

Indian Constitution and Parliamentary Privileges – A Background Note

Source- Committee on Privilege and Ethics, Lok Sabha Secretariat

Definition and Scope of Privileges

A simple definition of privilege is that it is an exceptional right or exemption. In its legal sense it means an exemption from some duty, burden, attendance or liability to which others are subject. In Parliamentary language, however, the term applies to certain rights and immunities enjoyed by each House of Parliament collectively, and by members of each House individually without which they cannot discharge their functions. The object of Parliamentary privileges is to safeguard the freedom, the authority and the dignity of Parliament. Privileges are necessary for the proper exercise of the functions entrusted to Parliament by the Constitution. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the service of its members, and by each House collectively for the protection of its member and the vindication of its own authority and dignity.

2. It must, however, be remembered that the privileges of Parliament are granted to members in order that they may be able to perform their duty in Parliament without any let or hindrance. They are available to individual member only in so far as they are necessary for the House to perform its functions freely. They do not exempt the 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 application of laws, 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 have to be treated equally in the eyes of law. Unless so provided in the Constitution or in any law a member of Parliament cannot claim any higher privileges than those enjoyed by an ordinary citizen in the matter of the application of the laws.

Constitutional Provisions

3. Each House of the Indian Parliament collectively and its members individually enjoy certain powers, privileges and immunities which are considered essential for them to discharge their functions and duties effectively without any let or hindrance. While the more important of these privileges, namely freedom of speech in Parliament and immunity of members from any proceedings in courts in respect of anything said or any vote given by them in Parliament, are specified in the Constitution, itself and some of them are specified in certain statutes and the Rules of Procedure and Conduct of Business in Lok Sabha, others are at present based on the precedents and conventions

which have grown in this country, in terms of the provisions of the Constitution, until defined by Parliament by Law.

4. Article 105 of the Constitution of India which provides for powers, privileges and immunities of the Houses of Parliament and of the members and the Committee thereof, reads as follows:—

- (1) Subject to 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 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 or 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 law, and until, so defined, shall be those of that House and of its members 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.

The corresponding provisions relating to the powers, privileges and immunities of the Houses of State Legislatures and of members and Committees thereof are contained in Article 194 of the Constitution which are in identical terms to those in Article 105 relating to Parliament.

Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 came into force with effect from the 20 June, 1979. Prior to that, clause (3) of Article 105 provided that in other respect the powers, privileges and immunities of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees at the commencement of the Constitution i.e. on the 26 January, . 1950.

Main Privileges of Parliament, its Committees and Members

5. Some of the more important privileges of each House of Parliament and of its members and Committee are as follows:—

- (i) Freedom of speech in Parliament [Article 105(1) of the Constitution];
- (ii) 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 Committees thereof [Article 105(2) of the Constitution];
- (iii) Immunity to a person from proceedings of any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes, or proceedings [Article 105(2) of the Constitution];
- (iv) Prohibition on the courts to inquire into proceedings of Parliament (Article 122 of the Constitution);
- (v) Immunity to a person from any proceedings, civil or Criminal, in any court in respect of the publication in a newspaper or a substantially true report of the proceedings of either House of Parliament unless the publication is provided to have been made with malice. This immunity is also available in relation to reports or matters broadcast by means of wireless-telegraphy (Article 361A);
- (vi) Exemption of members from liability to serve as juror;
- (vii) Prohibition of disclosure of the proceedings or decision of a secret sitting of the House;
- (viii) Rights of the House to receive immediate information of the arrests, detention, convictions, imprisonment and release of a member (Rules 229 and 230 of the Rules of Procedure and Conduct of Business in Lok Sabha, Ninth edition);
- (ix) Prohibition of arrest and services of legal process within the precincts of the House without obtaining the permission of the Speaker (Rules 232 and 233 of the Rules of Procedure and Conduct of Business in Lok Sabha Ninth Edition);
- (x) Members or officers of the House cannot give evidence or produce documents in courts of law, relating to the proceedings of the House without the permission of the House. (First Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on 13 September, 1957);

- (xi) Members or officers of the House cannot attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (Sixth Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on 17th December, 1958);
- (xii) All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the enquiry by a Committee.....A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of a Committee (Rules 269 and 270 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (xiii) A Parliamentary Committee may administer oath or affirmation to a witness examined before it (Rule 272 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (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 (Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha).

6. In addition to the above mentioned privileges and immunities each House also enjoys certain consequential powers necessary for 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 conduct of its business (Article 118 of the Constitution);
- (iv) to prohibit the publication of its debates and proceeding (Rule 249 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (v) to exclude strangers from the secret sittings of the House (Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha);

- (vi) to regulate admission to and order withdrawal/removal of strangers from any part of the House (Rules 386, 387, 387A of the Rules of Procedure and Conduct of Business in Lok Sabha).

Freedom of Speech

7. The Most important privilege of members of Parliament is freedom of speech in Parliament. This privilege is embodied in clause (1) and (2) of Article 105 of the Constitution. This privilege is based on Article 9 of the Bill of Rights, 1689 of the United Kingdom whereby it was declared:—

“That the freedom of speech, and debate or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.”

Thus no action can be taken against a member of Parliament in any court or before any authority other than Parliament in respect of anything said or any vote given by him in Parliament or any Committee thereof. It would be a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliament.

8. A member cannot also be questioned in any court or by any agency outside Parliament for any disclosures he may make in Parliament. The Committee of Privileges of Rajya Sabha in their 12th Report, adopted by Rajya Sabha on the 20 December, 1968, 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 and investigation outside Parliament of anything that a Member says or does in the discharge of his duties as Member of Parliament would amount to a serious interference with the Member’s right to carry out his duties as such Member.”

The Committee also recommended:

“If in a case a Member states something on the floor of the House which may be directly relevant to a criminal investigation and, if in the opinion of the investigating authorities, it is of vital importance to them as positive evidence, 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 the Home Minister's request, the matter should be allowed to rest there."

9. Thus, the speech and action in Parliament may be said to be unquestioned and free. However, this freedom from external influence or interference does not involve any unrestrained license of speech within the walls of the House. The right to freedom of speech in the House is circumscribed by the constitutional provision in Article 121 that the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties shall not be discussed in Parliament except upon a motion for presenting an address to the President praying for the removal of the judge. Rules 352 and 353 of the Rules of Procedure and Conduct of Business in Lok Sabha also guard against making of unwarranted allegations against a person. When a member violates any of these restrictions, the Speaker may direct him to discontinue his speech, or order the defamatory, indecent or unparliamentary or undignified words used by the member to be expunged from the proceedings of the House, or direct the member to withdraw from the House, or put the question of suspension of the member from the service of the House.

10. It has been held by the Supreme Court that the freedom of speech conferred on members under Article 105 is subject only to those provisions of the Constitution which regulate the procedure of Parliament and to the rule and standing orders of the House, but is free from any restrictions which may be imposed by any law made under Article 19(2) upon the freedom of speech of an ordinary citizen.

11. As already stated, for his speech and action in Parliament a member is subject only to the discipline of the House itself and no proceedings, civil or criminal, can be instituted against him in any court in respect of the same. Absolute privilege has been given in respect of anything said or any vote given in Parliament or a Committee thereof so that members may not be afraid to speak out their minds and freely express their views. It has been held that though the words uttered by members in the House may be false and malicious to their knowledge and though a speech delivered by a member in the House may amount to contempt of court, no action can be taken against him in a court of law. It has also been held that the disclosures made in the House by members either by speeches or questions cannot be made the subject-matter of a prosecution under the Official Secrets Act.

12. Although members do not have any privilege or immunity from arrest on a criminal charge or under any law for preventive detention, the House has a right to

receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.

The failure on the part of a judge or a magistrate or other authority to inform the House of the arrest, detention or imprisonment of a Member would constitute a breach of privilege of the House.

Breach of Privilege

13. 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 privileges 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 of libels upon itself, its members or officers, are also punishable as contempt of the House.

Contempt of Parliament and Power to punish

14. 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 officers of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results.” It may be stated that it is not possible to enumerate exhaustively every act which might be constructed by the House as contempt of the House.

The House may punish a person found guilty of breach of privilege or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own members, two other punishments can be awarded by the House, namely, suspension from the service of the House and expulsion.

The penal jurisdiction of the House is neither confined to its own members nor to its officers, but extends to all contempts of the House, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls. This power of the House to punish any person who commits a contempt of the House or a breach of any of its privileges is the “key stone” of Parliamentary Privileges. It is this power that gives effect to the privileges of Parliament and emphasises its sovereign character so far as the protection of its rights and the maintenance of its dignity and authority are concerned.

The power possessed by each House of Parliament and a House of the Legislature of a State to punish for contempt or breach of privilege is a general power of committing for contempt analogous to that possessed by the Superior Courts and is in

its nature discretionary. It flows from the provisions of Article 105(3) of the Constitution as affirmed by the Supreme Court in the case of Rajaram Pal & ors. Vs. UOI & ors.

Norms of punishment for breach of privilege or contempt

15. The House may impose the following punishments on a person found guilty of breach of privilege or contempt of the House.

(i) *Imprisonment*

The period for which the House can commit an offender to prison for contempt or breach of its privileges is limited by the duration of the session of the House. As soon as the House is prorogued, the prisoner is set at liberty. In a number of cases where visitors shouted slogans and threw leaflets from the visitors gallery on the floor of the House, the offenders were sent to prison for committing a contempt of the House by creating disorder in the public Galleries.

(ii) *Admonition or reprimand*

In cases where the offence of breach of privileges or contempt is not so serious as to warrant the imprisonment of the offender by way of punishment 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, whereas reprimand is the more serious mark of displeasure of the House.

(iii) In the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly than by admonition or reprimand, namely:

- (i) Suspension from the service of the House; and
- (ii) Expulsion from the House.

The penal powers of the House for breach of privilege or contempt of the House are, however, exercised only in extreme case where a deliberate attempt is made to bring the institution of Parliament into disrespect and undermine public confidence in and support of Parliament. It is also a tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by tacking no further notice of the matter.

Conclusion

16. Thus the privileges which have been granted by the Constitution specifically are the freedom of speech and immunity from proceedings in the Court of Law to the

Members and right to publication to the House of Legislature. These privileges have received liberal interpretation from the Courts. However, the privileges which have accrued by virtue of clause (3) of Article 105 & 194 have been at times source of constitutional and legal problems. Though the Constitution mandates the Parliament to codify its privileges, no law has been enacted by the Parliament in this regard so far and the Committee of Privileges in their 11th Report (14th LS) laid on the Table on 30 April, 2008, which was the last exercise on the subject of codification, listened to various points of view and held thorough consultations and then concluded and recommended that in view of the foregoing discussion, the Committee are of the considered view that there does not arise any occasion for codification of parliamentary privileges and as a matter of fact an awareness needs to be created with regard to the true import of the term parliamentary privileges and the ground realities that exist and the Committee accordingly recommended against codification of parliamentary privileges.“

Non codification of parliamentary privileges have also resulted at times in conflict between the organs of the State particularly the judiciary and the Legislature but the conflicts have been resolved in the most amicable manner in terms of the spirit of one democratic polity as enshrined in our supreme law *i.e.* the Constitution.

INDIAN CONSTITUTION AND PARLIAMENTARY PRIVILEGES – A BACKGROUND NOTE

Definition and Scope of Privileges

A simple definition of privilege is that it is an exceptional right or exemption. In its legal sense it means an exemption from some duty, burden, attendance or liability to which others are subject. In Parliamentary language, however, the term applies to certain rights and immunities enjoyed by each House of Parliament collectively, and by members of each House individually without which they cannot discharge their functions. The object of Parliamentary privileges is to safeguard the freedom, the authority and the dignity of Parliament. Privileges are necessary for the proper exercise of the functions entrusted to Parliament by the Constitution. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the service of its members, and by each House collectively for the protection of its member and the vindication of its own authority and dignity.

2. It must, however, be remembered that the privileges of Parliament are granted to members in order that they may be able to perform their duty in Parliament without any let or hindrance. They are available to individual member only in so far as they are necessary for the House to perform its functions freely. They do not exempt the 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 application of laws, 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 have to be treated equally in the eyes of law. Unless so provided in the Constitution or in any law a member of Parliament cannot claim any higher privileges than those enjoyed by an ordinary citizen in the matter of the application of the laws.

Thus, the privilege against assaults or molestation is available to a member only when he is obstructed or in any way molested while discharging his duties as a member of Parliament. In cases, when members were assaulted while they were not performing any parliamentary duty, it was held that no breach of privileges or contempt of the House had been committed. Similarly privilege of Parliament will not be attracted if a libel or a reflection upon a Member of Parliament does not concern his capacity as a member of the House and is not based on matters arising in actual transaction of the business of the House. Further, a member does not enjoy any exemptions from the operation of the ordinary laws of the land and it has been held in a typical case that a member does not enjoy any special privilege in regard to the censoring of mail and tapping of telephone authorized by law equally applicable to all citizens.

Constitutional Provisions

3. Each House of the Indian Parliament collectively and its members individually enjoy certain powers, privileges and immunities which are considered essential for them to discharge their functions and duties effectively without any let or hindrance. While the more important of these privileges, namely freedom of speech in Parliament and immunity of members from any proceedings in courts in respect of anything said or any vote given by them in Parliament, are specified in the Constitution, itself and some of them are specified in certain statutes and the Rules of Procedure and Conduct of Business in Lok Sabha, others are at present based on the precedents and conventions which have grown in this country, in terms of the provisions of the Constitution, until defined by Parliament by Law.

4. Article 105 of the Constitution of India which provides for powers, privileges and immunities of the Houses of Parliament and of the members and the Committee thereof, reads as follows:—

- (1) Subject to 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 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 or 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 law, and until, so defined, shall be those of that House and of its members 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.

The corresponding provisions relating to the powers, privileges and immunities of the Houses of State Legislatures and of members and Committees thereof are contained in Article 194 of the Constitution which are in identical terms to those in Article 105 relating to Parliament.

Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 came into force with effect from the 20 June, 1979. Prior to that, clause (3) of Article 105 provided

that in other respect the powers, privileges and immunities of each House shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees at the commencement of the Constitution i.e. on the 26 January, 1950.

Main Privileges of Parliament

5. Some of the more important privileges of each House of Parliament and of its members and Committee are as follows:—

- (i) Freedom of speech in Parliament [Article 105(1) of the Constitution];
- (ii) 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 Committees thereof [Article 105(2) of the Constitution];
- (iii) Immunity to a person from proceedings of any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes, or proceedings [Article 105(2) of the Constitution];
- (iv) Prohibition on the courts to inquire into proceedings of Parliament (Article 122 of the Constitution);
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- (xii) All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the enquiry by a Committee.....A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of a Committee (Rules 269 and 270 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (xiii) A Parliamentary Committee may administer oath or affirmation to a witness examined before it (Rule 272 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (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 (Rule 275 of the Rules of Procedure and Conduct of Business in Lok Sabha).

6. In addition to the above mentioned privileges and immunities each House also enjoys certain consequential powers necessary for 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 conduct of its business (Article 118 of the Constitution);

- (iv) to prohibit the publication of its debates and proceeding (Rule 249 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (v) to exclude strangers from the secret sittings of the House (Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha);
- (vi) to regulate admission to and order withdrawal/removal of strangers from any part of the House (Rules 386, 387, 387A of the Rules of Procedure and Conduct of Business in Lok Sabha).

Freedom of Speech

7. The Most important privilege of members of Parliament is freedom of speech in Parliament. This privilege is embodied in clause (1) and (2) of Article 105 of the Constitution. This privilege is based on Article 9 of the Bill of Rights, 1689 of the United Kingdom whereby it was declared:—

“That the freedom of speech, and debate or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.”

Thus no action can be taken against a member of Parliament in any court or before any authority other than Parliament in respect of anything said or any vote given by him in Parliament or any Committee thereof. It would be a breach of privilege to institute any legal proceedings against a member in respect of anything said by him in Parliament.

8. A member cannot also be questioned in any court or by any agency outside Parliament for any disclosures he may make in Parliament. The Committee of Privileges of Rajya Sabha in their 12th Report, adopted by Rajya Sabha on the 20 December, 1968, 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 and investigation outside Parliament of anything that a Member says or does in the discharge of his duties as Member of Parliament would amount to a serious interference with the Member’s right to carry out his duties as such Member.”

The Committee also recommended:

“If in a case a Member states something on the floor of the House which may be directly relevant to a criminal investigation and, if in the opinion of the

investigating authorities, it is of vital importance to them as positive evidence, 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 the Home Minister's request, the matter should be allowed to rest there."

In pursuance of the above recommendations of the Committee of Privileges of Rajya Sabha, the Ministry of Home Affairs have issued the following instructions to all State Governments and Union Territory Administrations:

"When it is found from disclosures made by a Member on the floor of the Rajya Sabha/Lok Sabha that he is in possession of a vital information in the criminal case which is under investigation, the matter should be referred by the concerned Superintendent of Police to the State Governments/Union Territory Administrations. If the State Government/ Union Territory Administration is also of the opinion that the information in the possession of a Member is of such vital importance that his assistance should be sought, a detailed report may be sent to this Ministry enclosing a list of points on which information is sought from the Member. The matter will then be taken up by the Minister of Home Affairs with the Member concerned through the Chairman of Rajya Sabha/Speaker of Lok Sabha. The information that might be made available by the Member will be communicated to the State Government/ Union Territory Administration and the extent to which it might be used in the investigation of the case, will also be indicated."

9. Thus, the speech and action in Parliament may be said to be unquestioned and free. However, this freedom from external influence or interference does not involve any unrestrained license of speech within the walls of the House. The right to freedom of speech in the House is circumscribed by the constitutional provision in Article 121 that the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties shall not be discussed in Parliament except upon a motion for presenting an address to the President praying for the removal of the judge. Rules 352 and 353 of the Rules of Procedure and Conduct of Business in Lok Sabha also guard against making of unwarranted allegations against a person. When a member violates any of these restrictions, the Speaker may direct him to discontinue his speech, or order the defamatory, indecent or unparliamentary or undignified words used by the member to be expunged from the proceedings of the House, or direct the member to withdraw from

the House, or put the question of suspension of the member from the service of the House.

10. It has been held by the Supreme Court that the freedom of speech conferred on members under Article 105 is subject only to those provisions of the Constitution which regulate the procedure of Parliament and to the rule and standing orders of the House, but is free from any restrictions which may be imposed by any law made under Article 19(2) upon the freedom of speech of an ordinary citizen.

11. Interpreting clause (1) of Article 194, the Supreme Court observed:

“.....The words regulating the procedure of the Legislature occurring in cl. (1) of Art. 194 should be read as governing both ‘the provisions of the Constitution’ and the rules and standing orders. So read, freedom of speech in the Legislatures become subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to the articles relating to procedure in Part VI including Articles 208 and 211; just as freedom of speech in Parliament under Article 105(1), on a similar construction, will become subject to the articles relating to procedure in Part V including Articles 118 and 121.”

12. As already stated, for his speech and action in Parliament a member is subject only to the discipline of the House itself and no proceedings, civil or criminal, can be instituted against him in any court in respect of the same. Absolute privilege has been given in respect of anything said or any vote given in Parliament or a Committee thereof so that members may not be afraid to speak out their minds and freely express their views. It has been held that though the words uttered by members in the House may be false and malicious to their knowledge and though a speech delivered by a member in the House may amount to contempt of court, no action can be taken against him in a court of law. It has also been held that the disclosures made in the House by members either by speeches or questions cannot be made the subject-matter of a prosecution under the Official Secrets Act.

13. It is also the duty of each member to refrain from any course of action prejudicial to the privilege of freedom of speech which he enjoys. As declared by the House of Commons, U.K. by a resolution on July 15, 1947:

“It is inconsistent with the dignity of the House, with the duty of a member to his constituents and with the maintenance of the privilege of freedom of speech of any member of his House to enter into any contractual agreement with an outside body, controlling or limiting the member’s independence of action in Parliament or stipulation that he shall act in any way as the representative of such outside body in regard to any matter to be transacted in Parliament; the

duty of a member being to his constituents and to the country as a whole, rather than to any particular section thereof.”

Breach of Privilege

14. 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 privileges 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 of libels upon itself, its members or officers, are also punishable as contempt of the House.

Contempt of Parliament

15. 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 officers of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results.” It may be stated that it is not possible to enumerate exhaustively every act which might be constructed by the House as a contempt of the House.

16. Some typical cases of breach of privilege and contempt are as follows:—

- (i) Speeches or writings reflecting on the House, its Committees or members;
- (ii) Reflections on the character and impartiality of the Speaker in the discharge of his duty;
- (iii) Publication of false or distorted report of the proceedings of the House;
- (iv) Publication of expunged proceedings of the House;
- (v) Premature publication of proceedings, evidence or report of a parliamentary committee;
- (vi) Publication of proceedings of secret sessions of the House;
- (vii) Reflections on the report of Parliamentary Committee;
- (viii) Circulation of petitions before presentation;
- (ix) Molestation of members on account of their conduct in the House or obstructing members in the performance of their duties as members or while on their way to or from attending the House or a Committee thereof;

- (x) Intimidation of members to influence them in their Parliamentary conduct;
- (xi) Offering bribes to members to influence them in their Parliamentary conduct;
- (xii) Obstructing or molesting officers of the House in the execution of their duties;
- (xiii) Giving false or misleading evidence or information deliberately to the House or a Committee thereof, by a member or a witness;
- (xiv) Obstructing or molesting any witness during his attendance in the House or evidence as such witness before the House or a Committee thereof;
- (xv) Disobedience to orders of the House or its Committees;
- (xvi) Misconduct in the House or the Committee thereof;
- (xvii) Presenting false, forged or fabricated documents to the House or its Committees;
- (xviii) Tampering with documents presented to the House or its Committees.

Thus, in a case where it was alleged -that two officers of the Ministry of industry had written to the Ministry of Home Affairs to take such action as the Ministry may like against another officer of the Ministry for giving certain evidence before the sub-committee of Committee on Public Undertakings of Lok Sabha in October, 1978, the Speaker inter alia observed that all witnesses appearing before Parliamentary Committees are protected by the privilege of this House in respect of any statement made by them during their evidence before a Parliamentary Committee.

Power of Parliament to punish for contempt

17. Each House of Parliament is the guardian of its own privileges. Courts of law in India, have recognised that a House of Parliament (or of a State Legislature) is the sole authority to judge as to whether or not there has been a breach of privilege or contempt of the House in a particular case. The House may punish a person found guilty of breach of privilege or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own members, two other punishments can be awarded by the House, namely, suspension from the service of the House and expulsion.

The penal jurisdiction of the House is neither confined to its own members nor to its officers, but extends to all contempts of the House, whether committed by members

or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls. This power of the House to punish any person who commits a contempt of the House or a breach of any of its privileges is the “key stone” of Parliamentary Privileges. It is this power that gives effect to the privileges of Parliament and emphasises its sovereign character so far as the protection of its rights and the maintenance of its dignity and authority are concerned.

The power possessed by each House of Parliament and a House of the Legislature of a State to punish for contempt or breach of privilege is a general power of committing for contempt analogous to that possessed by the Superior Courts and is in its nature discretionary.

Norms of punishment for breach of privilege or contempt

18. The House may impose the following punishments on a person found guilty of breach of privilege or contempt of the House.

(i) *Imprisonment*

The period for which the House can commit an offender to prison for contempt or breach of its privileges is limited by the duration of the session of the House. As soon as the House is prorogued, the prisoner is set at liberty. In a number of cases where visitors shouted slogans and threw leaflets from the visitors gallery on the floor of the House, the offenders were sent to prison for committing a contempt of the House by creating disorder in the public Galleries.

(ii) *Admonition or reprimand*

In cases where the offence of breach of privileges or contempt is not so serious as to warrant the imprisonment of the offender by way of punishment 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, whereas reprimand is the more serious mark of displeasure of the House. In Lok Sabha there have been two cases of persons having been summoned to the Bar of the House and reprimanded by the Speaker. In one case Shri R.K. Karanjia, Editor of a weekly magazine ‘Blitz’ was reprimanded for publishing a libelous dispatch in his magazine. In the other case, Shri S.C. Mukherjee, a Government officer was reprimanded for deliberately misrepresenting facts and giving false evidence before the Committee on Public Accounts.

19. As already stated above, in the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly than by admonition or reprimand, namely:

- (i) Suspension from the service of the House; and
- (ii) Expulsion from the House.

The penal powers of the House for breach of privilege or contempt of the House are, however, exercised only in extreme case where a deliberate attempt is made to bring the institution of Parliament into disrespect and undermine public confidence in and support of Parliament. It is considered desirable that the process of parliamentary investigation should not be used in a way which would give importance to irresponsible or reckless statements or to persons of no consequence making such statements. It has also been observed by the Committee of Privileges that in the ardour of political contest and in the heat of moment, strong and undesirable words are sometimes used which a person, thinking more coolly, would not say. It has also been held that the law of Parliamentary Privileges should not be administered in a way which could fetter or discourage the free expression of opinion or criticism, however, prejudicial or exaggerated such opinions or criticism, may be.

20. It may be mentioned that the Select Committee on Parliamentary • Privileges of House of Commons (U.K.), 1967 made the following recommendations:

“The House should exercise its penal jurisdiction (a) in any event as sparingly as possible, and (b) only when it is satisfied that to do so is essential in order to provide reasonable protection for the House, its members or its officers from such improper obstruction. or attempt at or threat of obstruction as is causing, or is likely to cause, substantial interference with the performance of their respective function.”

Subsequently, the Committee of Privileges of the House of Commons in their Third Report (1996-97) reiterated this recommendation, and the House of Commons, U.K., adopted it on 6th February, 1978.

21. The above approach has normally been followed in matters of privilege by Lok Sabha as well. Thus the Committee of Privileges of Seventh Lok Sabha in their First Report presented to the House on 8 May, 1981, observed inter alia as follows:

“The Committee feel that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution, the greater restraint is called for particularly in exercising its penal jurisdiction.”

It is also a tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House are accepted by the House and the House normally decides in such cases to best consult its own dignity by taking no further notice of the matter.

Privilege of freedom from arrest or Molestation

22. One of the privileges enjoyed by members is freedom from arrest in civil cases during the continuance of the session of the House and during a period of 40 days before its commencement and 40 days after its conclusion (Section 135A of the Code of Civil Procedure). The object of this privilege is to ensure the safe arrival and regular attendance of Members of Parliament. The arrest of a Member of Parliament in Civil Proceedings during the period when he is exempted from such arrest is a breach of privilege and the member concerned is entitled to release.

23. The Privileges of freedom from arrest does not, however, extend to criminal offences or cases of detention under the preventive detention. A criminal act committed by a member within the House cannot be regarded as a part of the proceedings of the House, for purposes of protection under the provisions of Article 105(2) of the Constitution. Thus, in Maharashtra Legislative Assembly when a member shouted at the operator to connect his mike to the loud-speaker, threw a paper-weight in the direction of the loud-speaker operator and rushed towards the Speaker, and grabbed the mike in front of the Speaker, he was not only expelled from the House but was subsequently convicted under different sections of the Indian Penal Code and sentenced to a rigorous imprisonment for six months.

24. Although members do not have any privilege or immunity from arrest on a criminal charge or under any law for preventive detention, the House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.

25. The failure on the part of a judge or a magistrate or other authority to inform the House of the arrest, detention or imprisonment of a Member would constitute a breach of privilege of the House.

26. Another privilege which a member under custody enjoys is his right to correspond without any let or hindrance with the Speaker, Secretary or Chairman of a Parliamentary Committee. It is a breach of privilege to withhold any communication addressed by a member in custody to the Speaker, Secretary- General, Lok Sabha or the Chairman of a Parliamentary Committee.

27. No arrest whether of a member or of a stranger, can be made within the precincts of the House without obtaining the prior permission of the Speaker. Request for seeking the permission of the Speaker to make arrest within the precincts of the House should not be made by the authorities concerned as a matter of routine. Such request should be confined only to urgent cases where the matter cannot wait till the House adjourns for the day. The request in each such case should be signed by an officer not below the rank of Deputy Inspector General of Police and it should also state

the reasons why arrest within the precincts of the House is necessary. Similarly, no legal process, civil or criminal, can be served within the precincts of the House without obtaining the prior permission of the Speaker whether the House is in session or not. As a corollary to this rule, the court of law should not seek to serve a legal process, civil or criminal on Member of Parliament through the Speaker or Lok Sabha Secretariat. The appropriate procedure is for the summons to be served direct on members concerned outside the precincts of Parliament, that is at their residences or at some other places. A court of law should not also ask the Speaker or the Lok Sabha Secretariat to inform a member about issue of a legal process against him or seek to utilise in any manner the agency of the Speaker or of the Secretariat of the House in the Service or execution of a legal process, civil or criminal, against a member.

Use of Handcuffs

28. There is no privilege specifically exempting a member of Parliament who is under arrest on a criminal charge, from being handcuffed. The Committee of Privileges of Fifth Lok Sabha in their Nineteenth Report presented to the House on 31 August, 1986 observed that the instructions regarding handcuffing of prisoners by the Union Minister of Home Affairs from time to time should be strictly and scrupulously followed by all the authorities concerned of the State Governments and Union Territory Administration and there should ordinarily be no occasion to handcuff prisoners such as Member of Parliament, Members of State Legislature, peaceful satyagrahis, persons occupying good positions in public life and professionals like jurists, journalists, doctors, writers and educationists.

Molestation of Members

29. It is also a breach of privilege and contempt of the House to obstruct or molest a member while in the execution of his duties, that is, while he is attending the House or when he is coming to, or going from the House. Thus, insults offered to Members on their way to or from the Houses have always been deemed to be high breaches of privilege. Molestation or obstruction caused to a member while going to Parliament House or coming from the Parliament House is a breach of privilege but 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 any Committee thereof.