CHAPTER - 2

PARLIAMENTARY PRIVILEGES UNDER THE CONSTITUTION OF INDIA

According to Erskine May, "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by members of each House individually, without which they could not 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 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 members and the vindication 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. "When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as
disobedience to its legitimate commands or libels upon itself, its Members or its officers.\textsuperscript{1}

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.\textsuperscript{2}

In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that they may be able to perform their duties in Parliament without let or hindrance.\textsuperscript{3}

They apply to individual members only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects.\textsuperscript{4} 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 application of laws, unless there are good and sufficient reasons in the interest of Parliament itself to do so.\textsuperscript{5}

\begin{footnotesize}
\begin{enumerate}
\item \textit{Ibid.}, p. 115.
\item Report of the Committee of Privileges in Lewis Case, House of Commons; 244 (1951), para. 22 quoted in Kaul & Shakdher, \textit{ibid.}
\item Report of the Committee of Speakers, 1956, para. 18 quoted in Kaul & Shakdher, \textit{ibid.}
\end{enumerate}
\end{footnotesize}
2.1 Legal Provision relating to Parliamentary Privileges in India-

The Constitution of India specifies some of the privileges. They are freedom of speech in Parliament;\(^6\) immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof;\(^7\) 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.\(^8\) Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure.\(^9\)

No officer or Member of Parliament empowered to regulate procedure or conduct of business or to maintain order in Parliament can be subject to a court's jurisdiction in respect of exercise by him of those powers.\(^10\) No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy.\(^11\) This immunity, however, is not available to publication of proceedings of a secret sitting of the House.\(^12\)

In other respects, the powers, privileges and immunities of each House of Parliament and of the members and committees thereof shall be such as may from time to time be defined by Parliament by law and until

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\(^6\) Art. 105(1).
\(^7\) Art. 105(2).
\(^8\) Ibid.
\(^9\) Art. 122(1).
\(^10\) Art. 122(2).
\(^11\) Art. 361A.
\(^12\) Art. 361A(1), Proviso.
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-forth Amendment) Act, 1978.\textsuperscript{13}

The framers of the Constitution had provided for the same powers and privileges for members, etc. as were possessed and enjoyed by the House of Commons at the commencement of the Constitution. The reference to the House of Commons in clause (3) of article 105 was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. Since, however, no law defining the privileges has been made by Parliament so far, in actual practice, the position in this regard remains the same as it existed at the commencement of the Constitution.

2.1.1. Statutory provision

Apart from the privileges specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.\textsuperscript{14}

2.1.2 Privileges based on Rules of Procedure and precedents

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.\textsuperscript{15}

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House.\textsuperscript{16}

\textsuperscript{13} Art. 105(3).
\textsuperscript{14} Code of Civil Procedure, 1908, s. 135A.
\textsuperscript{15} Rs. 222A and 222B.
Members or officers of the House cannot be compelled to attend as
witnesses before the other House or a House of a State Legislature or a
committee thereof without the permission of the House and without the
consent of the member whose attendance is required.\textsuperscript{17}

2.1.3 Consequential Powers of the House

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: to commit
persons, whether they are members or not, for breach of privilege or
contempt of the House;\textsuperscript{18} to compel the attendance of witnesses and to
send for persons, papers and records;\textsuperscript{19} to regulate its procedure and the
conduct of its business;\textsuperscript{20} to prohibit the publication of its debates and
proceedings\textsuperscript{21} and to exclude strangers.\textsuperscript{22}

2.1.4 Penal powers of the House

If any individual or authority violates or disregards any of the
privileges, powers and immunities of the House or members or
committees thereof, he may be punished for "breach of privilege" or
"contempt of the House". The House has the power to determine as to
what constitutes breach of privilege and contempt. The penal jurisdiction
of the House in this regard covers its members as well as strangers and
every act of violation of privileges, whether committed in the immediate
presence of the House or outside of it.

\textsuperscript{16}1 Rpt., COP (adopted on 2.5.1958).
\textsuperscript{17}33 Rpt., COP (adopted on 30.3.1993).
\textsuperscript{18}R.S. Deb., 30.3.1973, c. 115-16; and 21.11.1983, c. 415-18.
\textsuperscript{19}Rs. 84, 196, 208, 212E, 212L and 212T.
\textsuperscript{20}Art. 118(1).
\textsuperscript{21}M.S.M. Sharma \textit{v.} Shri Krishna Sinha, AIR 1959, SC 395.
\textsuperscript{22}R. 265.
A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment,\textsuperscript{23} or by admonition (warning)\textsuperscript{24} or reprimand.\textsuperscript{25}

Two other punishments may also be awarded to the members for contempt, namely, 'suspension'\textsuperscript{26} and 'expulsion'\textsuperscript{27} from the House.

\textbf{2.2 Freedom of speech and immunity from court proceedings}

Members have freedom of speech in the House and enjoy immunity from proceedings in any court in respect of anything said or any vote given by them in Parliament or in any committee thereof. The freedom of speech of members in the House, in fact, is the essential pre-requisite for the efficient discharge of their parliamentary duties, in the absence of which, they may not be able to speak out their mind and express their views in the House without any fear. Importance of this right for the Members of Parliament is underlined by the immunity accorded to them from civil or criminal proceedings in a court of law for having made any speech/disclosure or any vote cast inside the House or a committee thereof.

Any investigation outside Parliament, of anything that a member says or does in the discharge of his parliamentary duties amounts to a serious interference with the member's freedom of speech in the House. Therefore, to attack a member or to take or even threaten to take any action against him including institution of legal proceedings on account of anything said or any vote given by him on the floor of the House would amount to a gross violation of the privilege of a member.

\textsuperscript{24} Ibid., 23.3.1982, c. 370-72; and 26.8.1983, c. 500-01.
\textsuperscript{25} Ibid., 24.12.1980, c. 1-2; and 1.6.1990, c. 1-2.
\textsuperscript{26} R. 256.
\textsuperscript{27} R.S. Deb., 15.11.1976, c. 162.
The immunity granted to members under article 105(2), covers anything said in Parliament even though it does not strictly pertain to the business before the House. As stated by the Supreme Court:

The article confers immunity, *inter alia*, in respect of 'anything said... in Parliament'. The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament... Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business would be immune from proceedings in any court. This immunity is not only complete but is as it should be... The courts have no say in the matter and should really have none.\(^{28}\)

The freedom of speech available to the members on the floor of the House is different from that available to the citizens under article 19(2). A law made under this Article providing for reasonable restrictions on the freedom of speech of the citizens would not circumscribe the freedom of speech of the members within the walls of the House.\(^{29}\) Members enjoy complete protection even though the words uttered by them in the House are malicious and false to their knowledge.\(^{30}\) Courts have no jurisdiction to take action against a member for his speech made in the House even if it amounts to contempt of the court.\(^{31}\)

The express Constitutional provisions contained in clauses (1) and (2) of article 105 are thus a complete and conclusive code in respect of the privilege of freedom of speech and immunity from legal liability for


\(^{29}\) M.S.M. Sharma, *op.cit*.

\(^{30}\) *Suresh Chandra Banerji v. Punit Goala*, AIR 1951, Calcutta 176.

anything said in the House or for publication of its reports. Anything which falls outside the ambit of these provisions is, therefore, liable to be dealt with by the courts in accordance with law. Thus, if a member publishes questions which have been disallowed by the Chairman and which are defamatory, he will be liable to be dealt with in a court under the law of defamation.\(^{32}\)

The right of freedom of speech in the House is, however, circumscribed by the constitutional provision \(^{33}\) and the rules of procedure.\(^{34}\) When a member violates any of the rules, the Chair has ample powers conferred by the rules to deal with the situation.\(^{35}\)

In view of the immunity conferred on the member's right to speech and action in the House, its misuse can have serious effects on the rights and freedom of the people who could otherwise seek the protection of the courts of law. Members, therefore, as people's representatives, are under greater obligation to exercise this right with utmost care and without any prejudice to the law of the land. The Committee of Privileges has emphasised that a Member of Parliament does not enjoy unrestricted licence of speech within the walls of the House. The Committee has observed:

It is against the rules of parliamentary debate and decorum to make defamatory statements or allegations of incriminatory nature against any person and the position is all the worse if such allegations are made against persons who are not in a position to defend themselves on the

\(^{32}\) In re Satish Chandra Ghose, AIR 1956, Calcutta, 433.
\(^{33}\) For instance, Art. 121.
\(^{34}\) For instance, Rs. 238 and 238A.
\(^{35}\) Rs. 238, 240, 261, 262, 255 and 256.
floor of the House. The privilege of freedom of speech can only be secured, if members do not abuse it.\textsuperscript{36}

While doing so, the Committee has approvingly referred to the following observations contained in the Second Report of the Committee of Privileges, House of Commons.\textsuperscript{37}

...The privilege of freedom of speech is an important and necessary element in the work of Parliament. However, because of the immunity it confers, its misuse can have serious effects. Your Committee are well aware that from time to time members, in their anxiety to make their point, may use their privilege of freedom of speech in a way which because of the harm which it may do to other important rights or freedoms and the disproportionate damage which may result to individuals who could otherwise seek the protection of the courts of law, would be regarded by other members as quite unjustifiable... Your Committee, therefore, consider it right to emphasise the obligation upon all members to have regard, in any decision to make statements in the House which, if made outside the House, would be defamatory or even criminal, to the widespread effect of such statements when reported through newspaper reports and broadcasts of proceedings, and to the prejudice and possibility undeserved injury which may result to individual citizens who have neither remedy nor right of reply.

The provisions of article 105(2) also apply in relation to persons who by virtue of the Constitution have the right to speak in, and otherwise to take part in the proceedings of either House or any committee thereof\textsuperscript{38} as they apply in relation to Members of Parliament.\textsuperscript{39}

\textsuperscript{36} 25 Rpt., COP, p. 4.
\textsuperscript{37} Section 1978-79, HC 222, p.v., para. 10
\textsuperscript{38} Art. 88.
2.2.1 Questioning a member for his disclosure in the House

Members cannot be held accountable/questioned by an outside body for any speech/disclosure made or a vote given inside the House. This is essential for giving effect to their freedom of speech in the House. It is also a settled procedure that no member or officer of the House should give evidence in respect of any proceedings of the House or any committee thereof or any document relating to or connected with any such proceedings or in the custody of the officer of the House or produce any such document in a court of law without the leave of the House being first obtained.\(^\text{40}\)

As regards disclosure that may be made by a member on the floor of the House and his accountability to any outside body, the Committee of Privileges has, \textit{inter alia}, observed:

...it would be impeding a Member of Parliament in the discharge of his duties as such member if he is to be questioned in any place outside Parliament for a disclosure that he may make in Parliament. The right of a Member of Parliament to function freely and without fear or favour is in India, as in the U.K., a constitutional guarantee. This guarantee is subject only to the rules of the House and ultimately to the disciplinary jurisdiction of the House itself... any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a Member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member.\(^\text{41}\)

If in a case a member states something on the floor of the House which may be directly relevant to a criminal investigation and is, in the

\(^{39}\) Art. 105(4).
\(^{40}\) 1 Rpt., COP, \textit{op. cit.}
opinion of the investigating authorities, of vital importance to them as positive evidence, following procedure has been prescribed by the Committee:

... the investigating authority may make a report to the Minister of Home Affairs accordingly. If the Minister is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member through the Chairman to meet him. If the member agrees to meet the Home Minister and also agrees to give the required information, the Home Minister will use it in a manner which will not conflict with any parliamentary right of the member. If, however, the member refuses to respond to the Home Minister's request, the matter should be allowed to rest there.\textsuperscript{42}

2.2.2 Right to exclude strangers

The right of the House to exclude strangers from the House is a necessary concomitant of the privilege of freedom of speech on the floor of the House. In a deliberative body like Parliament, privacy of debate is no less important for free and fair discussion than is the immunity from legal proceedings. As observed by the Supreme Court:

...the freedom of speech claimed by the House (of Commons) and granted by the Crown is, when necessary, ensured by the secrecy of the debate which in turn is protected by prohibiting publication of the debates and proceedings as well as by excluding strangers from the House. This right was exercised in 1923 and again as late as on 18 November 1958.

\textsuperscript{42} Ibid., Ministry of Home Affairs letter to State Governments, etc. \textit{vide} No. 32/266/68-P. 11. I (A)/DS, 13.6.1969; F. No. 35/7/68-L.
This shows that there has been no diminution in the eagerness of the House of Commons to protect itself by secrecy of debate by excluding strangers from the House when any occasion arises.\textsuperscript{43}

Rules of Procedure empower the Chairman to regulate the admission of strangers\textsuperscript{44} and order their withdrawal from any part of the House.\textsuperscript{45}

2.2.3 Right to control publication of proceedings

Closely allied to the power to exclude strangers is the power of the House to prohibit publication of its debates and proceedings. Under the Constitution, absolute immunity from proceedings in any court of law has been conferred on all persons connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of the House.

The publication of proceedings of Parliament is subject to the control of the respective Houses.\textsuperscript{46}

The Secretary-General is authorised to prepare and publish a full report of the proceedings of the House in such form and manner as the Chairman from time to time directs.\textsuperscript{47}

Publication by any person in a newspaper of a substantially true report of any proceedings of either House of Parliament is protected under the Constitution from civil or criminal proceedings in court unless

\textsuperscript{43}. M.S.M. Sharma, op. cit
\textsuperscript{44}. R. 264.
\textsuperscript{45}. R. 265.
\textsuperscript{46}. Art. 105(2)
\textsuperscript{47}. R. 260.
the publication is proved to have been made with malice.\footnote{48} Statutory protection has also been given to such publication.\footnote{49}

But when debates or proceedings of the House or its Committees are reported \textit{mala fide, i.e.}, there is either wilful misrepresentation or suppression of speeches of particular members or a garbled, distorted and perverted accounts of debates, it is a breach of privilege and contempt of the House.

The Supreme Court has held:

...the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of debates or proceedings that take place within the House. \textit{A fortiori} the House had...the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. Nor do we share the view that it will not be right to entrust our Houses with those powers, privileges and immunities, for we are well persuaded that our Houses... will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities, except in gross cases.\footnote{50}

As observed by the Chairman in a case:

The newspapers are eyes and ears of the public not present in the House. Unless the House puts a ban, the newspapers must be held to have the rights to reproduce fairly and faithfully and accurately the proceedings or any part thereof without let or hindrance from any person not authorised by the House or by any law. The newspaper may not

\footnote{48} \textit{Art. 361A.} \footnote{49} \textit{Parliamentary Proceedings (Protection of Publication) Act, 1977, ss. 3 and 4. Original Act of 1956 remained repealed between February 1976 and April 1977.} \footnote{50} \textit{M.S.M. Sharma, op. cit.}
misrepresent by editing, adding or unfairly omitting to give a totally wrong impression.\textsuperscript{51}

If a member publishes separately from the rest of the debate a speech made by him in the House, it becomes a separate publication unconnected with any proceedings in Parliament. He, therefore, cannot claim this privilege and he would be held responsible under the law for any libelous matter it might contain.\textsuperscript{52}

\textbf{2.2.4 Premature publication of proceedings}

Premature publication of proceedings, particularly those of the Committees has been held to be a violation of the privilege and contempt of the House. In a case, contents of the evidence tendered by a witness before the Committee of Privileges, Rajya Sabha, were published in newspapers before the report of the Committee was presented to the House. The Committee held that the act of premature publication of proceedings of the Committee constituted breach of privilege and contempt of the House. Having regard to the regret expressed and apology offered by the newspapers, the Committee, however, did not recommend any punishment in this case. While cautioning all concerned that in future any premature publication or disclosure of proceedings of the Committees would be dealt with seriously, the Committee observed:

It is well established that the proceedings of a Parliamentary Committee are confidential and what transpired in the meetings of the Committee should not be disclosed or given any publicity, unless the same is presented to the House or is otherwise treated as not confidential.\textsuperscript{53}

\textsuperscript{51}. R.S. Deb., 2.3.1981, c. 145.
\textsuperscript{52}. May, p. 87.
\textsuperscript{53}.29 Rpt., COP, para 10.
2.2.5 Publication of expunged proceedings

Similarly, it is a breach of privilege and contempt of the House to publish expunged proceedings of the House. In this regard the Supreme Court has held:

The effect in law of the order of the Speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech, *i.e.*, including the expunged portion in derogation to the orders of the Speaker passed in the House may, *prima facie*, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news-item.\(^{54}\)

Shri Kuldip Nayyar, gave a notice of breach of privilege against Shri Chandan Mitra, Editor of *The Pioneer* for reproducing in an editorial of the paper certain remarks made by him in the House, which were expunged by the Chairman. The matter was referred to the Committee of Privileges for examination and report. In view of the apology tendered by Shri Mitra and taking into account the fact that the impugned article was not *mala fide*, the Committee decided to drop the matter and accordingly reported to the House.\(^{55}\)

2.2.6 Misrepresentation of proceedings

Misrepresenting or misreporting the proceedings of Parliament have been found to be the gross violation of breach of privilege and contempt of the House. In a case, the publishers published in a book the

\(^{54}\) *M.S.M. Sharma, op. cit.*

\(^{55}\) 43 Rpt., COP.
Finance (No.2) Bill, 1980, as Finance (No.2) Act, 1980, even before it was passed by the Rajya Sabha and assented to by the President. The Committee of Privileges held that the act amounted to deliberate and wilful effort on the part of the authors and publishers to misrepresent the proceedings and actions of the House and, therefore, constituted a breach of privilege and contempt of the House.\(^56\) The Committee, therefore, recommended that the principal contemner be committed to jail till the prorogation of the House and the co-authors, be reprimanded by the House.\(^57\) When the Report of the Committee came up before the Rajya Sabha on 11 December 1980, the House adopted a motion recommitting the matter to the Committee for reconsideration of its recommendations regarding imposition of punishment on the contemnors.\(^58\) The Committee after reconsidering the matter recommended in its subsequent report that the principal contemnor should also be reprimanded along with the co-authors.\(^59\) Accordingly, the contemners were reprimanded by the Chairman at the bar of the House on 24 December 1980.\(^60\) On many occasions members give notices of breach of privilege against persons or newspapers concerned for alleged misreporting or distorting the proceedings of the House or the Committees thereof. The Chairman, depending upon the merits of the case, either disposes the matter after giving his observations/ruleds thereon or refers it to the Committee of Privileges for examination, investigation and report. Some of the important cases are mentioned below:

The earliest case (Thought case) which was referred to the Committee arose from certain observations contained in a feature article

\(^{56}\)19 Rpt., COP, p. 2-4.  
\(^{57}\)Ibid., p. 6.  
\(^{59}\)20 Rpt., COP.  
appearing in a weekly journal *Thought* of New Delhi. The relevant passage in the article was: When a Congress member Mr. H.P. Saksena (U.P.) did a bit of skinpeeling that exposed the spots on the Communist friends of the Nagas, Mr. Gupta did the obvious: he flew into a rage. 'This was', he shrieked, (Mr. Gupta's voice is too shrill to permit a thunder) 'fatuous, fantastic, untrue’. As this appeared to be wilfully unfair and mendacious reporting of the proceedings of the House, the Chairman referred it to the Committee which, in view of the explanation and regret by the Editor, recommended that no further action be taken by the House in the matter.61 The House agreed, by a motion.62

On 12 August 1966, a member by a notice invited the attention of the Chairman to a report published in the *Times of India* under the caption 'Sabotage by Reds in Durgapur Confirmed.' The report was based on the previous day's proceedings of the Rajya Sabha. It was contended that the charges of sabotage against the Communists levelled on the floor of the House were not confirmed by the Government and, therefore, the newspaper was guilty of deliberately misleading the readers with malicious intention against a party in Parliament. The Chairman was requested to refer the matter to the Committee of Privileges. The Chairman, however, after hearing the viewpoints of other members observed:

...The headline, in my opinion, is not justified. Of course, I do not want to take a serious view of it but I only want to point out to the press that they owe a great responsibility to this House and in giving headlines

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61. 3 Rpt., COP.
they should not do anything which can be taken as partisanship or any such thing. The notice was withdrawn by the concerned member.63

Again, on 29 March 1967, a member pointed out in the House that the *Indian Express* of that day reported the proceedings of the House in a malicious and unfair way. The sentence "The new familiar pastime of baiting Generals Kaul and Choudhuri occupies half of the Question Hour in the Rajya Sabha," it was contended, accused both sides of the House of baiting the Generals; whereas the truth was that information was being sought during Question Hour. The Chairman observed:

We in this House are very anxious not to have differences with the press, and we leave many things unnoticed which otherwise we may have noticed. But this in my opinion is absolutely unfair and the press also owes this House a duty. In reporting the proceedings the reporting must be absolutely objective and opinions, suggestions and insinuations should not be brought in. Otherwise, this House will have to take a serious view of the matter.64

Another newspaper *The Statesman* was alleged to have committed a breach of privilege by publishing a wrong and distorted version of a speech made by a member in the House. After reading the said article and considering the matter, the Deputy Chairman observed:

I think newspaper reporting should be more careful, not to put anything in the mouth of members. To make fair comments about members' speeches is, of course, within the jurisdiction of the press. They can comment in any manner they like, but to make quotation and to say

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64. Ibid., 29.3.1967, c. 1152-54.
that a particular member has said this when he has not said it, is wrong. I think the paper should be more careful in this respect.\textsuperscript{65}

On 27 March 1973, a member sought to raise a question of privilege against the Editor of the \textit{Motherland} for attributing to him certain remarks which he had not made in the House. The editor accepted the mistake, expressed regret and published the same in his paper. The Chairman dropped the matter.\textsuperscript{66}

Similarly when a complaint was raised against a Tamil daily \textit{Alai Osai} for misreporting a member's speech, the Editor of the paper regretted and the matter was dropped.\textsuperscript{67} In another case, a complaint of breach of privilege arose out of misleading report of the proceedings of the House relating to the speech of the Minister of Industry, published in the \textit{National Herald}. In the report, some reasons were given and attributed to the Minister on the closure of Coca Cola, IBM and threats to Birlas, whereas the Minister had not given any such reasons or threats. The paper published a correction and the Editor regretted the mistake. The matter was dropped with the Chairman observing, "...the press would exercise great care in reporting accurately the proceedings of the House so that such misreporting and distortion do not occur in future."\textsuperscript{68} In one case, a summary of a speech delivered by a member in the House on 9 June 1980, was published in the \textit{Assam Tribune}. A member alleged that the paper had misrepresented his speech. While informing the House that the Editor had published his apology and expressed regret, the Chairman observed:

\textsuperscript{65} Ibid., 1.6.1972, c. 55-58; Digest, p. 427.
\textsuperscript{66} Ibid., 27.3.1973, c. 170-71; 31.3.1973, c. 3-4; Digest p. 427.
\textsuperscript{68} Ibid., 10.5.1978, c. 174-75; Digest p. 428.
I would like to observe that the Press should be circumspect in reporting the proceedings of the House...If there is editing with a view to *suppressio veri* or *suggestio falsi*, then in my sole judgement I shall take appropriate action. I hope that misreporting and such other things will not occur in future.\(^{69}\)

On 23 April 1981, several members gave notices of breach of privilege against the Editor of *Blitz*, a weekly and his Chief of Delhi Bureau for misrepresenting and distorting a ruling given by the Chairman on 26 March 1981, regarding notices of a question of privilege against Shri C.P.N. Singh, the then Minister of State in the Ministry of Defence. The matter was referred to the Committee of Privileges for examination, investigation and report. The Committee after considering the matter carefully found that the Chief of the Delhi Bureau of the weekly had distorted the ruling of the Chairman and used intemperate language in relation to the ruling.

The Committee felt that the weekly appeared to have unduly played up the Chairman's observations, blown them out of proportion and given them the slant which was not intended. The Committee in its report came to the conclusion that the impugned article produced an impression and effect contrary to what had been stated and intended by the Chairman and to that extent it amounted to misrepresentation of the proceedings of the House. No action was taken in the matter as recommended by the Committee, in view of the expression of regret by the editor.\(^{70}\)

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\(^{70}\).22 Rpt., COP.
2.2.7 Right of the House to regulate its proceedings

Each House of Parliament enjoys an inherent and exclusive authority to conduct and regulate its proceedings in the manner it deems proper. This right is the natural corollary of the immunity from proceedings in a court of law in respect of anything said or done inside the House. It is well settled now that each House has the exclusive jurisdiction over its internal proceedings. No authority other than the House and its Presiding Officer has any say in the matter relating to conduct of its proceedings. Accordingly, each House of Parliament has been empowered under article 118 of the Constitution to make rules for regulating its procedure and conduct of its business. Article 122 of the Constitution guarantees that the validity of proceedings of Parliament cannot be questioned in any court of law for any "alleged irregularity of procedure". The Supreme Court held:

Article 118 is a general provision conferring on each House of Parliament the power to make its own rules of procedure. These rules are not binding on the House and can be altered by the House at any time. A breach of such rule is not subject to judicial review in view of article 122. The proceedings of the Houses cannot be challenged in a court on the ground that they have not been carried on in accordance with the rules of procedure or that the House deviated from the rules duly made under article 118. Interpretation of the rules also is the exclusive preserve of the Presiding Officer and ultimately of the House itself.

But immunity from judicial interference is confined only to the matters of "alleged irregularity of procedure" as distinguished from

71. Surendra Mohanty v. Nabakrishna Choudhury, AIR 1958, Orissa, 168
"illegality of procedure". Clause (2) of article 122 provides that the Presiding Officer of each House or any other officer or the Member of Parliament, who for the time being, is vested with the power to regulate the proceedings, conduct of business or maintenance of order in the House of Parliament, shall not be subject to jurisdiction of the courts in the exercise of those powers. The Allahabad High Court in this regard held:

...this Court is not, in any sense whatever a court of appeal or revision against the legislature or against the rulings of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House. ...this Court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House. 74 In other words, the House has collective privilege to decide what it will discuss and in what order, without interference from a court of law. No writ, etc. can be issued by a court restraining the Presiding Officer "from allowing a particular question to be discussed, or interfering with the legislative processes of either House of the Legislature or interfering with the freedom of discussion or expression of opinion in either House." 75

2.2.8 Production of documents before a court

Inasmuch as the House has the exclusive jurisdiction over its proceedings, leave of the House is necessary for giving evidence in a court of law in respect of the proceedings in that House or committees thereof or for the production of any documents connected with the proceedings of that House. According to the First Report of the

75. Ibid.
Committee of Privileges of the Rajya Sabha "no member or officer of the House should give evidence in respect of any proceedings of the House or any committee thereof, or any documents relating to or connected with any such proceedings or in the custody of officers of the House or produce any such documents in a court of law without the leave of the House being first obtained." 76

If such requests are received when the House is not in session, the Chairman in order to prevent delays in the administration of justice, has been empowered to permit a member or officer of the House to give evidence or produce the relevant documents before a court of law in respect of any of the above matters. This fact has to be brought to the notice of the House immediately after it assembles. If, however, the matter involves any question of privilege, especially the privilege of a witness or should the production of the document appear to the Chairman to be a subject for the discretion of the House itself, he may decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.

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

A court summons was received asking a Security Officer, Rajya Sabha Secretariat to appear before the Court of Additional District and

76.1 Rpt., COP, p. 5-6.
Sessions Judge, Patiala House, on 14 February 1997, in person relating to the attendance of a member and production of a casual entry pass issued to one other person. In response, the Additional District and Sessions Judge was apprised of the fact that a document which is in the custody of the Secretary-General can, with permission of the Chairman/House, either be produced in a court of law by an officer of the Secretariat or a certified copy of the same can be given to the court on receiving a request to that effect from the court. No document is parted away in original.

The original counterfoil of the pass in question was produced in the court on 7 January 1998, with the permission of the Chairman, Rajya Sabha. When the Judge insisted that the original document be deposited in the court, the officer of the Secretariat refused to part with the same as he was not authorized to do so. Subsequently, the court was apprised of the position in this regard through a letter and a certified copy of the counterfoil of the pass was deposited in the court in accordance with the established parliamentary practices in this regard.77

Similarly, when the oral evidence of an officer of the House is required, the court should request the House stating precisely the matter and the date on which his evidence is required. The purpose for taking his evidence should also be clearly specified. A suitable form has been prepared by the Ministry of Home Affairs in consultation with the Ministry of Law for use by the courts when they require production of a document in the custody of the House or oral evidence of any officer of the House is required.

When such a request from courts is received during the session period, the matter may be referred by the Chairman to the Committee of

77. F.No. RS. 35/3A/97-L.
Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman of the Committee or a member of it to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.78

The above procedure was laid down by the Committee in the context of a request received by the Secretary, Rajya Sabha, in April 1958 to produce before the Tribunal "by a competent person the file containing the correspondence with the Indo-German Trade Centre, Calcutta, regarding the installation of the automatic vote recording system in the Rajya Sabha during 1956-57". The question before the tribunal was about the disqualification of Shri Biren Roy, a member of the Lok Sabha because of his connection with the above mentioned firm which had entered into a contract with Government for installation of the system. The Committee recommended that the correspondence be produced before the Tribunal. The House adopted the report of the Committee on 2 May 1958.79

All records relating to the attendance of members are in the custody of the Secretary-General and the same may be supplied only to a court of law with the permission of the House, if it is in session or of the Chairman, if the House is not in session. A request was received from the Sessions Judge, Cuddalore, for certified extracts from the Attendance Register from 1 March 1963 to 15 March 1963, in the Rajya Sabha, showing the presence and attendance of Shri R. Gopalakrishnan, member of the Rajya Sabha. As the House was not in session when the said request was received, the Chairman granted permission to send the relevant extracts from the Attendance Register duly certified to the

78 1 Rpt., COP, p. 5-6.
79 Ibid., R.S., Deb., 2.5.1958, c. 1290-95.
Sessions Judge. The extracts were sent on 30 January 1964, and the Deputy Chairman informed the House accordingly.\textsuperscript{80} As regards the production of printed/published debates of the House or reference to them in a court, a view was held that no leave of the House was required for the purpose. Under section 78 of the Evidence Act, 1872, the proceedings of Legislatures could be proved by copies thereof, printed by order of the Government. The question of obtaining the leave of the House would arise only if a court required the assistance of any of the members or officers in connection with the proceedings of the House or production of documents in the custody of the Secretary-General of the House.\textsuperscript{81} In this connection it may also be stated that in the House of Commons, no petition is required for leave to refer to the reports and debates of the Commons in court, if there is no question of evidence touching those proceedings or of the production of other documents.\textsuperscript{82}

There have also been numerous instances where the records were sought by the investigating agencies (police/CBI) for scrutiny in connection with various cases. In all cases records were shown and copies thereof made available to them with the stipulation that the same would not be used or produced before a court of law without obtaining prior permission of the Chairman for that purpose.\textsuperscript{83}

2.3 Freedom from arrest

A Member of Parliament is not liable to arrest or detention in prison, under a civil process, during the continuance of a session of the

\textsuperscript{80} R.S. Deb., 11.2.1964, c. 101.
\textsuperscript{81} F. No. 35/3/79-L; and 35/3/96-L.
\textsuperscript{82} May, p. 91 and 759.
\textsuperscript{83} F. No. 35/3/96-L.
House or meetings of any committees, of which he may be a member, and during forty days before and after such session/meeting.\textsuperscript{84}

The need for freedom from arrest of the Members of Parliament lies in the fact that every Legislature is entitled to have the first claim upon the services of its members and that any person or authority who prevents or obstructs a member from attending to his parliamentary duty is guilty of breach of privilege and the contempt of the House.

\textbf{2.3.1 Arrest for criminal offences or under preventive detention laws}

The privilege of freedom from arrest, however, is not intended to interfere with the administration of criminal justice or laws relating to emergency legislation such as preventive detention. The immunity, therefore, has been limited only to civil cases. The Madras High Court has held that the privilege of freedom from arrest "cannot extend or be contended to operate, where a Member of Parliament is charged with an indictable offence".\textsuperscript{85} The privilege of freedom from arrest thus ceases to operate where a Member of Parliament has been charged with a criminal or indictable offence, primarily on the ground that the House should not protect a member from the process of criminal law. He cannot, therefore, pray for a writ of \textit{mandamus} directing the State to enable him to attend the session of the Legislature. In fact, there is no statutory provision granting such privilege or immunity.\textsuperscript{86}

According to the Calcutta High Court, preventive detention partakes more of a criminal than of a civil character. It only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is true that such orders are made when criminal charges

\textsuperscript{84} Code of Civil Procedure, 1908, s. 135A.
\textsuperscript{85} \textit{In the matter of Venkateswarlu}, AIR 1951, Madras, 269.
\textsuperscript{86} \textit{Kunjan Nadar v. The State}, AIR 1955, Travancore-Cochin, 154.
possibly would not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.\textsuperscript{87}

2.3.2 Detained member's right to attend session

If a member is arrested under Preventive Detention Act and is lawfully detained even without actual trial, he cannot claim that his detention should be subordinated to his right to attend the session of Parliament. Members of Parliament can claim no special status higher than that of an ordinary citizen, insofar as a valid order of detention is concerned and are as much liable to be arrested and detained under it as any other citizen.\textsuperscript{88}

In this context, the Supreme Court observed:

Rights of a Member of Parliament to attend the session of Parliament to participate in the debate and to record his vote are not constitutional rights in the strict sense of the term and quite clearly, they are not fundamental rights at all. So far as a valid order of detention is concerned, a Member of Parliament can claim no special status higher than that of an ordinary citizen.\textsuperscript{89}

A member detained under the emergency legislation or on criminal charges, cannot claim immunity on the ground that he has to attend the session, even if he has received summons to this effect. Requests received from the members so detained for attending the sitting of the House have generally been rejected by the Chairman. The Chairman cannot compel or direct the Government to permit a member to attend the sittings of the House, if he has been apprehended and detained under the law relating to preventive detention or under code of criminal

\textsuperscript{87} Ansumali Majumdar v. State of West Bengal, AIR 1952, Calcutta 632.

\textsuperscript{88} In re. K. Anandan Nambiar, AIR 1952, Madras, 117

\textsuperscript{89} K. Anandan Nambiar v. Chief Secretary, Government of Madras, AIR 1966, SC 657.
procedure. The member may, however, approach the competent authority which may permit him to attend the sitting and go back to the jail.

There have been two cases when members of the Rajya Sabha were permitted to attend the session under police escort. Shri Raj Narain, a member of the Rajya Sabha, who was arrested under sections 107/117 of the Cr. P.C., was permitted by the Supreme Court to attend the session under the police escort to participate in the proceedings of the House. He accordingly attended the House on 4 and 5 September 1970 and took part in the debate on the Constitution (Twenty-fourth Amendment) Bill, 1970, relating to the abolition of privy purses. Miss Saroj Khaparde, a member of the Rajya Sabha, was allowed to attend the session under police escort by the Judicial Magistrate, F.C., Nagpur. She was transferred from Nagpur to Delhi for that purpose, as per the communication received in the matter. Miss Khaparde accordingly attended the House.

On one occasion when the Chairman informed the House about the intimation received from the Government of Madras regarding the release temporarily on parole for a month of a member of the Rajya Sabha "to enable him to attend to certain family matters in Delhi", a member requested the Chairman to allow that member to attend the House. The Chairman declined observing, "If under the law he can come under the conditions under which he has been released I do not know." The Leader of the House stated, "If the law permits him to do that, there will be no

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90. F. No. 35/19/76-L; and 35/3/77-L.
91. R.S Deb., 4.9.1970, c. 50 and F. No. 35/19/76-L.
obstacle in his way". Members detained are required to obtain leave of absence from the House.

2.3.3 Exemption from attending as witness in a court

The privilege of exemption from attending as a witness in a court is akin to the privilege of freedom from arrest in a civil case and is based on the principle that attendance of a member in the House takes precedence over all other obligations and that the House has the paramount right and prior claim to the attendance and service of its members.

On 1 May 1974, the Chairman received a notice from the Supreme Court in the matter of the Special Reference under article 143 of the Constitution regarding Presidential election. The notice required the Chairman to appear before the Court through an Advocate and take such part in the proceedings before the Court as he may deem fit. The General Purposes Committee before whom the matter was placed advised that no action need be taken by the Chairman on the notice. The House agreed with the decision.

2.3.4 Immunity from service of legal process and arrest within the precincts of the House

No arrest can be made within the precincts of the House nor a legal process, civil or criminal, served without obtaining the permission of the Chairman, and this permission is necessary whether the House is in session or not. Precincts of the House have been defined in the rule.

93. Ibid., 24.3.1966,
94. Ibid., 26.3.1965, c. 4685-86.
95. Ibid., 9.5.1974, c. 121.
96. R. 2(1).
The Government of India (Ministry of Home Affairs) has issued instructions to the authorities concerned to the effect that courts of law should not seek to serve a legal process, civil or criminal, on Members of Parliament through the Chairman or the Secretariat. Such a process should be served direct on the members concerned outside the precincts of Parliament, \textit{i.e.}, at the residence of a member or any other place.\footnote{Ministry of Home Affairs letter No. 1/16012/25/95-IS(D.) (III); 19.6.1996, addressed to State Governments etc.} Instructions have also been given to the effect that requests for seeking the permission to make arrests within the precincts of the House, should not be made by the authorities concerned as a matter of routine, but confined only to urgent cases where the matter cannot wait till the adjournment of House for the day. The request in each case should be signed by an officer not below the rank of a Deputy Inspector General of Police and should state the reasons why arrest within the precincts of the House is necessary.\footnote{Ministry of Home Affairs letter No. 56/58/Judi., 14.4.1953 and 30.9.1953, and No. 35/2/57-P.II, 8.2.1958, addressed to State Governments, etc.}

Whenever the Secretariat receives any summons, notice or any other process from a court or a commission for service on a member of the Rajya Sabha, the same is returned to the issuing authority and its attention is invited to the practice of not serving the processes through the Secretariat.\footnote{F. No. 39/1/94-L.}

\textbf{2.3.5 Intimation about arrest, etc. of members}

When a member is arrested on a criminal charge or for a criminal offence or is sentenced to imprisonment by a court or is detained under an executive order, the committing judge, magistrate or executive authority, as the case may be, has immediately to intimate such fact to the Chairman indicating the reasons for the arrest, detention or conviction, as

\footnote{Ministry of Home Affairs letter No. 56/58/Judi., 14.4.1953 and 30.9.1953, and No. 35/2/57-P.II, 8.2.1958, addressed to State Governments, etc.}
the case may be, as also the place of detention or imprisonment of the member in the prescribed form. When a member is arrested and after conviction released on bail pending an appeal or is otherwise released, such fact has also to be intimated to the Chairman by the authority concerned in the prescribed form. The information so received is communicated by the Chairman to the House, if it is sitting or is published in the Bulletin, if the House is not sitting, for the information of members. If, however, the intimation of the release of a member, whether on bail or discharge on Appeal is received before the House is informed of the original arrest, it is not necessary to intimate the House of the arrest, or subsequent release or discharge.

Again, if the member has started attending the House before it has been informed of the release of the concerned member, the information is not read to the House but is published in the Bulletin for the information of members. The Committee of Privileges while examining a complaint of breach of privilege arising out of the alleged failure on the part of the concerned authorities to send intimation about the arrest and detention of a member by the police at Madras, observed that where a restraint was put on the movement of a member, such as his removal (without taking a member in formal custody), the fact should be immediately communicated to the House for its information whether or not such restraint amounted to arrest or detention in the legal sense.

In a case where a delegation of Members of Parliament was prevented from visiting a riot-affected area and was kept waiting for

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100. R. 222A & Second Sch.
101. R. 222B & Second Sch.
102. R. 222C
103. Ibid., 1st Proviso.
104. Ibid., 2nd Proviso.
105. 24 Rpt., COP and Ministry of Home Affairs letter No. 1/13015/19/83/IS (D-III), 29.3.1984 in F. No. 35/26/83-L.
fifteen hours without being formally arrested, the Committee of Privileges, *inter alia*, observed:

...it would have been better if the authorities concerned by way of abundant caution sent factual information about the circumstances under which the delegation was stopped from visiting the riot-affected areas.\(^{106}\)

There have been many occasions in the Rajya Sabha where members have complained about their arrest on the ground that it was *mala fide* or prevented members from attending the House or there was delay or improper furnishing of information of arrest of members. Some important cases are mentioned below:

(i) *Mala fide arrest*

In a complaint a member alleged that he was arrested on a warrant with entries thereon manipulated and without the signature of the magistrate and the seal of the court. When *prima facie* the warrant appeared to be a doubtful document, the Chairman referred the matter to the Committee of Privileges. The Committee examined the matter fully and came to the conclusion that alterations in the warrant should have been countersigned. However, the arrest was neither illegal nor *mala fide*.\(^{107}\)

(ii) *Arrest and thereby preventing a member from attending the House* On 23 December 1969, the Minister of State in the Ministry of Home Affairs made a statement regarding the arrest of certain Members of Parliament in connection with a demonstration outside the Parliament House on the previous day. A member alleged that the arrests amounted to preventing members from attending the House that day. The Deputy Chairman disallowed the question of privilege by differentiating between

\(^{106}\) 30 Rpt., COP. p. 3.

\(^{107}\) 11 Rpt., COP.
arrest in normal conditions and arrest in abnormal conditions and stated that all circumstances of arrest had to be taken into consideration.\(^\text{108}\)

**(iii) Furnishing incorrect information**

On the basis of the information communicated through the Bulletin regarding his arrest, etc. the concerned member stated in the House that he was never arrested at the place and time nor released at the time mentioned in the Bulletin. This was followed by a notice of breach of privilege given by the member. The matter was referred to the Committee of Privileges. The Committee, after examining the matter, came to the conclusion that incorrect information was given.

However, in view of the fact that there was no want of *bona fides* on the part of the police official nor was there a deliberate attempt to mislead the House, the Committee accepted regret and apology tendered by the concerned police officials before it. The Committee also observed: "The casual and perfunctory manner in which information has been communicated to the Chairman leaves much to be desired. The communication has been sent in utter disregard to the sanctity of communication addressed to the Chairman for the information of the Rajya Sabha."\(^\text{109}\)

**(iv) Delay in sending intimation**

A member was arrested and later released on 1 March 1981. A wireless message dated 3 March 1981, was received by the Chairman on 4 March 1981, and was published in the Bulletin on the same day. On 5 March 1981, several members raised in the House the matter of delay in sending the intimation of arrest and release of the member. This was followed by the member giving notice of breach of privilege which was

\(^{108}\) *Digest*, p. 29.

\(^{109}\) 21 Rpt., COP.
referred to the Committee of Privileges by the Chairman. The Committee noted that there was a delay of couple of days and consequently a lapse on the part of police officials. The Committee was informed that State Government had conveyed its displeasure/awarded censure to the concerned officials. It, therefore, recommended that the matter need not be pursued further.110

2.3.6 Withholding communications from a member in custody

It constitutes a breach of privilege to withhold a communication from a member under arrest or detention addressed to the Chairman or the Secretary-General, Rajya Sabha or the Chairman of a parliamentary committee. It has now been recognised that, as long as the person detained continues to be member of the House, he is entitled to the right of correspondence with and to make representations to the Chairman, Rajya Sabha or the Chairman of a committee. No executive authority has any right to withhold such correspondence. This right flows not merely from the principles of natural justice but also from certain powers and privileges enjoyed by him as a member guaranteed by the Constitution.111

2.4 Power to Punish for Contempt

A House has power to punish a person, whether its member or outsider, for its ‘contempt’ or ‘breach of privilege’. A House can impose the punishment of admonition reprimand, suspension from the service of the House for the session, fine and imprisonment.112

This power to commit for contempt is truly described as the ‘keystone of parliamentary privilege’ for its is used by the House to protect its privileges, punish their violation, and vindicate its authority and dignity.

110 Ibid.
111 In re K. Anandan Nambiar, op. cit
112 Hardwari Lal V. Election Commission of India, ILR (1977) 2 P & H 269.
The grounds on which a person can be held guilty of contempt of the House are vague, uncertain and indefinite as these have not been defined anywhere. The scope of the phrases ‘contempt of the House’ and ‘breach of privilege’ is very broad and covers a variety of situations when the House can take action. Generally speaking, a case of contempt of House arises when any act or omission obstructs or impedes it in the performance of its functions, or which obstructs or impedes any member or officer of the House in the discharge of his duties, or which has a tendency, directly or indirectly, to produce such results.\textsuperscript{113}

There is no closed list of classes of offences punishable as contempt of the House as new ways of obstructing a House or its Members in performing their functions may manifest themselves.\textsuperscript{114} Comments in newspapers or statements made by individuals casting reflections on the proceedings of the House, or, on the character or conduct either of the members collectively, or of individual members, and thereby lowering their prestige in the eyes of the public;\textsuperscript{115} comments on the officers of the House casting reflections on them; comments tending to bring Parliament into disrespect and disrepute; premature publication of a report of a meeting of a committee of the House before it is presented to the House;\textsuperscript{116} any attempt by improper means, e.g., intimidation, threats or coercion, to influence members of the House;\textsuperscript{117} misreporting or misrepresentation of the proceedings of the House or of the speech of a member in the house\textsuperscript{118}; deliberately telling a lie or

\textsuperscript{113} WADE AND PHILLIPS, op. cit.; 206; MAY, op. cit., 136; Report of Press Commission, 418-431 (1954); 12 Privileges Digest, 31-40, 105; Report of the Select Committee, 95-108.
\textsuperscript{114} Report of the Select Comm., 97 (1967).
\textsuperscript{115} The Sinha case, Lok Sabha (1952).
\textsuperscript{116} The Sundarayya case, Lok Sabha (1952). While a committee of Parliament is holding its sittings from day to day, its proceedings should not be published nor any document or papers presented to the committee or the conclusions to which may have arrived at referred to in the Press. Also, 12 Privileges Dig. 17.
\textsuperscript{117} 12 Privileges Dig., 6.
\textsuperscript{118} Ibid, 13, 99, 110.
misleading the House by a member\textsuperscript{119}, are some of the instances of what have been regarded as amounting to contempt of the House.

It is for the House to decide whether any particular factual situation amounts to its contempt or not. The right of the House to punish for its contempt is analogous to the right of a superior court to punish for its contempt,\textsuperscript{120} and in fact was justified in early days in Britain by a reference to the mediaeval concept of Parliament being the highest court in the land.

In modern times, however, the phrase ‘breach of privilege’ is very much in vogue, as it is more flexible and broader a concept than the phrase contempt of the House’. ‘Breach of privilege’ means not only breach of a recognized and accepted privilege of the House but also any action, which though not breach of a specific privilege, yet undermines the dignity or authority of the house\textsuperscript{121}. Or tends to obstruct the House or an individual member thereof, in the discharge of the constitutional functions. The main advantage of the term ‘breach of privilege’ lies in the fact that it enables the House to uphold its dignity, defend itself against disrespect and affronts which could not be brought, or could be brought, only by implication under any accepted specific privilege.

Questions of breach of privilege are invoked every day in the House. A few cases may be mentioned here to illustrate the point. Publishing an article undermining the very foundations of parliamentary system of government\textsuperscript{122}, casting aspersions on the impartiality of the Speaker\textsuperscript{123}, attributing mala fides to him in the discharge of his duties in

\begin{itemize}
  \item \textsuperscript{119} Ibid, 33.
  \item \textsuperscript{120} On Contempt of Court,
  \item \textsuperscript{121} The case of John Junor, JI of Parl. Inf., 75 (1957).
  \item \textsuperscript{122} Ibid, 185.
  \item \textsuperscript{123} The Blitz case, ILR 1957 Bom 239; 12 Privileges Digest, 30.
\end{itemize}
the House in a writ petition before a High Court, ridiculing a member of a House for a speech delivered by him in the House, constitute breach of privilege of the House. To characterize Parliament as star chamber amounts to a gross breach of privilege as it casts grave reflection on the institution of Parliament.

In 1964, during discussion in the Maharashtra Legislative Assembly, a few members severely criticized the Bombay Municipal Corporation. The Corporation passed an adjournment motion to record its strong resentment against the speeches made in the Assembly. The Assembly held that the Corporation had committed a breach of privilege and contempt of the House since the tone and the content of the speeches made by the councilors as also the passing of the adjournment motion affected the dignity and authority of the House. The freedom of speech of the members of the Assembly being an important right, any interference with this right constitutes a breach of privilege. The House therefore decided to levy a fine of Rs. 10,000 on the Corporation if it did not rescind its offending resolution. The councilors who had participated in the discussion on the adjournment motion in the Corporation were to be admonished unless they apologized unconditionally to the House.

On December, 9, 1970, the Speaker of the Lok Sabha admonished a senior government servant for “having deliberately misrepresented the facts and given false evidence before the Public Accounts Committee.”

The punishment which a House may impose on non-members for its contempt or breach of privilege are admonition, reprimand, imprisonment and fine. The punishment by way of ‘reprimand’ or

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125. The Times of India, Aug. 20, 611.
126. Committee of Privileges (Fourth Lok Sabha), IV Report, 205.
‘admonition’ to the offending party is more commonly resorted to. In such a case, the Speaker of the House summons the wrongdoer to the bar of the House and admonishes or reprimands him.

The House of Commons does not enjoy the power to impose fines, though the Select Committee has suggested that it should have this power because at times a mere rebuke might appear to be an inadequate penalty whilst imprisonment might be too harsh, and also because this is the only penalty which can be imposed on corporation.\textsuperscript{128} In India, the position is not clear though, as stated above, the Maharashtra Legislature did impose a fine on the Bombay Corporation for breach of its privilege.

Members of the House may, in addition, be suspended or expelled from the House as noted earlier.\textsuperscript{129} Imprisonment for contempt of the House can be imposed by a House but it can only be till the close of the existing session, and the prisoner is entitled to be released automatically when the House is prorogued or dissolved. If the House passes an order detaining a person for its contempt for a fixed term, the unexpired portion of the sentence would lapse as soon as the session during which the order was made comes to an end by prorogation or dissolution.\textsuperscript{130} The punishment of imprisonment for breach of privilege or contempt of the House is awarded very rarely and only in extreme situations when the privileges offence is regarded to be very serious.

The Select Committee of the House of Commons has accepted that the complaint of ‘uncertainty’ made against the power of the House to commit for its contempt is ‘justified’, and to mitigate this, the Committee has emphasized that Parliament should use its power as sparingly as possible and only to protect itself, its members and its officers, to the

\textsuperscript{128} Report, xiviii.
\textsuperscript{129} Supra, 111.
\textsuperscript{130} Sushanta Kumar Chand v. Speaker, Orissa Legislative Assembly. AIR 1973 Ori. 111.
extent absolutely necessary for the due execution of its powers. Consequently, the committee has suggested that in an ordinary case where a Member has a remedy in the courts he should not be permitted to invoke the penal jurisdiction of the House in lieu of that remedy. Further, the House should be reluctant to use its penal powers to stifle criticism, however strong or unjustified the criticism may appear to be, as such criticism is the life and blood of democracy. But the House would be justified in using its penal powers if the criticism is liable to become an improper obstruction to the functioning of Parliament.

Usually, the House drops the action against a person infringing its privileges if he apologizes to the House and accepts his mistake. A House is not vindictive; it uses its powers only to vindicate its dignity and honour, or to protect the dignity and honour of its members, or protect them against vilification as members. If a satisfactory apology is not forthcoming from the guilty party, then the House may proceed to punish him.

Prorogation of the House does not put an end to a privilege matter pending before it. The House can again take up the matter when it meets after prorogation. The Supreme Court has argued that prorogation is not dissolution the House remains the same; only the session of the House are interrupted by prorogation. It is also beyond doubt now that a matter of breach of privilege of the House could be raised, after the dissolution of the House; in the next House. The point came into sharp focus in Lok Sabha in November, 1977, when a privilege motion was raised in the Sixth Lok Sabha against Indira Gandhi for her conduct in the Fifth Lok Sabha. The Privileges

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Committee ruled that the motion could be raised. “The dissolution of Lok Sabha does not imply discontinuity of the institution of Parliament… the Lok Sabha possesses the power to punish a breach of privilege and contempt of the earlier Lok Sabha” The House agreeing with the recommendation of the committee decided to imprison Indira Gandhi till the prorogation of the House and also expelled her from the membership of the House.  

2.4.1 Committee of Privileges

Each House of Parliament has a Committee of Privileges to advise it in matters affecting its powers, privileges and immunities as well as those of its members and committees. The Lok Sabha Committee consists of fifteen members nominated by the Speaker; the Rajya Sabha Committee has ten members nominated by the Chairman.

The necessary reference may be made to the committee either by the Speaker or the Chairman suo motu, or by the House upon a motion of a member.

The function of the Committee is to examine every question referred to it and to determine with reference to the facts of each case whether a breach of privilege is involved. If so, what is its nature and what are the circumstances leading to it? It can call for oral and documentary evidence. The committee may administer oath or affirmation to a witness examined before it.

The committee may make such recommendations as it may deem fit. It may also state in its reports the procedure to be followed by the House in giving effect to the committee’s recommendation. The report of the committee is presented to the House concerned which takes

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134 JENA, PARLIAMENTARY COMMITTEES IN INDIA, 58-71.
135 Rules 314 and 315 of the Rules of procedure of the Lok Sabha.
appropriate action on it. The recommendation of the committee is not binding on the house which may accept, modify or even reject the same.

The Committee of Privileges exercises an essentially adjudicatory function. This committee has a special obligation to discharge its functions objectively with a judicial approach and in a non-political or non-partisan manner because, in a way, in deciding whether its privilege has been infringed or not, the committee is acting as a judge in its own cause. The procedure of the committee ought to conform with the canons of natural justice. Whenever some one is arraigned before the committee for breach of parliamentary privilege, it is necessary that he be given a full and fair opportunity to defend himself and explain his conduct. In this connection, the comment made by the Second Press Commission may be taken note of.\textsuperscript{136}

“We are of the view that the rules of business of the House of Parliament and State Legislatures in India dealing with the procedure for taking action against alleged breaches of privilege, etc. should be reviewed and necessary provisions incorporated therein to provide for a reasonable opportunity to alleged condemners to defend themselves in the proceedings for breach of privilege……….”

2.4.2 Issue of breach of privileges in special reference to State of Uttarakhand-

The state of Uttarakhand came into exist on 9\textsuperscript{th} Nov, 2000. The general election for the first State Legislative Assembly of Uttarakhand was held in 2002. The issue of breach of privileges\textsuperscript{137} raised by the Members of the House on various occasions came to the

\textsuperscript{137} Source: Uttarakhand Vidhan Sabha Secretariat
notice of and dealt with by Hon’ble Speaker of Assembly may be summarized as follows:

Shri Harbans Kapoor, M.L.A. gave a notice of breach of privilege under Rule-63 alleging that the local M.L.As are being ignores by the authorities in the functions organized at Government and departmental level. He alleged that he was not informed about the inaugural function of Garhwal Jal Sansthan on 1\textsuperscript{st} March, 2001 organised in his constituency. Information was gathered by the Speaker in this regard in which the Chief Minister vide letter no. 771-20./2001 dated 30\textsuperscript{th} May, 2001 informed that the departmental function was organized in a very short period and there was no intention to ignore the local M.L.A. and General Manager, Jal Sansthan abolished for the same.

The Speaker observed that in the instant matter though there is no breach of privilege but it was expected from the departmental authorities to inform the local M.L.As properly about the Governmental/Departmental functions. Thus, the notice of breach of privileges in this case is not accepted.

A notice of breach of privilege was given by Shri Trivendra Singh Rawat, M.L.A. on 22\textsuperscript{nd} May, 2002 under Rule-64 on the allegation that on 10\textsuperscript{th} May, 2002 he met with the Chief Engineer, Jal Nigam, Uttaranchala are informed that he will deliver a representation in regard to the problems of supply of drinking water in his Constituency Doiwala but he was not preset there on that day. It was stated that the deliberate absence of an authority to received the representation on a pre-fixed date amount breach of privilege. The speaker ruled that as no question of breach of
privilege is involved in this matter, hence the notice is not accepted.

In his letter on 20\textsuperscript{th} May, 2003 Shri Kunwar Pranav “Champian”, M.L.A. raised an issue of breach of privilege against S.D.M., Laksar on the ground that calling of an explanation by an officer on the complaint of an employee written by him in the performance of his duty as an M.L.A. is certainly a gross insult of the member. The Speaker observed that as there is provision in a government order that before processing a complaint made by some important function, it is to be verified that whether the complaint was made by the person concerned or not, the said letter does not amount breach of privilege hence the notice is not admissible.

A notice of breach of privilege was given by Shri Madan Kaushik, M.L.A. on 29\textsuperscript{th} May, 2003 under Rule 63-64 on the ground that the letter no. 2406/09 of Chief Engineer Uttaranchal P.W.D., Dehradoon directing to all superintending Engineers of the department that no inaugural function of any work done by P.W.D. be organized without the knowledge of the concerning Minister lowers down the dignity of the House and its Members. In this regard the Minister, P.W.D. informed the speaker that there are so many precedents in which it had been clearly mentioned that the Inauguration Function be organized by the concert of the Government.

The Speaker ruled that an official letter written by Chief Engineer to his subordinates that no foundation stone be layed out or inaugural functions be organized without coming into the
knowledge of the concerning Minister did not amount in any way to lower down/forbid the dignity of the House or its Members. Hence the notice of breach of privilege is not admissible.

In a notice of breach of privilege Kunwar Pranav ‘champion’ M.L.A. on 14\textsuperscript{th} July, 2003 in regard to the publication in ‘Amar Ujala’ the Speaker observed that the question of breach of privilege could not be raised in the instant case as it could not be certified that the allegation published in the news paper were against a Member of the House but an individual and an can always have a right to complain against it in press council of India.

A notice of breach of privilege was given on 21\textsuperscript{st} July, 2004 by Shri Matbar Singh Kandari and Mrs. Asha Nautiyal, M.L.A.s against District Magistrate, Rudra Prayag on the allegation that he did not made available the building of Community Health Center , Agastyamuni for the centre School, Agastyamuni as decided earlier. The Speaker after talking into consideration the information received by him in this regard observed that it seems that probably the issue was raised before the House in confusion. No question of breach of privilege and contempt of House is involved in the instant case, hence notice is being rejected.

A notice of breach of privilege was given on 29\textsuperscript{th} October, 2004 by Shri Preetam Pawar, M.L.A. against the then Basic Shiksha Adhikari, Uttarkashi Shri R.S. Rawat for not making available the required information asked for. The Speaker ruled that the notice is not admissible as breach of privilege. However the required information be communicated to the Hon’ble Member.
Shri Harak Singh Rawat, Ranjeet Singh Rawat and Shri Pradeep Tamta, M.L.A. in their letter dated 12th August, 2005 gave a notice of breach of privilege against Shri P.C. Sharma, Secretary, Food & Civil Supplies and Shri Jagdish Chandra Pant, P.S. to the Secretary on the allegation that they were misbehaved by both of them when they entered into the office of the Secretary and enquired about the difficulties faced in food supply in hill areas. The Secretary and his P.S. in their explanations said that they did not utter a single word which in any way lowers down the dignity of a person.

The Speaker observed that the matter was not related to breach of privilege as the complaints did not enter in the office of the Secretary, Food & Civil Supplies in regard to the functions of the House and or its Committee and hence decided not to accept the motion as breach of privilege.

A notice of breach of privilege was separately given on 17th January, 2005 by both Shri Mahendra Prasad Bhatt, M.L.A. and Shri Anil Nautiyal, M.L.A. on the ground that they were not called in the meeting of Basic Shiksha Samiti and not following the recommendations and proposals of the Members made in the Zila Shiksha Pariyojana Samiti for the selection of Primary and New Junior High Schools which were required to be considered in order of preference as was informed in the House by the Hon’ble Education Minister. In response to this notice, the Education Minister informed that in the meeting Adhyaksh, of Basic Shiksha Samiti chaired by Zila Panchayat two M.L.As and not all M.L.As of the area were invited as members as it was not clear that how many M.L.As of the local area be invited as members of the committee. There was no mal
intention at all of Basic Shiksha Adhikari not to invite to complaints in the meeting and it was assured that in future that mistake will not be repeated.

To keep in view the above explanation of Hon’ble Minister, the Speaker observed, it did not seems that the Basic Shiksha Adhikari did not deliberately invite the complainants in the meeting and hence the notice is not admissible as breach of privilege.

Shri Prakash Pant gave a notice of breach of privilege against Principal Secretary, Finance and secretary, Vidhan Sabha. In reference to his notice the

Complainant Hon’ble member States that on July, 27, 2004 the Hon’ble Minister of Parliamentary Affairs informed in the House that the ‘Lap Top’ are given to the Members free of cost and they are not to be returned whereas the letter of Secretary, Vidhan Sabha of dated October 1, 2005 informs that the Members may retain the ‘Lap Top’ with them only after payment of 60% depreciated value of it. The decision of payment of depreciated value was taken by Finance department. The complaint alleged that it is against the decision taken on the floor of House and amount to breach of privilege.

In view of the above, the Speaker observed, the finance department should not impose any condition but must act as per the spirit of the House and as the Secretary, Vidhan Sabha performs its duties as per direction of the Speaker, Vidhan Sabha and any notice of breach of privilege against the employers of Vidhan Sabha can not be taken into notice without the consent of the Speaker.

In this context the Speaker did not accept the notice of breach of privilege but as per the sprit of the House, directed the government
to give the Lap Top to the Hon’ble Members free of cost and the condition to return the lap top given to the Members be waived.

Shri Ajay Bhatt, M.L.A. gave a notice of breach of privilege on the ground that he was not invited in an inaugural function of a School situated, in his constituency, in which Horticulture Minister was the Chief guest. He alleged that not inviting the local M.L.A. in an official/departmental meeting amounted to breach of privilege as it had been respectably resolved in the House that in such meetings, the local M.L.A. be necessarily invited. In response to it the Hon’ble Minister stated that it was not an official or departmental function but it was organized by local people and it was on the organizers to whom they were inviting.

In view of the above, the Speaker observed that in the instant matter, no question of breach of privilege and/or contempt of House is involved, hence notice is not accepted.

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