. At Nethali Police Station it was discovered that one of the persons was Shri Gadadhar Saha Member, Lok Sabha, Shri Saha was released on personal recognition at 07.00 hrs. on 3rd May, 1974.”

d. Like civil cases information should also be sent in preventive detention and criminal cases Superintendent of Police, CBI:SPE: ACU VIII, New Delhi, communicated the information about the arrest of Shibu Soren on 5th Sept., 1996, as:

“I have the honour to inform you that in connection with the investigation of CBI case no. RC.5(A)/96-ACU VIII under Section 120-B IPC and Section 7, 12 and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988, Shri Shibu Soren-Member of Lok Sabha, has been arrested by the Deputy Superintendent of Police, CBI, ACU VIII and the investigation officer of this case today i.e. 5 Sept., 1996 at 1815 hrs. He will be produced before the competent court tomorrow in accordance with the provisions of law.”

Failure on the part of the committing judge, magistrate, or executive authority amounts to breach of privilege and contempt of the House. The Hyderabad Legislative Assembly called a sub inspector of Police to the Bar of the House and held him guilty of the breach of privilege since he did not inform the speaker of the Assembly about the arrest of a Member. Since he was the

person concerned for the prevention of Member from attending the proceeding of Parliament or their committees and functioning as Member of the House. If the punishment awarding authority constitute a pannel then the responsibility lies with the senior most member.

II. The information is not only required when the person is arrested but also if he is detained for some time and kept under custody of Police. The concerned officer is required to inform the House as soon as possible. On April 5, 1967, the police detained Swami Brahmanand and kept in custody for about 2 hrs. for offering Satya Graha out side the Parliament but his detention was not intimated to the speaker by the concerned official.” The committee held while undertaking the matter that “technically the breach of privilege had been committed by the concerned official.”

Similar view was held when a Member of Lok Sabha, Krishna Chandra Halder, detained by the Police at Burdwan for participating in the demonstration inside the court compound and taken to Galsi on 14th November, 1973. The intimation was not delivered to the speaker thus, the committee of privileges observed that “Intimation regarding the restraint or detention of Shri Krishna Chandra Halder, M.P. on the occasion should have been
sent to the speaker, L.S., and failure to do this did constitute a breach of privilege.”

III. Not only the failure on the part of concerned authority about the arrest and detention is considered the breach of privilege but:

a. it is equally considered guilty when it is delayed. The Deputy Commissioner of Police Intimated the Speaker on 23rd of March, 1981, about the detention of Hukum Deo-Member of Rajya Sabha, while he was arrested on 1st of March, 1981. Committee regretting delay, found it a breach of privilege of the House and of individual Member of Parliament. Action was also taken by the State Govt. for the lapse on the part of the concerned authority and censure was awarded for delay on their part in sending the information.

b. it is imperative to communicate reasons for the delay in both civil and criminal cases. Like civil cases, reasons and grounds are required to be furnished in criminal cases also. In case of Jambuwant Dhote who was arrested on 25th April, 1973, intimated to the speaker about 21 hrs. late. The committee recommended that “when a Member of the Lok Sabha is arrested and
detained under the maintenance of Security Act, 1971, or under any other law providing for preventive detention, the concerned authority should, besides sending to the speaker immediate information regarding the arrest and detention of the Member together with the reasons for his arrest and detention, send a copy of the detailed grounds to the speaker Lok Sabha, simultaneously those grounds are supplied to the detenue under the relevant law providing for preventive detention."

IV. Immediate information is also required if a person is released and rearrested. Sharan Bhushan Singh a Member, raised the issue on 23rd April, 1993, who was rearrested on 17th of April, was previously arrested on 8th of April and granted bail on 16th of April (not physically released) and released on 20th of April but not intimated to the House. The committee held "that a breach of privilege and contempt of the House had been committed in not sending intimation to the speaker Lok Sabha about the release of Bhushan, M.P., on 21st of April, 1993." It was only after unconditional apology tendered by Circle officer, Superintendent of Police, D.M., and Additional Chief Judicial Magistrate (Gonda), the matter was closed.

V. When any such information is received in the House under rule 231, it is the responsibility of the speaker to inform the same to the House as early as possible. If the House is in session he delivers the message received by the arrestee in the House. He publishes the information in the Bulletin of the House if the House is not in session to inform the Members. On 3rd March 1960 the Speaker intimated the House as: "I have the honour to inform the House that I have received the following telegram dated the 2nd March, 1960, from Deputy Superintendent of Police, Bailhongal." Then read out the contents of telegram as: "I have found it my duty in exercise of my power under section 54 criminal procedure code (Act V of 1898) to arrest Shri Nath Pai, Member of Lok Sabha in the limits of Indalhond village, Khanapur Taluka Police station today at 1130 hrs. for offences under sections 341 and 353 IPC registered at Khanapur Police Station." Similarly in 1996, Sept. the 9th, Deputy speaker informed the House about the arrest of Shibu Soren as:

"I have to inform the House that the following communication dated 5th Sept., 1996, was received on 6th Sept., 1996, from the Superintendent of Police, CBI: SPE: ACU VIII, New Delhi." and then read out the contents of the letter.

Though the speaker and the House require immediate information about the arrest, place of detention and transfer from one jail to another of its Member but no breach of privilege can be claimed if:

1. the concerned authority fails to intimate the speaker about the place of detention or transfer of Member from one jail to another. The Deputy Speaker observed on the arrest of Mahavir Tyagi, Member of Rajya Sabha as “Normally it takes some time for the Magistrate or whoever it is to prepare the warrant and other documents and to prepare the statement to be sent to the Parliament. Even allowing an hour or so for that I think the information should have reached us by now.”\(^{27}\)

2. the circumstances demand so. The committee on privileges held that “while it is well recognised that such intimation should be given promptly, it is not possible to lay down any hard and fast rule on the subject. Much would depend upon the surrounding circumstances of each case.”\(^{28}\)

3. a Member is arrested in the matter of administration of criminal justice and released immediately on bail then the


\(^{28}\) P.D., 1975, pp. 37-47.
concerned magistrate is not required to intimate the House. The committee in *Dashratha Deb* Case observed, that “it is not on the part of the magistrate to inform the House as he was released immediately after he was produced before the magistrate” and viewed that such arrest in itself did not constitute a breach of privilege of the House.\(^{29}\)

The committee in its report presented in 1958, held that “no breach of privilege had been committed by the authorities in not sending intimation to the Speaker of the release of a Member on bail pending trial as it does not prevent the Member from attending the sitting of the House.\(^{30}\)

**Privileges in Custody:**

Beyond the said limit of forty days before and forty days after the commencement of the House, the Member can be arrested even in civil cases, but in all cases of arrest whether civil or criminal he is entitled for:

1. the “privilege of communication” with the House Speaker or of State Legislature or Chairman of Parliamentary Committee or Secretary General. Neither the “executive nor any other body has any right to withhold his correspondence addressed to


the Speaker or Chairman of Committee or Secretary General. With holding such correspondence by the concerned authority is breach of privilege. The Madras High Court held that:

"A Member of a Legislature, in detention, was entitled to the right of correspondence with the Legislature, and to make representations to the Speaker and the Chairman of the Committee of Privileges and no executive authority has any right to withhold such correspondence."^31

The committee on privileges in 1958 suggested in case of Kansari Lal Halder that "Provisions might be incorporated in Jail Codes, Security of Prisoners Rule etc of State Govt. and Administrations to the effect that all communications addressed by a Member of Parliament under arrest or detention or imprisonment for security or other reasons to the speaker of Lok Sabha or the Chairman of Rajya Sabha, as the case may be, or to the chairman of a Parliamentary Committee or of a Joint Committee of both Houses of Parliament should be immediately forwarded by the Suprintendent of the Jail concerned to the Govt. so as to be dealt with by them in accordance with the rights and privileges of the prisoners as a Member of the House to which he belong."^32

The same provision was suggested for the State Legislatures. In 1959 all the state Govts. and Administrations were advised by the

32. 4 R (CPR-2LS), 1958.
Ministry of Home affairs to make necessary provisions in the relevant rules. Since then most of the State Govts. amended their concerned rules in order to employ these provisions. However, the immunity is not extended in case of a letter by a Member in custody from jail to another Member and if govt. withholds such communications, no privilege can be claimed.

2. Under arrest, they are supposed to get courtesy which other citizens are not entitled for. In case of alleged arrest and ill treatment of Bhupindra Singh Mann, Member Rajya Sabha, on 7th July 1992, by police for carrying a trolley of wheat from Punjab to Haryana in Protest of ‘Ban Order’ on the carriage of wheat from Punjab to other states, the committee expressed displeasure over the arrest and ill treatment. The Chief Secretary of the Govt. of Punjab also instructed to all the District Magistrates and Senior Superintendent of Police in the state to extend utmost respect and courtesy to M.Ps and M.L.As. The message was conveyed right up to the lowest level functionaries of govt. that extreme caution and care should be exercised while dealing with M.Ps and M.L.As etc. So their privileges and prerogatives would be properly respected.

Molestation:

Molestation like arrest, of any Member of Legislature with a view to prevent a Member from attending the House is also constitutes a breach.

1. Ill treatment or harassment while one is on his way to attend Parliamentary business. Kumar Saha, Member Lok Sabha, raised a privilege issue about his harassment and ill treatment on 31st July, 1972, by certain Railway staff, Police and other officials while he was proceeding to attend a meeting of Parliamentary Committee. The Committee found that “the Railway official and police have committed breach of privilege and contempt of the House,” and recommended that “suitable departmental action be taken by the govt. against them and report to the House as early as possible.”

2. Filthy, abusive and insulting languages against a Member whether inside or out side the House is also a breach of privilege. On 22nd December, 1981, a matter was raised under rule 377, Satyanarayan Jha a Member of Lok Sabha, alleged assault and use of abusive remarks by the Police at Ujjain on 15th Dec., 1981. The committee urged “that the Ministry of Home affairs should take appropriate steps to
curb the growing tendency on the part of law enforcing authorities of assaulting and ill treating M.Ps and other elected representatives of the people and of using abusive language in respect of them." The committee also desired that the Ministry of Home Affairs be asked to issue necessary instruction to the authorities concerned to ensure that such incident may not reoccur and if an officer acts in that manner then serious actions should be taken against him."

3. On assaulting Members the committee emphasized that "M.Ps are entitled to the utmost consideration and respect at the hand of the public servants and as such the police or any other authority should not do any thing or act in a manner as it will hamper them in their functioning as public men. The authorities when dealing with M.Ps. should act with great restraints and circumspection and show all courtesy which is legitimately due to the representatives of the people."34 Similar matter was raised on 13th Sept. 1991 by Sukomal Sen - M.P., Rajya Sabha, as was allegedly assaulted when he was coming out of Parliament House Annexe to proceed to attend the sitting but because of unconditional apology tendered by the Deputy Commissioner of Police for misbehaviour by the

Police personnel under his charge and assured against the guilty. The committee then dropped the matter.\textsuperscript{35}

4. Breach of privilege also occurs if a Member is intimidated and obstruction is caused by an outsider in the discharge of his duties within the precinct of the House.\textsuperscript{36}

This privilege of immunity from assault is available only if person is obstructed in discharge of his duties as Member of Parliament or State Legislature. Members can not claim this immunity if they are not performing legislative duties. It also exempts the persons or officers of the House acting as witness and counsel, appearing before Parliament or its Committees. Their arrest within the precinct, without the permission of chair even in criminal cases or molestation, is considered guilty. Their obstruction whether direct or indirect in carrying out specific duties entrusted to him by Parliament constitute contempt of the House like Member of Legislature and for the same duration.s

\textsuperscript{35} "Privilege Issues," \textit{op. cit.}, 1993, p.468.