CHAPTER - 1

INTRODUCTION

Parliaments perform important functions as democratic institutions, which broadly fit into three main areas; legislation, representation and the oversight of executive government. To achieve these objectives and keep the executive accountable and transparent, parliaments possess certain privileges, powers and immunities. The term ‘parliamentary privilege’ refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their Members in the performance of their duties. These privileges are an exception to ordinary law and are intended to allow parliamentarians to perform their duties without fear of intimidation or punishment, and without impediment. Notwithstanding this, parliamentary privilege is the privilege of the Houses of Parliament as a whole and not simply of the individual Member.¹

‘Privilege’ means a special or exceptional right or an immunity enjoyed by particular class of persons or individuals which is not available to the rest of the people. In its legal sense it means an exemption from some duty, burden, attendance or liability to which others are subject. In Parliament parlance the term ‘privilege’ means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by them members of each House individually without which they cannot discharge their functions efficiently and effectively. The object of parliamentary privilege is to

safeguard the freedom, the authority and the dignity of the institution of Parliament and its members.

These privileges are granted by the Constitution to enable them to discharge their functions without any let or hindrance. But they do not exempt members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the applications of the laws of the land unless there are good and sufficient reasons in the interest of Parliament itself to do so. The fundamental principle is that all citizens including members of Parliament should be treated equally before the law. The privileges are available to members only when they are functioning in their capacity as members of Parliament and performing their parliamentary duties.

The more important of the privileges, namely, freedom of speech in Parliament and immunity to members from any proceedings in any Court in respect of anything said or any vote given by them in Parliament are specifically provided in Article 105 of the Constitution of India. This Art also provides immunity to a person from any proceedings in any Court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. Further, the Courts are prohibited to inquire into the proceeding of Parliament under Article 122 of our Constitution.

As regards other Privileges, Article 105 (3) as originally enacted provided that in other respects, the powers, privileges and immunities of Parliament, its committees and members, until defined by Parliament by law, shall be the same as those of the Constitution on 26 Jan. 1950. This clause was those specified in the Constitution, the powers, privileges and
immunities of each House of Parliament, its members and Committees shall be such as may from time to be defined by Parliament by law and until so defined shall be those of that House, its members and Committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. This amendment has in fact made only verbal changes by omitting all references to the British House of Commons but the substance remains the same. In other words, each House, its Committees and members in actual practice, shall continue to enjoy the power, privileges and immunities (other than those specified in the Constitution) that were available to the British House of Commons as on 26 Jan. 1950.

No law has, however, so far been enacted by Parliament defining its power, privileges and immunities as stipulated in clause (3) of Article 105 with the result that continue to be equated to those of British House of Commons as on 26 Jan. 1950. The British Parliament has not itself codified its privileges so far. Their privileges are based on precedents and past practices. Opinions are divided both in British as well as India whether privileges of Parliament should be codified. The predominant view in parliamentary circles, however, has all along been that any codification is more likely to harm the prestige and sovereignty of the Parliament/State Legislatures without there being any benefit to the Press and others. In this respect, the following observations made by M. Hidyatulla, former Chief Justice of India and former Vice-President of India and Chairman of Rajya Sabha are pertinent:

“If there is mutual trust and respect between Parliament and the Courts, there is hardly any need to codify the law on the subject of privileges. With a codified law more advantage will flow to persons bent

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2. w.e.f. 20 June 1978
on vilifying Parliament, its members and Committees and the Court will be called upon more and more to intervene. At the moment, given a proper understanding on both sides, Parliamentary right to punish for breach of its privileges and contempt would rather receive the support of Court then otherwise. A written law will make it difficult for Parliament as well as Courts to maintain that dignity which rightly belongs to Parliament and which the Court will always uphold as zealously as they uphold their own.”

1.1 Analogous Provision-

Parliamentary privilege is a legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made related to one's duties as a legislator. It is common in countries whose constitutions are based on the Westminster system. A similar mechanism is known as parliamentary immunity.

In the United Kingdom, it allows members of the House of Lords and House of Commons to speak freely during ordinary parliamentary proceedings without fear of legal action on the grounds of slander, contempt of court or breaching the Official Secrets Act. It also means that members of Parliament cannot be arrested on civil matters for statements made or acts undertaken as an MP within the grounds of the Palace of Westminster, on the condition that such statements or acts occur as part of a proceeding in Parliament—for example, as a question to the Prime Minister in the House of Commons. This allows Members to raise questions or debate issues which could slander an individual, interfere
with an ongoing court case or threaten to reveal state secrets, such as in the Zircon affair or several cases involving the Labour MP Tam Dalyell.³

There is no immunity from arrest on criminal grounds, nor does the civil privilege entirely extend to the devolved administrations in Scotland or Wales. A consequence of the privilege of free speech is that legislators in Westminster systems are forbidden by conventions of their House from uttering certain words, or implying that another member is lying.

The rights and privileges of members are overseen by the powerful Committee on Standards and Privileges. If a member of the House is in breach of the rules then he/she can be suspended or even expelled from the House. Such past breaches have included giving false evidence before a committee of the House and the taking of bribes by members.

Similar rights apply in other Westminster system countries such as Canada and Australia. In the United States, the Speech or Debate Clause in Article One of the United States Constitution provides for parliamentary privilege based on Westminster, and many state constitutions provide similar clauses for their state legislatures.

Parliamentary privilege is controversial because of its potential for abuse; a member can use privilege to make damaging allegations that would ordinarily be discouraged by defamation laws, without first determining whether those allegations have a strong foundation. A member could, even more seriously, undermine national security and/or the safety of an ongoing military or covert operation or undermine relations with a foreign state by releasing information that the Government does not wish to be in the public domain.

³ http://en.wikipedia.org/wiki/parliamentary_privilege#p-search
In the United Kingdom, the House of Commons Library Parliament and Constitution Centre has summarised parliamentary privilege as having two essential components:

a) Freedom of speech, as guaranteed by Article 9 of the Bill of Rights 1689, and,

b) The exercise by Parliament of control over its own affairs, known technically as ‘exclusive cognisance’.⁴

The definitions outlined above distinguish some important features of parliamentary privilege: privilege is seen to be essential to both enabling parliament to perform its duties and functions, and to maintaining parliament’s authority and independence from the executive.

Section 49 of the Commonwealth of Australia Constitution Act states:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.⁵

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⁵ Originally, privileges were incorporated in Section 49 of the Commonwealth Constitution. Privileges were eventually given their own comprehensive legislation eighty years later with the Parliamentary Privileges Act 1987, following an inquiry by a Joint Select Committee. Campbell (2000) op. cit.
The ability of parliament to independently manage its internal affairs is captured in section 50 of the *Commonwealth of Australia Constitution Act*, which states that:

Each House of the Parliament may make rules and orders with respect to

(i) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

Thus to a significant extent Parliamentary Privileges in Australia is founded on Article 9 of the English Bill of Right, 1689.

In New Zealand the House of representatives (2008) standing orders of the House of Representative, Wellington, House of Representative, the wording in Standing Order 23 is similar to the U.K. version ad States “on being conformed by the Governor General of Speaker of a new Parliament, the Speaker, on behalf of the House, lays claim to all the Houses Privileges; especially to freedom of speech in debate, to free excess to the Governor General when ever occasion may require construction it, and that the most favorable may be put on all the Houses ‘ proceeding’
Parliamentary privilege in Canada is similar to its parliamentary counterparts based on the Westminster model.\(^6\) The Canadian Parliament formally applied the privileges of the British House of Commons at the time of Confederation by the *Constitution Act 1867*, with the Preamble to this Act stating that ‘the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom’. Prior to Confederation, privileges were enjoyed by some of the colonies, such as Nova Scotia at its establishment in 1758, by common law because ‘the legislature had first call on their services and attendance’.\(^7\)

Parliamentary privileges were also incorporated into section 4 of the *Parliament of Canada Act 1875*, which states:

The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise

(a) Such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and


\(^7\) Maingot (1997) op. cit., pp. 3, 198.
(b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

Section 5, relating to the judiciary states:

The privileges, immunities and powers held, enjoyed and exercised in accordance with section 4 are part of the general and public law of Canada and it is not necessary to plead them but they shall, in all courts in Canada, and by and before all judges, be taken notice of judicially.

Section 18 of the Constitution Act grants the Canadian Parliament the right to define its privileges by statute as long as these privileges do not exceed those enjoyed by the British House of Commons at the time of Confederation. The Canadian Parliament may also adopt legislation claiming new privileges provided that those privileges are also held by the British House of Commons.

Article 1 Section 6 of the United States Constitution provides that:

Senators and Representatives… shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.
1.2 Definition and Purpose

The most commonly used and accepted definition of parliamentary privilege is found in Erskine May, which defines parliamentary privilege as:

…the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.\(^8\)

Another definition was offered in 1966 by Enid Campbell who defined parliamentary privilege as ‘…those rights, powers and immunities which in law belong to the individual Members and officers of a parliament and the Houses of Parliament acting in a collective capacity’.\(^9\) Griffith and Ryle state:

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\(^8\) Erskine May (2004) op. cit., p. 75.
Parliamentary privilege, even though seldom mentioned in debates, underpins the status and authority of all Members of Parliament. Without this protection, individual Members would be severely handicapped in performing their Parliamentary functions, and the authority of the House itself, in confronting the Executive and as a forum for expressing the anxieties of the citizen, would be correspondingly diminished.10

Griffith and Ryle also observe that these privileges are essentially those of the House as a whole, meaning that individual Members can only make claims of privilege in so far as any denial of their rights or threats made to them, would impede the functioning of the House.11

In a recent case in Canada concerning the management of parliamentary employees Canada (House of Commons) v Vaid12 the Supreme Court of Canada considered the meaning of parliamentary privilege. There it was said that such privileges were considered necessary ‘to protect legislators in the discharge of their legislative and deliberative functions, and the legislative assembly’s work in holding the government to account for the conduct of the country’s Business’.13

While a distinction needs to be drawn between the rights and immunities enjoyed by Members individually and those powers enjoyed by the Houses of Parliament in their collective capacity, Gareth Griffith from the New South Wales’ Parliamentary Library Research Service notes that there is an obvious correlation between the two. For example, the right to freedom of speech is the basis of the power of the House to

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regulate its own proceedings and to control the publication of its debates and proceedings.\textsuperscript{14}

Griffith cites the main immunities enjoyed individually as including freedom of speech in parliament and the qualified immunity of Members and officers from legal process.\textsuperscript{15} There is also the immunity extended to individuals who appear as parliamentary witnesses giving evidence before a parliamentary committee. The rights and powers enjoyed by the Houses of Parliament in a collective capacity include the power to control the publication of debates and proceedings, the power to regulate internal affairs and procedures and the power to conduct inquiries and order the production of documents.

In the United Kingdom, the House of Commons Library Parliament and Constitution Centre has summarised Parliamentary privilege as having two essential components:

a) Freedom of speech, as guaranteed by Article 9 of the \textit{Bill of Rights 1689}, and,

b) The exercise by Parliament of control over its own affairs, known technically as ‘exclusive cognisance’.\textsuperscript{16}

The definitions outlined above distinguish some important features of parliamentary privilege: privilege is seen to be essential to both enabling parliament to perform its duties and functions, and to maintaining parliament’s authority and independence from the executive.

Notwithstanding this, however, parliamentary privilege and particularly the potential for its abuse and misuse has been a contentious

\textsuperscript{14} Griffith (2007) op. cit., p. 4. also Campbell (2003) op. cit., n 5, pp. 74-75.

\textsuperscript{15} Such as the exemption from compulsory attendance before a court or tribunal when Parliament is sitting and exemption from jury service, Griffith (2007) op. cit., pp. 3-4, 10

issue in academic commentaries on the subject, and subject matter for parliamentary committees themselves. Recent reviews by such committees, conducted in various jurisdictions, have investigated such issues as: whether citizens should be allowed a right of reply; whether the privilege of freedom of speech in parliamentary proceedings needs to be qualified rather than absolute; and, whether privilege allows persons to be unjustly defamed.\footnote{17}

In line with many parliamentary jurisdictions, in Victoria both the Legislative Assembly and Legislative Council have privileges committees that inquire into and report on complaints of breach of parliamentary privilege that are referred to the committee by resolution of the House. These committees meet as required and are appointed at the start of each Parliament. The procedure in the Assembly and the Council is that a Member makes a complaint of a breach of privilege in writing to the relevant Presiding Officer who then considers the matter and decides if the case should have precedence.\footnote{18} The Member may then proceed in the House with an appropriate motion and, if the motion is agreed to, the matter may be referred to the relevant Privileges Committee.\footnote{19}

\footnote{17} Two significant reviews include the previously mentioned, United Kingdom, Joint Committee on Parliamentary Privilege (1999) \textit{Parliamentary Privilege – First Report}, op. cit., (henceforth, UK Joint Committee Report (1999), and Australia, Commonwealth of Australia (1984) \textit{Joint Select Committee on Parliamentary Privilege}, October, Canberra, Commonwealth of Australia. There are numerous examples of committee reports that address specific cases that have questioned such issues. These reports are readily available on most committee websites, such as the relevant committees in Victoria, the Commonwealth of Australia and the United Kingdom. Examples of the many reports published by committees that deal with specific cases include the following: Australia, Senate, Committee of Privileges (1997) \textit{Person referred to in the Senate – Dr Neil Cherry}, no. 65, PP No. 48/1997 and Commonwealth of Australia, Senate, Committee of Privileges (2007) \textit{Person referred to in the Senate – Indonesian Forum for Environment}, no. 132, PP No. 173/2007 (which determined that foreigners have right of reply); Commonwealth of Australia, Senate, Committee of Privileges (2002) \textit{Execution of search warrants in Senators’ offices – Senator Harris}, no. 105, PP No. 310/2002 (concerning immunity of seized material). also Griffith (1997) op. cit.

\footnote{18} The Legislative Council’s procedure is prescribed by Standing Orders. The Legislative Assembly’s procedure is guided by practice.

\footnote{19} Whereas the Assembly’s Privileges Committee has met occasionally, the Council’s Privileges Committee has never met as the House or President has dealt directly with matters, including right of reply.
The term ‘parliamentary privilege’ has itself attracted some criticism in the reports published by several committees established with the purpose of reviewing the law and practice of parliamentary privilege.\textsuperscript{20} One such report, published in 1999 by the United Kingdom Joint Committee on Parliamentary Privilege (hereafter, the ‘UK Joint Committee Report’) noted that the term ‘labours under the disadvantage that the word privilege still carries a connotation of benefit or advantage unrelated to public need or duty… the very title is misleading and unfortunate’.\textsuperscript{21}

1.3 Historical prospective

The privileges enjoyed in Westminster systems such as Australia, New Zealand, Canada, the United Kingdom and elsewhere are, in their origins,\textsuperscript{22} the products of an actual political struggle between the House of Commons and the Crown (and the House of Lords) in the United Kingdom. British precedent has significantly influenced the adoption of parliamentary privilege statutes and the application of privilege in Australia, as well as other jurisdictions that have embraced the Westminster model. For example, the Commonwealth of Australia and most Australian state jurisdictions, Canada and New Zealand have incorporated versions of Article 9 of the English Bill of Rights 1689 in some form or another.\textsuperscript{23} Article 9 states ‘That the freedom of speech, and


\textsuperscript{21} UK Joint Committee Report (1999) op. cit., para. 337. In their review, the Committee did not decide to recommend replacing the word privilege with ‘rights and immunities’ as suggested by the 1967 Committee. also Blackburn & Kennon (2003) op. cit., p. 124. Indeed, the Queensland Parliament decided to use the phrase ‘powers, rights and immunities’ over ‘powers, privileges and immunities’ as privilege ‘suggests that a personal advantage or benefit accrues to members either collectively or individually’. Queensland Parliament (2001) Explanatory Memorandum, Parliament of Queensland Bill 2001, p. 7.

\textsuperscript{22} Rachel Macreadie and Greg Gardiner “An Introduction to Parliament Privilege” August, 2010

\textsuperscript{23} 4 At the time in which the Bill of Rights was made, the Julian calendar was in use. In referring to the Bill of Rights in this paper, the Bill of Rights 1688 is used interchangeably
debates or proceedings in Parliament, ought not be impeached or questioned in any court or place out of Parliament’.

For this reason it is important to examine House of Commons practice, for, while most Australian jurisdictions have passed their own legislation and developed their own practice in regards to parliamentary privilege, ‘the practice and precedents of the House of Commons are of continuing interest’ and have established the precedent followed in many parliaments influenced by the Westminster model.24

In order to understand contemporary practice, it is important to examine the origins of parliamentary privilege. As Erskine May notes, ‘the importance of privilege today cannot be entirely divorced from its past’.25 Many of the customs and practices today relate to traditions formed and developed over centuries. Similarly, many of the features of parliamentary privilege hint at the unique historical circumstances in which the immunities and rights provided for arose. Even today, at the beginning of each session in the United Kingdom Parliament, the Speaker petitions, on behalf of the Commons, for freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require, and that the most favorable constructions should be placed upon all their proceedings.26

On this historical theme, the UK Joint Committee Report notes:

26. As Erskine May notes, the third of the Speaker’s petitions is medieval in origin and is a corporate privilege, meaning it does not apply to individual members but to the House as a whole. The Commons still restricts the sovereign from attending its debates, unlike the Lords. The fourth petition is nowadays a courtesy since the proceedings of the House are protected from interference from the Crown. ibid., pp. 78, 89-90
Tradition still plays a significant part in the way Parliament does its job, in the powers it exercises and in its constitutional relationship with the Crown and the courts. Much of the strength of parliamentary privilege, not least the extent to which it is widely recognized and accepted, lies in its antiquity; the same is true of its weaknesses, in particular the obscurity and obsolescence of certain areas of privilege.27

The powers, privileges and immunities of the UK Parliament developed in the context of the Parliament’s need to assert its integrity, independence and authority against outside influence. In providing a brief history of parliamentary privilege in both the House of Commons and the House of Lords, Erskine May notes that the House of Lords have ‘ever enjoyed’ their privileges simply because ‘they have place and voice in Parliament’ and ‘because of their immemorial role in Parliament as advisers of the Sovereign’.28 By contrast, the House of Commons had to repeatedly assert and claim its privileges and the acquisition of privilege was ‘both complex and prolonged’.29

Erskine May notes that in the latter part of the fifteenth century the House of Commons enjoyed an ‘undefined right to freedom of speech, as a matter of tradition rather than by virtue of a privilege sought and obtained’.30 Charles McIlwain wrote that there was the perception of Parliament being of ‘such dignity’ that its privileges in the early times

29. Ibid., p. 78. In spite of the privileges afforded Westminster Parliament the exercise of these privileges during this time was still subject to the extent to which the monarch would allow. Morgan states that the reality was that absolutist abuses were rife and the courts were often subject to royal domination. D. Morgan (2008) Parliamentary Privilege in Queensland, AIAL Forum No. 59, p. 9.
30. Erskine May charts the historical development of privilege discussing each privilege and power separately, demonstrating how they are related and yet distinct in their development and chronology, having evolved with fluctuating importance in different struggles and contexts. Erskine May (2004) op. cit., p. 79.
were not questioned.\textsuperscript{31} McIlwain wrote of Parliament functioning more as a court than a legislature in its beginnings, stating that parliamentary privilege ‘furnishes… one of the most convincing of all the instances of the eminently judicial character of Parliament’.\textsuperscript{32}

The privileges of the House of Commons crystallized in the seventeenth century as a result of conflicts with the Stuart monarchs. The struggle for freedom of speech reached a climax in 1629 when Charles I, attended by an armed escort, entered the Commons and arrested several Members ‘found guilty in King’s Bench of seditious words spoken in debate’. The Crown’s argument was that parliamentary privilege did not protect seditious comments.

It is important to note that when the Stuarts returned from exile in 1660, and reinstated the monarchy, the Commons were determined to ensure freedom of speech was preserved. Within months of the restoration of the monarchy a Bill was read to maintain and confirm the House’s privileges, stating that ‘the Parliaments of England and the Members thereof shall forever hereafter fully and freely enjoy all their ancient and just rights and privileges in as ample a manner as… formerly’.\textsuperscript{33} Erskine May notes that ‘Despite several reminders from the Commons, the Lords failed to return the bill before the end of the session’.\textsuperscript{34}

The revolutionary circumstances of 1688-1689 gave the Commons another opportunity to ground freedom of speech in statute. As a report

\textsuperscript{31} C. McIlwain (1910) \textit{The High Court of Parliament and its Supremacy}, New Haven, Yale University Press, pp. 236, 230, 109-256.

\textsuperscript{32} He also noted, ‘If the whole length of parliamentary history be had in view, it will appear how late in that history parliamentary privilege became an important question’. ibid., pp. 229-230.


\textsuperscript{34} Erskine May (2004) op. cit., p. 82. The Commons also established a Committee in 1667 to review the issue of freedom of speech and the arrests nearly forty years earlier.
by the UK Parliament’s Parliament and Constitution Centre notes, the Bill of Rights that emerged from the ‘Glorious Revolution’ was intended, in part, to curb future arbitrary behaviour of the monarch, and to guarantee the Parliament’s powers vis a vis the Crown.\textsuperscript{35} Erskine May notes that Article 9 of the Bill of Rights was ‘intended to stifle both the courts and the Crown’.\textsuperscript{36}

While freedom of speech was established by the Parliament itself and only after a long struggle to assert its independence, freedom of arrest was more deeply engrained. Nonetheless, Erskine May notes that the implementation of freedom from arrest may have been ‘patchy and often beyond the power of the Commons alone to enforce’.\textsuperscript{37}

The provision of freedom from arrest has its foundations in the early days of establishing parliamentary supremacy in the House of Commons. It derives from a time in which Members could be arrested and detained for civil matters, particularly related to debt, and highlights the importance for the House to establish specific priority on the attendance of Members at Parliament. The immunity from arrest in civil proceedings was first vindicated in the House of Commons in 1543 when the Commons secured the release from arrest of a Member.\textsuperscript{38} However, it is thought that the earliest known assertions of freedom from arrest date back to the fourteenth century.\textsuperscript{39}

\textsuperscript{36} Erskine May (2004) op. cit., p. 82. Carney notes that another concern of the Commons, expressed behind the principle of Article 9, was that the House of Lords would be reviewing its internal affairs and become the ‘overlord’ of the Commons. Carney cites \textit{R v Richards; Ex parte Fitzpatrick and Browne} (1955) 92 CLR 157 at 162. Carney (2000) op. cit., p. 171.
\textsuperscript{37} Erskine May (2004) op. cit., p. 83.
\textsuperscript{38} Australia, Joint Select Committee on Parliamentary Privilege (1984) op. cit., p. 25.
\textsuperscript{39} Erskine May (2004) op. cit., p. 83.
Importantly, *Erskine May* explains that ‘the privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation’ and that the privilege could not be pleaded in cases of treason, felony and breach of the peace. This was accepted in the fifteenth century by both the House and the courts and in 1697 the Commons resolved that ‘no Member of this House has any privilege in case of breach of the peace, or forcible entries or forcible detainers’. The *Privilege of Parliament Act 1603* was intended to statutorily recognise the privilege of freedom from arrest as well as the right of either House to set a privileged person at liberty and the right to punish those who make or procure arrests. However, the Act also maintained the rights of creditors to be able to sue the privileged party once the privilege claimed had expired with the session or the Parliament.

The further regulation of freedom from arrest in additional statutes in the early eighteenth century changed the means of securing a Member’s release, with Members normally being discharged immediately upon motion in the court from which the process issued. Nonetheless, the UK Joint Committee Report, cited above, noted that this immunity lost most of its importance in 1870 when imprisonment for debt was abolished by the *Debtors Act 1869*.

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40. ibid., pp. 84, 85.
41. ibid., p. 84. Commons Journals (1667-1687), p. 342; Commons Journals (1693-1697), p. 784. *Erskine May* cites examples in the sixteenth and seventeenth centuries where pleas of privileges failed and Members were arrested and detained. It is also worth noting that the Houses do not always insist on their privileges. *Erskine May* cites several examples of such instances, including the House of Commons giving leave, in 1607, for a Member to be sued, when the Member would have otherwise been protected by privilege, *Erskine May* (2004) op. cit., pp. 83-84, 76.
42. ibid., p. 87.
43. ibid., p. 88.
44. UK Joint Committee Report (1999) op. cit., para. 327.
The principle of control by parliament of its own affairs, free from interference by the courts, is referred to as ‘exclusive cognizance’, a key component of parliamentary privilege. Not only is parliament independent from the government and judiciary, but in bicameral parliaments exclusive cognizance extends to each House’s independence from the other House. Each House has the right to judge the lawfulness of its own proceedings and has the power to require the attendance of witnesses and the production of documents. As Sir William Blackstone said in his *Commentaries on the Laws of England*, ‘the whole of the law and custom of Parliament has its origins from this one maxim, that whatever matter arises concerning either House of Parliament, ought to be examined, discussed and adjudged in that House and not elsewhere’.

Even earlier, in the sixteenth century, the concept that the Parliament should remain autonomous and have its own laws and customs is well developed in the words of Sir Edward Coke who said in the Commons:

…as every Court of Justice hath Laws and Customs for its direction, some by the Common Law, some by the Civil and Cannon Law, some by peculiar Laws and Customs… all weighty matters in any Parliament moved concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of the Parliament, and not by the Civil Law, nor yet by the Common Laws of this Realm used in more inferiour Courts… the King cannot take notice of anything said or done in the House of Commons, but by the report of the House of Commons: and every Member of Parliament hath a judicial place, and can be no witness. And this is the

reason that Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the Common Laws…\textsuperscript{47}

The ability of parliament to independently manage its internal affairs is captured in section 50 of the \textit{Commonwealth of Australia Constitution Act}, which states that:

Each House of the Parliament may make rules and orders with respect to–

(iii) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(iv) The order and conduct of its business and proceedings either separately or jointly with the other House.

In Victoria it is section 43 of the \textit{Constitution Act 1975} that encapsulates the authority of the Houses to order their own affairs (see in particular section 43(1)(e) and 43(1)(f)).

While the Houses of Parliament possess autonomy in managing their internal affairs without interference (from both the judiciary and the executive arms of government), the protections afforded by privilege and the freedom of speech provisions oblige parliament to exercise self-regulation. This is particularly the case in matters of \textit{sub judice}.

The sub judice rule

With regards to \textit{sub judice}, the House of Lords \textit{Companion to the Standing Orders} states that the privilege of freedom of speech ‘places a corresponding duty on Members to use the freedom responsibly… under

the [sub judice] rule both Houses abstain from discussing the merits of disputes about to be tried and decided in the courts of law’. 48

In India the powers, privileges and immunities of each House of Parliament, its committees and its members derive their authority from Art. 105. Before coming into force of the Constitution on 26 Jan. 1950 the privileges of members of Indian Legislature were laid down in section 28 of the Govt. of India Act, 1935. Section 67(7) of the Govt. of India Act, 1919 also contained a provision regarding the privileges of members of the Indian Legislature.

During debate on adjournment motion moved in the Central Assembly on 21 Jan. 1927 to discuss the conduct of Govt. in preventing S.C. Mitra (who was elected to Central Assembly while in detention) from attending to his duties as a member, Govt. gave an assurance that they would follow House of commons procedure and report to the Speaker every case of detention of members. 49

Section 28 of Government of India Act, 1935 provided as follows:

Privileges, &c. of members

(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the

49. C.A Deb., 1927, Vol. 1, pp. 16 and 18-40
authority of either Chamber of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do:

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in,
and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature

1.4 Debates of the constituent Assembly and Parliamentary Privileges-

The discussions of the framers of the Constitution are important and their views still carry weight not only because of their imminence and vast administrative experience but they gave a serious thought to deal with the matters of emergent nature. Though they did not want to incorporate the provision of the Government of India Act, 1935 in toto but they felt the necessity to provide for privileges to the Houses of Parliament and State Legislatures, particularly to deal with the freedom to the members as well as to the Houses to discuss the matters freely and without fear.

The Draft Article 85 of the Constitution dealing with Parliamentary Privileges etc. of members was placed for discussion before the Constituent Assembly on may 19, 1949, This Article reads as follows:

Art- 85- (1)- Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2)- No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3)- In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by Law, and until so defined, shall be such as are enjoyed by the
members of the Houses of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4)- The provision of clauses (1), (2), and (3) of this Article shall apply in relation to persons who by virtue of this Constitution have the right to speak in and otherwise take part in the proceeding of, a House of Parliament as they apply in relation to members of Parliament.

Following there amendments were moved for consideration and acceptance of the House.

The first amendment moved by Shri H.V. Kamath suggested ‘that in clause (3) of Article 85, for the word ‘as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution’ the words ‘as were enjoyed by the members of the Dominion Legislature of India immediately before the commencement of this Constitution’ be substituted.

He stated that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the Constitution of another State. I see no valid reason why this should be done and asked “Is it necessary or is it desirable when we are drafting our own Constitution, that we should lay down explicitly in an article that the provision as regards this matter will be like those of the House of Commons in England?”

He further stated, “we know very well what our privileges at present are. Therefore, sir it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries.”

The second amendment was moved by Shri Jaspat Roy Kapoor for consideration of the House, as “That in clause (4) of article 85 after the
words ‘a House of Parliament’ the words ‘or any committee thereof’ be inserted.”

“The provision of clauses (1), (2) and (3) of this article shall apply in relation to person who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

The object of this amendment is to bring clause (4) in conformity with clause (2) of this article. According to clause (2) a Member of Parliament is immune from any proceeding in a court of Law in respect of whatever he may say in a committee of the Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a committee of the Parliament. I see no reason why this privilege should be restricted in the case of a non-member of Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. It is very necessary that whatever is said either in evidence or otherwise by persons who are invited by the sub-committee of Parliament to speak before them, whatever they say, must also be privileged.

Prof. K.T. Shah moved the third amendment viz, “That after clause (4) of article 85, the following new clause be inserted:-

‘(5) in all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any
order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.’

He stated, Sir, this is a simple proposition well known in Constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority.

All these three proposed amendment in Draft Article were presented by the president of the Drafting committee for open discussion. For the sake of convenience the discussion of proposed amendments is being made hare in under.

The first amendment moved by Shri H.V. Kamath was opposed by prof. Shibban Lal Saxena by stating that it may amount complete nullification of all our privileges. Instead we must define the privileges enjoyed by the members of House of Commons and put them as an appendix to our Constitution. However Mr. Kamath replied that there were no nullification of privilege but there will be a committee of privileges which will go into the matter and defined various privileges of the members of the House.

Mr. Naziruddin Ahmad stated that the provision of clause (3) was vague. In fact the privileges of the members of the House of Commons are not statutory.

They are embedded in the common law to be found in the text books which are many and also in case law which are scattered in many places. No one can tell us what the privileges are. These should all be defined
and not left vague as at present. I suggest that at the end there should be added a schedule defining the rights pending the House of Parliament making adequate laws in this respect.

Dr. P.S. Deshmukh also supported the view expressed by Mr. Kamath by stating that the privileges of the members of the commons are well understood and well defined and so there should be no difficulty in enumerating them in a schedule.

Shri Alladi Krishnaswami Ayyar was of the view that the privileges be formulated in a compendious form but feared that due to constrained of time, it may not be possible and therefore there is no harm in making reference to the privilege of the House of Commons. He has submitted that there is absolutely no force in the objection made as to the reference to the British Parliament. And therefore there is no infra dig in the wording of clause (3) as there is nothing to fetter the discretion of the future parliament of India. Only as a temporary major, the privileges of the House of Commons are made applicable to this House.

In the Australian Constitution there is a direct reference to the House of Commons of the United Kingdom.

Pandit Lakshmikant Maitra and Mr. Rohini Kumar Chaudhari opposed the inclusion of the word ‘the House of Commons’s in clause (3) of the Article.

In view of the above discussion the amendment moved by Mr. Kamath was negatived.

As far as second amendment moved by Shri Jaspat Roy Kapoor that in clause (4) of the article 85 after the words a House of Parliament the words or any committee thereof be inserted. He stated that the
provision of clauses (1) (2) and (3) of this Article shall apply in relation to the person who virtue to this Constitution have the right to speak in, and otherwise the part in the proceeding of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament. The object of this amendment is to bring clause (4) in conformity which clause (2) of this Article.

According to clause (2) a Member of Parliament is immune from any proceeding to court of law in respect of anything which he may speak on the floor of the House and also in respect of whatever he may say in a Committee of Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a Committee of the Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. I think it is very necessary that whatever is said either in evidence or otherwise by person who are invited by the sub-committee of the Parliament to speak before them, whatever they say, must also be privileged. The amendment moved by Kapoor was supported by mr. Naziruddin Ahmad and finally the amendment moved by Mr. Kapoor was adopted.

The third amendment moved by Mr. K.T.Shah for the inclusion of the new clause (5) was negatived.

An attention was drawn by Mr. S.L. Saksena to one other aspect of clause (2) of article 85 which says “No member of Parliament shall be liable to any proceeding in any court in respect of anything said or any
vote given by him in parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.”

He stated that the privilege is given only in respect of publication under the authority of either House of Parliament. He wanted the privilege which was qualified in the clause should be absolute so that whatever spoken in the House may be published in any paper.

Mr. Naziruddin Ahmad suggested that the speeches made in any of the Houses which are not objectionable and are not ruled out by the Speaker or the Chairman should also be fully published outside also without authority of the House of the Parliament. Dr. P.S. Deshmukh also agreed with the statement of Dr. saksena. However Shri Jagat Narain Lal opposed the move of Mr. saksena by stating that clause (2) seeks to give them two privileges or immunities. One is with regard to both and the other is with regard to others which they may deliver in the Parliament and which might be published under the authority of the parliament. My friend wants further immunity that the members who has delivered a speech in the Parliament should have further immunity, should have the right the privilege and immunity of publishing their speech outside in the press. That may relate to the freedom of the press, but that does not pertain to the freedom of the member so far as his speech and his vote in the Parliament is concern. I think that is stretching a point too far and it is neither necessary nor proper. Shri M. A. Ayyangar was opposed to any amendment and wanted the clause as it stands to be accepted. Ultimately the amendment moved by Mr. saksena was not adopted.

At the end Article 85, as amended was added to the Constitution.
1.5 Constitutional Provision relating to Parliamentary Privileges-

The Constitutional provisions regarding privilege of Parliament and State Legislature are identical. Article 105 and 194 provide for privileges of the Parliament and the State Legislature respectively.

1.5.1 Article 105

Powers, Privileges, etc. of the Houses of Parliament and of the members and committees thereof-(1) Subject of the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No Member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Houses of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by and committees immediately before the coming into force of section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.50

50. Similar provisions are contained in art. 194 in respect of State Legislature.
1.5.2  Article 118- Rules of Procedure- (1) Each House of
the of parliament may make rules for regulating, subject to the provisions
of this Constitution, its procedure and conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure
and standing orders in force immediately before the commencement of
this Constitution with respect to the Legislature of the Dominion of India
shall have effect in relation to parliament subject to such modification
and adaptations as may be made therein by the Chairman of the Council
of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the chairman of the
Council of states and the speaker of the House of the House of the people,
may make rules as to the procedure with respect to joint sittings of, and
communication between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of
the people, or in his absence such person as may be determined by rules
of procedure made under clause (3), shall preside.

1.5.3  Article 121- Restriction on discussion in Parliament-
No discussion shall take place in Parliament with respect to the conduct
of any Judge of the Supreme Court or of a High court in the discharge of
his duties except upon a motion for presenting an address to the President
praying for the removal of the Judge as hereinafter provided.

1.5.4  Article 122- Court not to inquire into proceedings of
Parliament- (1) The validity of any proceedings in Parliament shall not be
called in question on the ground of any alleged irregularity of procedure.

(2) No officer or Member of Parliament in whom powers are
vested by or under this Constitution for regulating procedure or the
conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

1.5.5 Article 194- Powers, Privileges, etc. of the Houses of Parliament and of the members and committees thereof-(1) Subject of the provisions of this Constitution and to the rules and standing orders regulating the procedure of the legislature, there shall be freedom of speech in Parliament.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Houses of such a legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a state, and of the members and the committees of a House of such legislature, shall be such as may from time to time be defined by the Legislature by law and, until so defined, and committees immediately before the coming into force of section 26 of the Constitution (Forty-Fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the legislature of a state or any committee thereof as they apply in relation to members of the legislature.
1.5.6 **Article 208-** Rules of Procedure- (1) A House of the legislature of a state may make rules for regulating, subject to the provisions of this Constitution, its procedure and conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding province shall have effect in relation to legislature of the state subject to such modification and adaptations as may be made therein by the Speaker of the legislative Assembly, or the Chairman of the legislative Council, as the case may be.

(3) In a State having a legislative Council the Governor, after consultation with the speaker of the legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communication between the two houses.

1.5.7 **Article 211-** Restriction on discussion in the Legislature- No discussion shall take place in legislature of a state with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

1.5.8 **Article 212-** Court not to inquire into proceedings of Parliament- (1) The validity of any proceedings in the Legislature of a state shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the legislature of a state in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature
shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

1.6 Parliamentary Privileges of Houses

Lists of Parliamentary can be drawn and have in fact been drawn. No such list, however can be exhaustive. The important privileges of each House of Parliament, its members and Committees may be said to be:

(i) Freedom of speech in Parliament.\(^51\)

(ii) Immunity to a member from any proceeding in any courts in respect of anything said or any vote given by him in Parliament or any Committee thereof.\(^52\)

(iii) Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.\(^53\)

(iv) Prohibition on the courts to inquire into proceedings of Parliament.\(^54\)

(v) Freedom from arrest of members in civil during the continuance of the session of the House and 40 days before its commencement and 40 days after its conclusion.\(^55\)

(vi) Exemption of members from liability to serve as jurors; wherever this system of juries prevail

(vii) Right of the house to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.\(^56\)

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\(^51\) Art. 105 (1) of the Constitution
\(^52\) Article 105 (2) of the Constitution
\(^53\) Art. 105 (2) of the Constitution
\(^54\) Article 122 of the Constitution
\(^55\) Section 135A of the Code of the Civil Procedure
\(^56\) Rules 229 and 230 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition
(viii) Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the speaker.\textsuperscript{57}

(ix) Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.\textsuperscript{58}

(x) Members of officers of the House are not to give evidence or produce documents in courts of law, relating to the proceeding of the House without the permission of the House.\textsuperscript{59}

(xi) Members of officers of the House are not to attend as witnesses before the other House or a Committee there of without the permission of the House and they cannot be compelled to do so without their consent.\textsuperscript{60}

(xii) All Parliament Committees are empowered to send for persons, papers, and records relevant for the purpose of the inquiry by a Committee who may be required to produce such documents as are required for the use of a Committee.\textsuperscript{61}

(xiii) A Parliamentary Committee may administer oath or affirmation to a witness examined before it.\textsuperscript{62}

(xiv) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.\textsuperscript{63}

\textsuperscript{57} Rules 232 and 233 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition

\textsuperscript{58} Rule 252 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition

\textsuperscript{59} First Report of Committee of Privileges of the Second Lok Sabha, adopted by Lok Sabha on 13 September. 1957

\textsuperscript{60} Sixth Report of the Committee of Privileges of the Second Lok Sabha, adopted by Lok Sabha on 17 December. 18958

\textsuperscript{61} Rules 259 and 270 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition

\textsuperscript{62} Rules 272 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition

\textsuperscript{63} Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha
In addition to the above mentioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are as follows:

(i) To commit persons, whether they are members or not, for breach of privilege or contempt of the House;

(ii) To compel the attendance of witnesses and to send for papers and records;

(iii) To regulate its own procedure and the conduct of its business.\(^{64}\)

(iv) To prohibit the publication of its debates and proceedings.\(^{65}\)

(v) To exclude strangers from the House.\(^{66}\)

The most important of parliamentary privileges is that of freedom of speech while performing parliamentary duties. Article 19(1)(a) of Indian Constitution also gives a citizen the right of freedom speech but Article 105 and 194 lay special emphasis on the right of free speech of members of the legislatures. Under Article 19(1)(a), the fundamental right of freedom speech is subject to reasonable restrictions imposed under Article 19(2), for instance, the law of libel. An ordinary person who speaks something libelous is liable to be proceeded against but a Member of Parliament speaking in the House or in one to its Committees is immune from any attack on the grounds that his speech was libelous or defamatory.

Members have to give expressions to public grievances and raise various matters of public importance. In doing this, members should not suffer any inhibition and they should be able to speak out Parliament, a

\(^{64}\) Art. 118 of the Constitution

\(^{65}\) Rule 249 of the Rules of Procedure and Conduct of Business in Lok Sabha, Sixth Edition

\(^{66}\) Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha
express their views freely. Inside the House or Committees of the Parliament, a member is absolutely free to say whatever he likes subject only to the internal discipline of the House or the Committee concerned; no outside authority has any right to interfere. Freedom of speech is absolutely necessary for a member to function freely without any fear or favour in the committees and in the Houses of Parliament. Unless whatever a member says enjoys immunity from legal action, he cannot be expected to speak freely and frankly. The Constitution provides, therefore, that no action can be taken against a Member of Parliament in any court or before any authority other than the Parliament in respect of anything said or a vote given by him in the Houses of Parliament or any Committee thereof. It is also a breach of privilege to molest a member or to take any action against him on account of anything said by him in the Parliament or a Committee thereof. Likewise, it would be a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliament or in a Committee thereof.

A member cannot also be questioned in any court or by any agency outside the Parliament for any disclosure he may make in the Parliament. It has been held by the Supreme Court in the Searchlight case that the freedom of speech conferred on members under Art. 105 is subject only to those provisions of the Constitution which regulate the procedure of Parliament and to the rules and standing orders of the Houses, but is free any restrictions which may be imposed by any law made under Article 19(2) upon the freedom of speech of an ordinary citizen. Any investigation outside the Parliament in respect of anything said or done by members in the discharge of their parliamentary duties would amount to a serious interference in the members right. Even though a speech delivered by a member in the house may amount to contempt of Court, no
action can be taken against him in any Court. Court being an outside authority does not have the power to investigate the matter. Article 122 specifically for bids any inquiry by Courts into the proceedings of the Parliament.

The immunity from external influence or interference, however, does not mean an unrestricted license of speech within the walls of the Parliament. It is subject to the constitutional provisions. For example Art. 121 provides that no discussion shall take place in the Parliament with respect to the conduct of any judge of the Supreme Court or of a High Court in the Discharge of his duties except upon a motion for presenting an Address to the President praying for the removal of the judge. Rule 352 and 353 of the Rules of Procedure of the House inter alia prohibit making of unwarranted allegations against a person and provide for remedial measures for incorrect statements made by ministers or members of the House. When a member violates any of the restrictions, the Speaker may direct him to discontinue his speech or order the defamatory, indecent, unparliamentarily or undignified words used by the member to be withdrawn or expunged from the proceedings of the House. In extreme cases, he may even direct the member to withdraw from the House, and/or initiate the process for suspensions of the member from the service of the House.

A member cannot be arrested not only when the House to which he belongs is in session or when a Parliamentary Committee of which he is a member, is meeting or during joint-sitting of both the houses, but also during 40 days before and 40 days after the session of the parliament or when he is coming to or going from the Houses. It would be a breach of privilege even if that molestation or obstruction is caused to him at a
place outside New Delhi while he is on his way to New Delhi to attend any
business of Parliament or a Committee thereof.

The object of their privilege is to ensure the safe arrival and
regulate the attendance of members in the Parliament. Although the
members have immunity from arrest only in civil cases and it does not
apply to arrests in criminal cases or under the law of Preventive
Detention, the House has a right to receive immediate information of the
arrest, detention, conviction, imprisonment and release of a member. It is
the duty of the concerned authority to intimate the Speaker immediately
of every arrest, detention or imprisonment of a member of the Lok Sabha.
The failure on the part of authorities to do so, constitutes a breach of
privilege of the House. The arrested may be in any part of the country;
the information must be sent telegraphically and later confirmed by a
letter.

It has been laid down that no summons-on legal process, civil or
criminal-can be served and no Member of Parliament can be arrested
within the precincts of Parliament, without the permission of the
Speaker/Chairman. This immunity is available even to a private person
inside the precincts of the Parliament. Thus, nobody can be arrested
inside the Parliament House without the permission of the
Speaker/Chairman because with the precincts of the Parliament, only the
writ and orders of the House of Parliament or of the Speaker/Chairman
prevail and not of any other government authorities or local
administration. Even section 144 cannot be applied to the precincts of the
Parliament. If the authorities ever sough to so extend it, it would be a
breach of privilege and contempt of the House. It is another matter that
within the precincts of the Parliament there may be in operation an order
of the Speaker that may be similar to the provisions of section 144.
Members are free from the liability to serve as jurors in criminal cases. Though it is the duty of every citizen to serve as a juror wherever the system of jury prevails, the members of Parliament and State Legislatures have been exempted.

An officer of the Legislature Secretariat or other person cannot be compelled to give evidence or public documents which relate to the proceedings of a House without the permission of the House. Similarly, there cannot be any compulsion for appearance as a witness before the other House without the permission of the House of which he is a member.

All Parliamentary Committees have the power to send for persons, papers and records. The following types of conduct of a witness before a committee would constitute a breach of privilege and contempt of the Committee;

(i) Refusal to answer questions;
(ii) Prevarication or willfully giving false evidence or suppressing the truth or misleading the Committee;
(iii) Trifling with the Committee and returning insulting answers;
(iv) Destroying or damaging a material document relating to the enquiry by the Committee.

The Committees of the Parliament are entitled to the same respect as the Parliament itself. Therefore, if anybody casts reflections on the decisions or conduct of a Parliament Committee it is treated as a breach of privilege and contempt of the House.

Also, as a part of the privilege law, a member under custody enjoys the right to communicate without any hindrance with the Speaker/Chairman of a Parliament Committee. A communication so
addressed by the member in custody be withheld by the administrative authorities.

When a matter is under consideration of a Parliamentary Committee and the Committee is holding its sittings day to day for that purpose, no person including a Member of Parliament should make or publish a statement or comment about that matter. Making public comments on a matter which is being considered by a Parliamentary Committee is highly improper and may even amount to contempt of the House. The publication of the proceedings or of any documents or papers which may have been presented to a Committee, is also treated as a breach of privilege of the House.

No arrest whether of a member or any other person can be made within the precincts of the House without obtaining the permission of the Speaker. Similarly no legal process, civil or criminal can be served or executed on any person within the precincts of the House, without obtaining the permission of the Speaker, as these acts are derogatory to the dignity of Parliament in whose precincts the writ of an outside authority cannot run.

When any individual or authority disregards or attacks any of the privileges, rights and immunities, either of the members individually or of the House in its collective capacity, the offence is called a breach of privilege and is punishable by the House. Besides breaches of specific privileges, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its members or officers, are also punishable as contempt of the House.
Contempt of the House may be defined generally as “any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty or which has a tendency, directly or indirectly, to produce such results”. It is not possible to enumerate every act which might constitute a contempt of the House. However, some typical cases of contempt are speeches or writings reflecting on the House, its committees or members; reflections on the character or impartiality of the Speaker in the discharge of his duty; publication of false and distorted report of the proceedings of the House; publication of expunged proceedings of the House, molestation of members on account of their conduct or speeches in the House or obstructing members while in the performance of their duties or while on their way to or from, attending the House or a committee thereof, offering bribes to members in connection with their Parliamentary conduct. In general, any misconduct in the presence of the House or a committee thereof, whether by members of Parliament or by members of the public who have been admitted to the galleries of the House or to sittings of committees as witnesses, will constitute a contempt of the House.

The power of the House to punish for its own breach of privilege and contempt is the “key stone of Parliamentary privilege”. It is this power which gives reality to the privileges and makes the House the master of its own privileges. This power of Parliament is akin in nature to the power of the Supreme Court to commit for its own contempt from which there is no appeal. The penal jurisdiction of the House extends to its member as well as outsiders.

The period for which the House can commit an offender to prison is limited by the duration of the session of the House. The prisoner is
automatically entitled to release on the prorogation of the House. In cases where the offence is not so serious as to warrant imprisonment, the person concerned may be summoned to the Bar of the House and admonished or reprimanded by the Speaker by order of the House. Admonition is the mildest form of punishment. In the case of its own members, two other punishments are also available to the House, namely, suspensions from the service of the House for a particular period which is limited to the duration of the session, and expulsion from the House.

A question of breach of privilege and contempt of the House can be raised in the House only with prior consent of the Speaker. A member wishing to raise a question of privilege has to give notice in writing to the Secretary-General before the commencement of the sitting by 10.00 hrs. on the day the question of privilege is proposed to be raised. Notices received after 10.00 hours are deemed to have been received for the next sitting day. If the notice is based on a document, it should be accompanied by the document. In giving his consent, the Speaker is guided by the consideration that the question of privilege should be restricted to a specific matter of recent occurrence which should require the intervention of the House. The notice should be given at the earliest opportunity after the occurrence of the event. The reason is that a question of privilege is given priority over all the items entered in the list of business of the day as it is considered a matter of utmost urgency. The question whether the matter requires the intervention of the House is decided inter alia in the light of past precedents relevant to the matter. Before giving his consent to raise the matter in the House, the Speaker normally gives an opportunity to the person incriminated to explain his case to the Speaker. The member concerned is then informed of the Speaker’s decision.
If the Speaker gives his consent, the member concerned is called by the Speaker after the Question Hour to seek the leave of the House to raise the matter when he is permitted to make a short statement relevant to the question of privilege. If objection to leave being granted is taken, the Speaker requests those members who are in favour of leave being granted to rise in their places. If twenty-five or more members rise accordingly, the Speaker declares that leave is granted.

Leave to raise a question of privilege can be asked for only by the member who has given notice of question of privilege. He cannot authorize another member to do on his behalf. Also, only the aggrieved member can give a notice and raise the question of privilege.

After leave is granted by the House, the matter may either be considered and decided by the House itself, or it may be referred by the House to the Committee of Privileges for examination, investigation and report. The usual practice is, however, to refer the matter of complaint to the Committee had presented its report.

The Speaker is empowered to refer suo moto any question of privilege to the Committee of Privilege. While doing so, he may not mention the matter in the House. In the alternative, he may bring the matter before the House and then declare that he is referring the matter to the Committee of Privileges.

If the Committee recommends that no further action be taken in the matter, no further action is normally taken on the report and the matter is treated as closed.

Privileges of Parliament apply to individual members only in so far as they are a means to the effective discharge of the functions of the Houses.
On 2 Mar. 1959, in H.C., U.K. on a question being raised whether the action of the Federation of Rhodesia and Nyasaland (a British protected territory) in declaring a British a M.P. (Mr. Stonehouse) as a prohibited immigrant to that territory did not unduly restrict the freedom of a member of House, Speaker observed:

“…Privilege belongs to the House and not to the individual Member; he does not carry it about with him wherever he goes. Privileges generally are concerned with seeing that an hon. Member has free access to this place and free speech when he is here. I know of nothing that had been done against that.

……If the House had sent the hon. Member for Wednesbury (Mr. Stonehouse) on its own business to Salisbury, Northern Rhodesia, or wherever it may be, then any refusal to facilitate his progress by the authorities there might have been regarded by the House in certain circumstances as approaching a contempt of the House because he was a delegate of the House.

……the House has a right to look into a case of a British citizen who, it may think, is wrongfully treated—but only as a British subject, not as a Member of Parliament.”67

### 1.7 Extension of Privileges

The privileges and immunities of a Member of Parliament extend also to every Minister and Attorney-General of India who are entitled to speak in and otherwise to take part in the proceedings of a House of Parliament or Committees thereof under art. 88.

67. 601 H.C. Deb., cc. 48-49