ABSTRACT

Parliamentary privileges are indispensable to the effective discharge of the functions and duties of Parliamentarians. Being representatives of people, they are expected to hold fair and free deliberations within the House which are guaranteed to a large extent by these privileges. They not only ensure a congenial atmosphere in the House but also help in upholding the sanctify of the sovereign institution. The present thesis is a modest attempt to analyse these privileges, their effective use, abuse and misuse.

Thesis is divided into five Chapters with an introduction, conclusion, bibliography and few charts showing the background of the parliamentarians, their behavior in the House etc.

The Introduction tries to analyse the meaning, content and extent of privileges in retrospect. Laws and rules are essential for governing any country, Parliament is the institution which is primarily associated with law-making. Its Members and Committees have therefore been provided with certain privileges which enable them to function without any hindrance or obstacle, fear or favour for or favor. These are the special rights and liberties, provided to the Members individually and to
the House collectively for the effective performance of their duties as representatives of the people. In the initial years these powers and privileges were not the same as what we have today, rather it is a result of hard and bitter struggle of many centuries. Petitioners were very humble and could not make constitutional claim to share parliamentary functions. With the passage of time, a gradual and steady change came in their way. During eleventh century only high ranking clergy were entitled to advice the king. But king John, in the thirteenth century, initiated the process of calling elected knights for important meetings of the Great Council. The Charter Act of 1716 further enhanced the House of Commons. The Charter Act of 1853 established the Legislature. The Morley Minto Reforms Act, 1909, Govt. Of India Act, 1919 and 1935 further contributed towards the development of parliamentary institutions. Prior to independence, almost all the efforts had been made to codify the privileges in order to get equal status with that of the House of Commons. The Constitution of India under Article 105 specify the privilege of freedom of speech while made others same as those of the House of Commons. Apart from the Constitution, certain privileges are specified in the statutes while others in the Rules of procedure. Members enjoy certain consequential powers also in order to safeguard their privileges.
The second chapter highlights the significance of privileges. Very often a question is posed as to why the House or its Members need privileges when they themselves are the representatives of the people. Further it is said that no Member of Parliament has higher privileges than those enjoyed by an ordinary citizen as regards the application of law. No doubt this is true but the functions entrusted to Parliament are so enormous and that without these immunities and privileges they can not be accomplished with greater efficiency. As a microcosm of the nation, Parliament has consistently reflected the feelings, hopes, aspirations and even weaknesses and frustrations of the people. It has clearly emerged as the most crucial political institution on whose working depends the future of the nation because the success of any nation depends on how much its policies are effective and implemented in the real life of a citizen. This can be possible only when the representatives are granted somewhat wider powers than others. The Bill of Rights, 1688, laid down that the freedom of speech, debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out side the Parliament. Article 122 of the Constitution of India categorically states that the validity of the proceedings in Parliament can not be called in question in a court of law on the ground of any alleged irregularity of the procedure.¹

¹ AIR, 1959, SC. 395.
Each House reserves to itself the power to suspend any rule of procedure in its application to a particular business before it. To make their movements free and observe secret sittings other privileges are also bestowed to them. Thus, on the basis of this, it can be said that powers, privileges and immunities act as shield against the high handedness and onslaughts of the party in power. The Constitution of India has not listed the privileges because any codification might have put a premium on them. However, if a specific privilege undermines the dignity of the House or tends to obstruct the House as a whole or individual Member, in the discharge of their constitutional functions, is considered breach of privileges or contempt of the House because the very aim of providing privileges is to enable the House and Members in upholding its sanctity and defend itself against disrespect and affrontation which can not be brought or could be brought only by implication under any accepted specific privilege. According to Halsburys, any act or omission which obstructs or impedes any Member or Officer of the House in the discharge of their duties, or which has a tendency to produce such a result would constitute 'contempt of legislature'.

The third Chapter analyses one of their major privileges i.e. freedom of speech which is an essential attribute of any legislature. This privilege enables the Members to hold free and frank discussion on any matter and provide immunity to Members from any action against them
for any thing said or from casting vote on the floor of the House. Its original purpose was to protect the Members against the King and was first confirmed by practice of selecting the speaker in 1376 to carry out their agreed reply to the King. The first express claim for liberty of speech was made in the Commons in 1455 when Thomas Younge, one of the knights for the shire brought a petition into the Commons, complaining about his arrest and imprisonment in the Tower five years back. Thomas More (1523) was the first speaker to be asked from the royal indulgence for any untoward expressions by individuals in debate. Same petition was moved by speaker Moyle in 1542 and was allowed by Henry. In case of Duncan Sandys, 1938, the House of Commons resolved that it was a breach of privilege to attempt to require a Member of Parliament to divulge to a court of inquiry, set up by the Army Council, the source of his information concerning the anti aircraft defence of London which he had used for the purpose of framing a question in the House. It is also said that this privilege is necessary for wise and beneficial legislation and can never be secured if Members function under restraints imposed by the law of slander and libel upon private character.

In India this privilege is embodied under Article 105 (1) and (2) and was granted to Indian legislators for the first time under the Montague Chelmsford Reforms Act and given statutory recognition. It was argued that the immunity granted under Article 105 (2) is related to what was
relevant to the business of Parliament and not to some thing which was utterly irrelevant. But the argument was rejected by the Supreme Court. The Chief Justice of India once observed “having conferred freedom of speech on the legislators cl (2) emphasizes the fact that the said freedom is intended to be absolute and unfettered”. For speeches and actions in Parliament Member is subjected only to the discipline of the House. The High Court under Article 226 can not take cognizance of the dispute.

Molestation or bringing legal proceedings against any person for giving evidence in relation to any proceeding in the House is considered breach of privilege. The freedom is guaranteed almost to all Parliaments but the duration of immunity varies from country to country. To observe freedom of speech it is necessary on the part of the House to secure privacy.

The House has the power to exclude strangers from the House. Parliamentary Papers Act, 1840, made the publication of any report, papers, votes or proceedings, of the Houses of Parliament, completely privileged but can take action against immature publication or publication of expunged proceedings as it is considered breach of privileges and contempt of the House. The Houses are the sole judges of

2) AIR, 1965, SC. 745
3) AIR, 1902, J & K 23.
their own privileges. No action can be taken in one House for any thing that is said in another House.

The fourth Chapter is an attempt to analyse freedom from arrest. It is considered a breach of privilege if a Member is arrested in civil cases during the session and forty days before and forty days after the session. Only under criminal charges, Preventive Detention Act or Defence of India Act or in the interest of Public safety the arrest can be made. A brief account of the history of this privilege has been given. In India this exemption from arrest was conferred on the members of legislative body by the Legislative Members Exemption Act, 1925, which has been continued in a slightly modified form after independence.

Members can not be served with a legal notice within the precinct unless in case of urgency where the matter can not be delayed. Whenever an arrest is made, even in criminal cases, the House requires immediate intimation of arrest, detention and conviction or even release of the Member together with reasons and place of arrest or detention. The senior most person who causes the arrest is required to furnish the information. In custody, the Members are supposed to be treated with utmost dignity and their correspondence addressed to the chairman or speaker of the House or Committee can not be withheld. A part from this filthy and abusive language, ill treatment, assault or any obstruction caused by the outsiders is also considered breach of privilege. The
chapter also examines the judicial response in safeguarding this privilege.

The fifth Chapter highlights the relative importance of the two esteemed institutions - legislature and judiciary. The troika, legislature, judiciary and executive are three different but important parts of the Constitution, their powers are different but still marked by some sort of interrelationships, specially between the judiciary and legislature. A greatest reservoir for supplying power to judiciary to invalidate the statute is provided by the fundamental rights mainly under Article 14 and 19 of the Constitution but attempts has been made by the Parliament to weaken this reservoir. Both authorities are supreme in their own sphere neither of which can challenge the authority of the other. In England on the contrary, both Houses claimed to be the sole judges where as the court maintained that privileges are the law of the land and therefore the court is bound to decide questions coming before it in any case within their jurisdiction even if the privileges are involved. Till early eighteenth century the position was quite in favour of the court as in case of Stockdale. V. Hansard, the majority opinion of the court did not admit the superiority of the High court of the House of Parliament over other law court as the judicial matter cannot be decided inside the House, only the matter coming out from its internal proceedings would be the jurisdiction of the House. But over the years the Parliament in
England has established its supremacy vis a vis the judiciary and its acts can not be nullified by the court on any ground whereas in USA, the Supreme Court is in a more advantageous position as far as judicial review is concerned. In India we have adopted a via media between the American system of judicial paramountcy and English principle of parliamentary supremacy.

After prolonged contradiction and conflicts in a number of cases an understanding has been emerged between the two on the lines that; courts will recognise those privileges which have the sanction of common law; new privileges can be created for the House only by a law passed by the Parliament and not merely by the resolution of one House; whether a particular privilege 'exists or not' is a question to be decided by the courts etc.

In ordinary cases, the courts have accorded the privileges to the speaker of the House but where they are in conflict with the fundamental rights and the doctrine of judicial review it is not easier to claim and there is a possibility of a confrontation between the judiciary and Legislature. It is advisable that the area or sphere of privileges be determined by the courts in context of the rights of the citizen, Judiciary is thought to be the guardian of the rights of man and protects these rights from all possibilities of individual and public encroachments and if there is no adequate provision for the administration of justice, the
liberty of the people is jeopardized, for there is no definite means which should ascertain and decide rights, punish crimes, and protect the innocent from injury and usurpation. The courts themselves show great reluctance to interfere with the working of the legislature, only in case of malafide or perversity they go into the matter otherwise the power of the House is so wide that it can enforce its own decision.

An overview of the problem has been given in the conclusion. The importance of the privileges has been focused as without them the task of the Parliament can not be achieved. They are essential for the functioning of effective democratic legislature. But on the other hand every organ of government in a democratic set up is equally important thus, a proper harmony among them is an imperative. Further, it is also true that today, the greatest threat to their privileges is not from out side but from their own acts and attitudes. Making irresponsible statements within the privileged precincts of Parliament have the effect of unjustly injuring the reputation of individual citizen or a group. The privileges should not be used as a cover to indulge in character assassination or political vandalism. Fine Vandekh. Shouting slogans, organising dharnas, reaching and demonstrating at the podium of the House, tearing of papers and throwing articles are now not unusual in the House, which cast a heavy cloud on Parliament and its institutions. The situation can be averted only if proper attention is paid. The need is to
restore the priestine past of these institutions so as to enable them to work for the establishment of an egalitarian society where there is equality, justice and freedom. Describing the importance of parliamentary system, R. Venkataraman, President of India, on his inaugural address to the 37th Commonwealth Parliamentary Conference, at New Delhi, on Sept. 23, 1991, rightly said as "superior" to all other systems that human ingenuity has to far been able to devise. If it works properly and honestly, there is perhaps no better substitute than the representative parliamentary democracy.