

## CHAPTER—8

### Parliamentary Privileges

#### Nature of privilege

**A**ccording to Erskine May, “Parliamentary privilege is the sum of certain 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. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute. 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 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 contempts, that is, 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.”<sup>1</sup>

#### What is contempt

“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.”<sup>2</sup>

In interpreting these privileges, therefore, attention must be given 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.”<sup>3</sup> 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.”<sup>4</sup> 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.<sup>5</sup>

### Constitutional provisions

The Constitution of India specifies some of the privileges. These are freedom of speech in Parliament;<sup>6</sup> 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;<sup>7</sup> 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.<sup>8</sup> Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure.<sup>9</sup> No officer or Member of Parliament empowered to regulate procedure or the 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.<sup>10</sup> 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 any 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.<sup>11</sup> This immunity, however, is not available to publication of proceedings of a secret sitting of the House.<sup>12</sup>

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 so defined, shall be those of that House, its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.<sup>13</sup>

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.

### **Statutory provision**

Apart from the privileges as 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.<sup>14</sup>

### **Privileges based on Rules of Procedure and precedents**

The Chairman 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.<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup>

### **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;<sup>18</sup> to compel the attendance of witnesses and to send for persons, papers and records;<sup>19</sup> to regulate its procedure and the conduct of its business;<sup>20</sup> to prohibit the publication of its debates and proceedings<sup>21</sup> and to exclude strangers.<sup>22</sup>

### **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.

A person found guilty of breach of privilege or contempt of the House may be punished either by imprisonment,<sup>23</sup> or by admonition (warning)<sup>24</sup> or reprimand.<sup>25</sup> Two other punishments may also be awarded to the members for contempt, namely, 'suspension'<sup>26</sup> and 'expulsion'<sup>27</sup> from the House.

### 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.

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.<sup>28</sup>

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.<sup>29</sup> Members enjoy

complete protection even though the words uttered by them in the House are malicious and false to their knowledge.<sup>30</sup> 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.<sup>31</sup>

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 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.<sup>32</sup>

The right of freedom of speech in the House is, however, circumscribed by the constitutional provisions<sup>33</sup> and the rules of procedure.<sup>34</sup> When a member violates any of the rules, the Chair has ample powers conferred by the rules to deal with the situation.<sup>35</sup>

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 floor of the House. The privilege of freedom of speech can only be secured, if members do not abuse it.<sup>36</sup>

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 (Section 1978-79) HC 222, p.v., para. 10):

...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 of 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<sup>37</sup> as they apply in relation to Members of Parliament.<sup>38</sup>

### **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.<sup>39</sup>

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, *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.<sup>40</sup>

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

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.<sup>41</sup>

### **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. 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.<sup>42</sup>

Rules of Procedure empower the Chairman to regulate the admission of strangers<sup>43</sup> and order their withdrawal from any part of the House.<sup>44</sup>

### **Right to control publication of proceedings**

Closely linked with 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.<sup>45</sup>

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.<sup>46</sup>

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 the publication is proved to have been made with malice.<sup>47</sup> Statutory protection has also been given to such publication.<sup>48</sup>

But when debates or proceedings of the House or its committees are reported *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.

*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.<sup>49</sup>

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 misrepresent by editing, adding or unfairly omitting to give a totally wrong impression.<sup>50</sup>

If a member of either House publishes separately from the rest of the debate a speech made by him in the course of proceedings in Parliament, his printed statement becomes a separate publication, unconnected with any proceedings in Parliament, and he is legally responsible for any defamatory matter it may contain.<sup>51</sup>

### **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.<sup>52</sup>

Any publication of a draft or approved report of a Parliamentary Committee, before such report has been presented to the House or to the Chairman, is treated as a breach of privilege of the House.

### **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.<sup>53</sup>

Shri Kuldeep 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.<sup>54</sup>

## Misrepresentation of proceedings

Misrepresenting or misreporting the proceedings of Parliament have been found to be the gross violation of privilege and contempt of the House.

In a case, the publishers published in a book the 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> The Committee after reconsidering the matter recommended in its subsequent report that the principal contemner should also be reprimanded along with the co-authors.<sup>58</sup> Accordingly, the contemnors were reprimanded by the Chairman at the bar of the House on 24 December 1980.<sup>59</sup>

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/rulings 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 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.<sup>60</sup> The House agreed, by a motion.<sup>61</sup>

On 12 August 1966, a member gave a notice and 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 they should not do anything which can be taken as partisanship or any such thing.

The notice was withdrawn by the concerned member.<sup>62</sup>

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 the 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.<sup>63</sup>

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 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.<sup>64</sup>

On 27 March 1973, a member sought to raise a question of privilege against the Editor of the *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.<sup>65</sup>

Similarly when a complaint was raised against a Tamil daily *Alai Osai* for misreporting a member's speech, the Editor of the paper regretted and the matter was dropped.<sup>66</sup>

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 *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."<sup>67</sup>

In one case, a summary of a speech delivered by a member in the House on 9 June 1980, was published in the *Assam Tribune*. The 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:

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.<sup>68</sup>

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.<sup>69</sup>

### 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.<sup>70</sup> 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 rules is not subject to judicial review in view of Article 122.<sup>71</sup>

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”<sup>72</sup> as distinguished from “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.<sup>73</sup>

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.”<sup>74</sup>

### **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 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.”<sup>75</sup>

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 summon was received asking a Security Officer of the Rajya Sabha Secretariat to appear before the Court of Additional District and 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 authorised 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.<sup>76</sup>

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 Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman of the Committee or one of its member to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.<sup>77</sup>

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, member of the Lok Sabha, because of his connection with the above mentioned firm which had entered into a contract with the 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.<sup>78</sup>

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 Sessions Judge. The extracts were sent on 30 January 1964, and the Deputy Chairman informed the House accordingly.<sup>79</sup>

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.<sup>80</sup>

In this connection, it may also be stated that in the House of Commons, parties to a suit who desire to produce such evidence or any other document in the custody of officers of the House accordingly petition the House, praying that the proper officer may attend and produce the material. However, in 1980 the House of Commons agreed to permitting reference to be made in court to certain parliamentary papers such as official report and the published reports and evidence taken by committees, without the necessity of the presentation of a petition for leave of the House.<sup>81</sup>

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.<sup>82</sup>

### **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 House or meetings of any committees, of which he may be a member, and during forty days before and after such session/meeting.<sup>83</sup>

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.

### **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”.<sup>84</sup> 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 *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.<sup>85</sup>

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 orders of preventive detention are made when criminal charges possibly would not be established, but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.<sup>86</sup>

### **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, in so far as a valid order of detention is concerned and are as much liable to be arrested and detained under it as any other citizen.<sup>87</sup>

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.<sup>88</sup>

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 procedure.<sup>89</sup> 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, member of the Rajya Sabha, who was arrested under Sections 107/117 of the CrPC, 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.<sup>90</sup>

Miss Saroj Khaparde, 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.<sup>91</sup>

On one occasion when the Chairman informed the House about the intimation received from the Government of Madras regarding the temporary release of a member of Rajya Sabha on parole for a month "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 obstacle in his way".<sup>92</sup>

Members detained are required to obtain leave of absence from the House.<sup>93</sup>

### **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.<sup>94</sup>

### **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.<sup>95</sup>

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, *i.e.*, at the residence of a member or any other place.<sup>96</sup> 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.<sup>97</sup>

Whenever the Secretariat receives any summon, 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.<sup>98</sup>

### **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 the case may be, as also the place of detention or imprisonment of the member in the prescribed form.<sup>99</sup> 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.<sup>100</sup> The information so received is communicated by the Chairman to the House, if it is sitting or is published in the parliamentary bulletin part II, if the House is not sitting, for the information of members.<sup>101</sup> 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.<sup>102</sup> 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 Parliamentary Bulletin for the information of members.<sup>103</sup>

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 Chairman for its information whether or not such restraint amounted to arrest or detention in the legal sense.<sup>104</sup>

In a case where a delegation of Members of Parliament was prevented from visiting a riot-affected area and was kept waiting for 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.<sup>105</sup>

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 their arrest was to prevent 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*.<sup>106</sup>

*(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 arrest in normal conditions and arrest in abnormal conditions and stated that all circumstances of arrest had to be taken into consideration.<sup>107</sup>

*(iii) Furnishing incorrect information*

On the basis of the information communicated through the Parliamentary 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."<sup>108</sup>

*(iv) Delay in sending intimation*

On 1 March 1981, a member was arrested and later released on the same day. A wireless message dated 3 March 1981, was received by the Chairman on 4 March 1981, and was published in the Parliamentary 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 concerned member giving notice of breach of privilege which was 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.<sup>109</sup>

### **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.<sup>110</sup>

### **Ill-treatment of members by police/jail authorities**

Members have time and again given notices of breach of privilege arising out of alleged misbehaviour or ill-treatment received from law-enforcing agencies or jail authorities. Some of these cases are mentioned below:

On 31 July 1967, Shri Bhupesh Gupta, Shri A.P. Chatterjee, Shri Raj Narain and Shri Mulka Govinda Reddy submitted to the House that on 29 and 30 July 1967 certain members of the Rajya Sabha and the Lok Sabha were prevented illegally and forcibly by the police from going into the Prime Minister's house, in the absence of specific orders to that effect. They contended this to be a matter of breach of privilege. They also alleged rude behaviour on the part of the police. The Home Minister, Shri Y.B. Chavan, while responding to the matter stated that since the members reportedly talked of picketing the Prime Minister's house, the police were only doing their duties under the Police Act to see that the entrance and exit of the Prime Minister's house were not blocked. The Chairman, on 2 August 1967, while ruling that there was no question of breach of privilege in the matter, however, reiterated that Members of Parliament are entitled to the utmost consideration and respect and the police or other authorities should not do anything which is likely to impede them in the proper discharge of their duties.<sup>111</sup>

On an occasion, members sought to raise the question of manner in which a member was arrested and treated in jail. The Deputy Chairman

observed that if a Member of Parliament was arrested, it was necessary and essential that proper medical care and attention was provided to him.<sup>112</sup>

A member's complaint regarding his ill-treatment in jail was referred to the Committee of Privileges but in the absence of any response from the concerned member rebutting the version of the State Government, the Committee felt that no useful purpose would be served by pursuing the matter.<sup>113</sup>

On 9 March 1989, a member made a special mention in the House about the ill-treatment meted out to him during his arrest about which the Minister of Home Affairs had made a statement in response to the matter being raised in the House. The Chairman referred the matter to the Committee of Privileges. In view of the concerned officials having been warned to be careful in future, as per the communication of the Ministry of Home Affairs, the Committee recommended that no further action need to be taken in the matter.<sup>114</sup>

On an incident of ill-treatment of a lady member which was referred to the Committee of Privileges by the House when it was raised on 23 May 1990, the Committee felt that the matter need not be pursued further in view of the apology tendered by the concerned police officials before the Deputy Chairman (Chairman of the Committee).<sup>115</sup>

In an incident, a member of the Rajya Sabha complained that when he was coming out of Parliament House Annexe and proceeding towards Parliament House to attend the sitting of the House, a constable rushed towards him, caught hold of him by his right arm and virtually forced him to stand in a corner until everything was clear. This happened in spite of the member having disclosed his identity. The Chairman referred the matter to the Committee of Privileges. The Committee was informed that the constable had been placed under suspension and a departmental inquiry had also been ordered against him. The Deputy Commissioner of Police also tendered unqualified apology for the misbehaviour of the policeman to the member personally. The Committee, therefore, recommended that the matter need not be pursued further.<sup>116</sup>

In yet another case of ill-treatment of a member by the police officials, the Committee of Privileges to which the case was referred observed that the member was not treated with the courtesy and dignity which was due to him as a Member of Parliament. However, in view of the steps taken by the State Government to check the recurrence of such incidents in future and the regrets expressed and unconditional apologies tendered by all concerned, the Committee recommended that the matter need not be pursued further.<sup>117</sup>

In a case of allegation that the police officers had insulted and humiliated a member by using abusive language, the Committee of Privileges to which the case was referred by the Chairman, recommended that the matter need not be pursued further in view of the regrets expressed and unconditional apologies tendered by all concerned. The Committee, however, desired that the State Government concerned should ensure due compliance with the instructions issued by the Central Government from time to time in respect of modalities of official interaction with Members of Parliament.<sup>118</sup>

While dealing with the question of ill-treatment meted out to a member under custody, the Committee of Privileges observed that “Members of Parliament are entitled to utmost consideration at the hands of public servants”. The Committee further said:

The police or any other authority should not do anything or act in a manner which will hamper Members of Parliament in their functioning as public men. The authorities concerned, while dealing with the Members of Parliament, should act with great restraint and circumspection and show all courtesies which are legitimately due to the representatives of the people. The police should exercise utmost discretion and forbearance and should not put more fetters on the personal liberty of a citizen, particularly of Members of Parliament even for a short period than are reasonably necessary to meet a particular situation.<sup>119</sup>

On an occasion, the Committee of Privileges considered a series of complaints of members about obstruction/manhandling/misbehaviour by policemen, at Parliament House or elsewhere in Delhi, referred to it. The Committee expressed its anguish and concern over the manner in which Members of Parliament were treated by the police, and strongly felt that they being the representatives of the people in the Parliament should be treated with utmost courtesy and circumspection by the law enforcing authorities, since any disrespect or discourtesy shown to a Member of Parliament impinges upon the dignity of the Parliament, besides causing personal affront and discomfiture to members. Subsequently, at the request of the Committee, the Minister of Home Affairs met the Committee informally and assured to take appropriate steps to avoid recurrence of such incidents involving Members of Parliament. The Committee recommended that the Government should frame detailed guidelines for dealings (i) between the administration and legislators; and (ii) police and legislators, consistent with the dignity of members to avoid such complaints. The Committee expressed the hope that stern action would be taken by the Government against erring persons, whether in administration or police, on this score and that appropriate guidelines, if implemented in letter and spirit, would help reduce such complaints in future.<sup>120</sup>

### Handcuffing of members

Use of handcuffs for a member under arrest on a criminal charge does not constitute a breach of privilege.

A member gave a notice to raise a privilege issue relating to the handcuffing of another member while the latter was being taken to the court in the Baroda Dynamite case. The Deputy Chairman ruled that it was not a privilege matter.<sup>121</sup>

On another occasion a member of the Rajya Sabha was arrested and detained in jail under criminal law. He was taken to court in handcuffs. His contention that handcuffing was a breach of privilege available to a Member of Parliament, was not accepted by the Chairman.<sup>122</sup>

The Ministry of Home Affairs has issued instructions in regard to the handcuffing of Members of Parliament under arrest. According to these instructions, there should ordinarily be no occasion to handcuff prisoners such as Members of Parliament and the State Legislatures, persons occupying good positions in public life and that the use of handcuffs should be restricted to cases where the prisoner is a desperate character or where there are reasonable grounds to believe that he will use violence or attempt to escape.<sup>123</sup>

### Imputing motives to members

It is well established that speeches and writings or libels reflecting upon the proceedings of the House or any member thereof, for, or relating to, his services therein is a violation of the rights and privileges of the House. It has further been held that written imputations affecting a member may amount to a breach of privilege without being libels under common law, provided such imputations concern the character or conduct of the member in that capacity. It is, however, for the House to decide whether any particular publication constitutes such an affront to the dignity of the House or its members in their capacity *qua* members as would amount to a contempt of Parliament.<sup>124</sup>

In *Ram Gopal Gupta's* case the Committee of Privileges held that certain passages contained in a letter circulated by a businessman of Kanpur attributed motives to members in putting certain questions in the House and, therefore, constituted breach of privilege and contempt of members of the House and the House itself. In view of the nature of the offence, the Committee decided to recommend that the contemner should be reprimanded at the Bar of the House. However, subsequently the contemner tendered an unconditional and unqualified apology. The Committee, therefore, recommended that the House would best consult its own dignity by taking no further notice of the matter.<sup>125</sup>

In *Ram Nath Goenka's* case, certain statements made by a Minister in the House were described as “maliciously misleading” by Shri Goenka as per report in the *Indian Express*. The Committee held Shri Goenka guilty of committing a breach of privilege and contempt of the House. The Committee, however, did not recommend any action in the matter since Shri Goenka was elected to the Lok Sabha in the meantime.<sup>126</sup>

In the *Economic Times* case where certain “base” motives were attributed to a member for his speech during a short duration discussion, in an Editorial in the newspaper, the Committee held that certain observations in the Editorial attributed ulterior motives to a member. However, in view of the regret expressed before the Committee and subsequent apology by the Editor published in an issue of the paper, the Committee recommended that no further action be taken by the House in the matter.<sup>127</sup>

In a case of alleged intimidation and imputing motives to a member in a letter written to him by the Group President, Reliance Industries Limited, the Committee of Privileges observed, *inter alia*, that in the interest of free flow of information between the people and their representatives, fetters cannot be put on such communications even if the tone is disrespectful or the information not genuine, so long as there is no intention to deter a member from performing his Parliamentary duty or influencing him in his Parliamentary conduct. The Committee while holding that there was no breach of privilege in the matter, further recommended that the House record its expectation that communications to Members of Parliament from members of public will be couched in courteous and temperate language so as to facilitate members in discharging their obligations as public representatives to the best of their ability.<sup>128</sup>

### **Speeches and writings reflecting on the House, its members, etc.**

It is a breach of privilege and contempt of the House, to make speeches or to print or publish any libels reflecting on the character or proceedings of the House or its committees or on any member of the House for or relating to his character or conduct as a Member of Parliament. Such speeches or writings are punished by the House as a contempt on the principle that such acts “tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.”<sup>129</sup>

In the *Hindustan* case, certain statements contained in an Editorial of the *Hindustan*, a Hindi daily, were captioned ‘*Niradhar, Anargal Wa Anuchit*’ (Baseless, Absurd and Improper). The Committee of Privileges to which the matter was referred by the House, held that the impugned statements and similar others in the Editorial cast serious reflections on the character and proceedings of Parliament and on the conduct of

its members and thereby tended to bring the Parliament and its members into disrepute. In view of the apology tendered and regret expressed by the Editor of the paper, the Committee recommended that no further action be taken in the matter.<sup>130</sup>

In order to constitute a breach of privilege, however, a written imputation upon a Member of Parliament must concern his character or conduct in his capacity as a member of the House.<sup>131</sup> Reflections on members otherwise than in their capacity as members do not, therefore, involve any breach of privilege or contempt of the House.

A member complained that certain references were made to him in an article in a Bombay Weekly emphasising that his “amorous proclivities” amounted to a reflection on his fitness to discharge his duties as a Member of Parliament. The Committee of Privileges to which the matter was referred by the Chairman, concluded that the references and the innuendos did not concern the character or conduct of the concerned member *qua* a Member of Parliament and as such did not amount to a breach of privilege.<sup>132</sup>

Similarly, speeches or writings containing vague charges against members or criticising their parliamentary conduct in a strong language particularly in the heat of a public controversy, without, however, imputing any *mala fides* are not treated by the House as a contempt or breach of privilege.

In a case where the complaint was based on certain paragraphs of an affidavit filed in a suit in the High Court of Bombay, the Committee of Privileges came to the conclusion that the said paragraphs did not contain any direct or explicit insinuation against any member of the Rajya Sabha. In any case, in the opinion of the Committee, the statements contained therein were not free from ambiguity.<sup>133</sup>

In the *Hindustan Times* case the Committee of Privileges was considering certain writings contained in a feature article “*National Affairs*” with a sub-title “*Shades of the Star Chamber*”. According to the Committee, the author of the article had used strong language and had expressed himself equally strongly in relation to certain discussions that took place in the Rajya Sabha concerning the House of Birlas. Nevertheless, the Committee felt that it was not necessary to attach undue significance to such writings and thereby bring them within the ambit of the privilege of the House. In this context the Committee quoted with approval the following observations of Gladstone:

Breach of privilege is a very wide net, and it would be very undesirable that notice should be taken in this House of all cases in which hon'ble members are unfairly criticised. Breach of privilege

is not exactly to be defined. It is rather to be held in the air to be exercised on proper occasions when, in the opinion of the House, a fit case for its exercise occurs. To put this weapon unduly in force is to invite a combat upon unequal terms wheresoever and by whomsoever carried on...Indeed, it is absolutely necessary that there should be freedom of comment. That freedom of comment may, of course, be occasionally abused; but I do not think it is becoming the dignity of the House to notice that abuse of it.<sup>134</sup>

Reflections upon members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House.<sup>135</sup> There have been cases in the Rajya Sabha when cognizance had been taken of general statements against Members of Parliament without any member being named.<sup>136</sup>

In a lengthy ruling given while disposing a complaint of privilege arising out of an article in the *Times of India* captioned '*Black Money and Crime*' which commenced with a sentence, 'Dacoits, smugglers and bootleggers are now honoured Members of the Legislatures', the Chairman rejected the contention of the Editor that there was no reference at all to the Rajya Sabha and so the matter could not be raised there. He held, *inter alia*, that general statements of this type were "not a libel of any particular member or of any particular House but a libel in gross...This profuse employment of the plural number (in the impugned sentence), discloses an intention to traduce legislative institutions generally...and deliberately employed to show that legislators are universally tainted."<sup>137</sup>

In a case of alleged derogatory remarks against Members of Parliament by India's Ambassador in USA, which were reported in the Asian Age dated 21 August 2007, the Members of Parliament were referred to as 'running around like headless chickens', in the matter pertaining to Indo-US Civil Nuclear Agreement; the Committee *inter alia* was of the view that the personal frame of mind should not have influenced the public utterances of a senior and experienced diplomat. The Committee observed that the diplomat should have reacted on the issue with abundant caution and restraint while conversing with the correspondent. In view of the diplomat's unconditional apology and his having admitted that the impugned remarks were not only in poor taste but also unwarranted, the Committee recommended that the matter be allowed to rest.<sup>138</sup>

It is considered inconsistent with the dignity of the House to take any serious notice or action in the case of every defamatory statement which may technically constitute a breach of privilege or contempt of the House.

On 5 September 1974, the House adopted a motion that an article published in a Hindi weekly *Pratipaksha* under the title, *Sansad Ya*

*Choron Aur Dalalon Ka Adda* constituted a gross breach of privilege and contempt of the House and that the House would best consult its own dignity by taking no further action in the matter.<sup>139</sup>

In another case of casting reflections on the Deputy Chairman by criticizing his ruling and referring to expunged proceedings of Rajya Sabha in '*Jadeed Markaz*', a weekly newspaper, the Committee felt that the Editor of the newspaper crossed the boundaries of established standards of responsible journalism and used such words and sentences which not only transcended the limits of decency but also appeared to be attributing motives to Chair. The Committee further observed that it would be better if the House saves its own dignity by not giving undue importance to such irresponsible articles published with the sole intention of gaining cheap publicity.<sup>140</sup>

The above mentioned instances bring out some of the basic criteria which are usually applied to privilege cases arising out of reflections on the House, its members, etc. However, the decision on the question as to whether there has been a breach of privilege or contempt of the House depends upon facts and circumstances of each case. No two cases are identical and, therefore, the House or the Committee of Privileges has some freedom in appraising the facts in the case before it and coming to a conclusion. From the study of cases, however, it may be stated that when a complaint about reflection upon members of the House and so upon the House itself or upon the Chair or on any individual member in his capacity as such, is made, the House is generally guided by the following principles:

(1) Penal proceedings for breach of privilege should not be taken unless the attack on the House, its Presiding Officer or members is of a serious nature and is calculated to diminish the respect to the House and thus lessen its authority.

On 24 May 1990, the House adopted a resolution holding that a statement of a former Member of Parliament, Shri K.K. Tewari, as published in the newspapers that day brought the office of the Chairman of the Rajya Sabha to indignity and constituted contempt of the House. After seeking confirmation of the statement, the contemner was, as recommended in the resolution, summoned to the Bar of the House and reprimanded.<sup>141</sup>

(2) The law of parliamentary privilege should not be administered in a manner which would fetter or discourage the free expression of opinion or criticism.

In a case, the Committee of Privileges observed:

...every citizen has a right to offer fair criticism and/or comments on a matter which is of public concern and that it is not correct to

suggest that a Member of Parliament is not liable to be criticised in the performance of his duties as such member. Fair comments or criticism by a citizen... particularly a statement couched in proper language in which he puts forward his own version of certain facts, which may be contrary to something said on the floor of the House by a member or Minister, will not be objectionable. When, however, the citizen exceeds the limit of fair comment or criticism and indulges in imputations of improper motive to a Member of Parliament, he brings himself within the penal jurisdiction of the House.<sup>142</sup>

In the context of the writings in the Press, the Committee had in a case observed:

While the Committee is conscious that the Press should have the liberty to express its views without fear or favour on matters of public importance ...this liberty should not be abused by distorting facts and attributing motives.<sup>143</sup>

In another case, the Chairman disposed a privilege notice arising out of a signed item of the Executive Editor of the *Indian Express* carrying the heading, "*Petty little lies in Parliament*" observing, *inter alia*, that "Newspapers always look into things closely and critically...the newspapers are the eyes and ears of the public and if every citizen has a right to criticise the actions of others, so also the newspapers whose profession is to turn the light of publicity on the irregularities of public actions."<sup>144</sup>

In another case later, the Chairman again observed:

It is only when a point is reached and the writing ceases to be journalistic vapouring and becomes an improper obstruction to the functioning of Parliament and its members by patent falsehood or otherwise, that action to the extent of punishment is called for. Then the House will never hesitate to do its duty towards itself.<sup>145</sup>

In yet another case of alleged defamation of member in the Star News Channel in its programme, '*Operation Chakravayuh*', the Committee observed that if the public had an opportunity of seeing the unedited programme, the impression about the member would have been totally different from what had been created by the anchor in the telecast version. The Committee further observed that resorting to too much of coaxing and inducement, casting reflection on the integrity of other Members of Parliament and trying to entrap someone by fabricating false stories was not the way to expose wrongs in the parliamentary system. In view of the regrets expressed by the Chief Executive Officer of the channel and his acceptance of the Committee's view that there were other ways also of showing the programme which would have sent a different message about the concerned member, the Committee recommended not to pursue the matter further.<sup>146</sup>

(3) The process of parliamentary investigation should not be used in a manner as would give importance to irresponsible statements. In such cases, the convention is to ignore them<sup>147</sup> or treat them beneath notice<sup>148</sup> or of trivial in nature.<sup>149</sup>

A number of members had given notices of breach of privilege against Shri Khushwant Singh, a member of the House in respect of his well-known column *With Malice Towards One and All* in the *Hindustan Times* dated 6 August 1983, on the ground that certain passages from the writings of an English author who had criticised politicians generally and in particular Members of Parliament for voting in their own favour to raise their own emoluments, were applied to members of our Parliament. The Chairman after witty analysis of the article observed that such writings were not worth serious notice.<sup>150</sup>

In another case, by a notice of breach of privilege, the Chairman's attention was invited to certain observations of Acharya Rajneesh reported in the *Nav Bharat Times* of 3 August 1986, that 'Members of Indian Parliament are mentally under-developed. If investigations are made they would be found to have mental age of 14 only.' The Chairman observed, "We generally treat such remarks beneath our notice...It is inconsistent with our dignity to attach any importance to the vituperative outbursts or irresponsible statements of a frustrated person. He closed the matter exhorting Godmen to leave the good men alone", and the newspapers not to give publicity to irresponsible statements against Members of Parliament as by doing so, they were not doing any service to the great institution of Parliament.<sup>151</sup>

(4) When the offender expresses regret and tenders unqualified apology and withdraws the offending writing or statement, the House generally does not proceed further in the matter, whether or not the House or the Committee has come to the decision that a breach of privilege or contempt of the House has been committed.<sup>152</sup>

In the *Thought case*,<sup>153</sup> the *Organiser case*,<sup>154</sup> and the *Ram Gopal Gupta's case*,<sup>155</sup> wherein the Committee of Privileges has recommended that no further action be taken by the House in view of the expression of regret and tendering of apology by the concerned persons, the House had adopted motions agreeing with the recommendations of the Committee.

In some cases without the matter being referred to the Committee, the complaints of breach of privilege were also taken up by the House with the concerned newspapers for allegedly casting reflections on members and explanations therefor by the concerned papers. The House then agreed to treat the matter closed in view of their expression of regret.<sup>156</sup>

### Statements made in affidavits/writs

The House may take cognizance of statements made in writ petitions or affidavits filed in courts if they attract breach of privilege or contempt of the House.

At the sitting of the Rajya Sabha held on 1 May 1963, a complaint of breach of privilege arising out of certain paragraphs contained in an affidavit filed by a businessman before the High Court of Judicature at Bombay was referred by the House to the Committee of Privileges. In the said affidavit, the defendants were, *inter alia*, stated to have managed to circulate a pamphlet amongst the Members of Parliament in the prearranged conspiracy to have speeches made and questions put to the Ministers, etc. against the businessman. The Committee came to the conclusion that the impugned paragraphs did not contain any direct or explicit insinuation against any member of the Rajya Sabha. The Committee, therefore, recommended that the matter should not be pursued further.<sup>157</sup> The House agreed with the report of the Committee.<sup>158</sup>

A member gave notice of a breach of privilege against a company and its director for certain statements contained in a writ petition filed by them in the High Court of Calcutta. It was contended by the member that in the said petition the petitioners had referred to certain portions of the proceedings of the Rajya Sabha in relation to a question and in doing so had attributed motives to the members who put the question and the Minister who answered it. The matter was referred by the Chairman to the Committee of Privileges to which another matter connected with the same proceeding of the House had also been referred. In view of the election of the person concerned to the Lok Sabha, the Committee did not consider it necessary to recommend any further action in the matter.<sup>159</sup>

### Assault, etc. on members

It is a breach of privilege and contempt of the House to obstruct or molest or assault a member during the execution of his duties, that is, while he is attending the House or when he is coming to, or going from, the House. The privilege, however, is not available when the member is not performing any parliamentary duty.

A complaint of breach of privilege was given notice of by some members arising from the alleged assault on a member of the House by some policemen in the residential quarters of the workers of a mill in West Bengal. The matter was also raised on the floor of the House. Subsequently, the Minister of State in the Ministry of Home Affairs stated in the House that the allegation had been denied by the

West Bengal Government. The member concerned characterised the denial as ‘utterly false’ and ‘a white lie’. The Chairman considered the matter and referred it to the Committee of Privileges. The Committee, on the evidence adduced before it, stated that the alleged incident took place when the concerned member was talking to workers in an area. It could not, therefore, be said that the member was performing any parliamentary duty at the time of the incident and as such, his arrest and the alleged assault on him did not in the circumstances of the case involve any breach of privilege or contempt of the House or the member.<sup>160</sup>

### **Intimidation of members**

Attempts by improper means to influence members in their parliamentary conduct may be considered contempts.<sup>161</sup>

The Committee of Privileges considered a complaint of a member that the Managing Director of a firm in Bombay had intimidated and discouraged him from his parliamentary duties as a Member of Parliament by making two telephone calls to him and writing a letter in connection with a matter involving the company raised by the member in the House through a Special Mention. In view of the disclaimer of any intention on the part of the person concerned to intimidate or discourage the member from performing his parliamentary duties and unconditional and unqualified apology, the Committee recommended that the matter be not pursued further.<sup>162</sup>

### **Power of the House to punish for breach of privilege or contempt**

The power of the House to punish for contempt or breach of privilege has been aptly described as the “keystone of parliamentary privilege” and is considered necessary to enable the House to discharge its functions and safeguard its authority and privilege.<sup>163</sup> Without such a power the House “would sink into utter contempt and inefficiency.” This power has been judicially upheld in a number of court cases.<sup>164</sup>

The period for which the House can commit an offender to custody or prison for contempt is limited to the duration of the session of the House, *i.e.*, when the House is prorogued.<sup>165</sup>

### **Punishments for breach of privilege or contempt**

#### *Imprisonment and Reprimand*

In cases where the offence of breach of privilege or contempt of the House is of a serious or grave nature, the offenders may be punished by

imprisonment. There have been occasions when the Rajya Sabha has sentenced the offenders to imprisonment for gross contempt of the House for shouting slogans/throwing leaflets or other objectionable articles on the floor of the House (*infra*). In less serious cases (on two occasions) the contemnors were summoned to the Bar of the House and reprimanded (*supra*).

#### *Imposition of fine*

While recommending imprisonment/reprimand to co-authors of a book, the Committee of Privileges considered that the type of contempt committed by them who were also the publishers, had the characteristic of an economic offence as well in as much as these persons by their unauthorised publication had also made pecuniary gains out of the same and as such fine would have been the most appropriate penalty that could be imposed upon them. However, after examining the law and precedents on the subject whether the House had the power to impose the penalty of fine for the breach of privilege and after taking competent opinion in the matter, the Committee doubted whether the House possessed any power to impose the penalty of fine.<sup>166</sup>

The Attorney-General whose opinion was informally sought by the Committee had observed, "If the House be of the opinion that the imposition of fines may operate as a better deterrent against erring persons who are members or strangers and that such power once belonged to the British House of Commons which has become obsolete by non-exercise and should be revived then the proper course would be to revive it by a regular legislation and not merely by a resolution passed by a single House."<sup>167</sup>

In this connection it may also be interesting to note that the status of the House of Commons as a court of record has been doubted and the Commons has not imposed a fine since 1666. Select Committee in 1967 and 1977 and the Joint Committee on Parliamentary Privilege in 1999 have recommended legislation to give the Commons a statutory power to fine.<sup>168</sup>

#### *Prosecution of offenders*

In the above mentioned case of joint authors, the Committee also recommended that the Government should examine the matter with a view to initiating legal proceedings against the authors (and other publishers) for offences under the Copyright Act and the Indian Penal Code.<sup>169</sup>

#### *Punishing its own members*

The penal power of the House is exercised not only against an outsider but also against a member of the House. No authority or agency other than

the House itself, has the power to punish a member for his acts of omission and commission on the floor of the House. The jurisdiction of the House over its own members, its right to impose discipline within its walls, is absolute and exclusive.

The Rules of Procedure and Conduct of Business in the Rajya Sabha confer powers on the Chairman to preserve order and enforce his decisions in the House<sup>170</sup> and provide for withdrawal and suspension of members to enable the Chairman to enforce discipline on the members if they resort to disorderly behaviour, disregard the authority of the Chair and abuse the rules by wilfully obstructing the business of the House.<sup>171</sup>

If an unruly member does not withdraw from the House even after the direction of the Chair to this effect, the latter may name him and put forthwith a motion to suspend him. If the motion is adopted, the member concerned stands suspended.<sup>172</sup>

A member may be punished not only for his disorderly behaviour inside the House, but also for any conduct outside the House which tends to impair its dignity and authority. The power of the House to punish its own members for their conduct outside the House which is prejudicial to its dignity and of its members and is inconsistent with the standard of behaviour expected of them, was exemplified in the report of the Committee of Privileges appointed to investigate the conduct and activities of Shri Subramanian Swamy, a member of the Rajya Sabha in 1976. Shri Swamy was expelled from the House on a motion to this effect moved on 15 November 1976, and adopted unanimously on the same day (*supra*).

However, there were conflicting decisions on the power of the House to expel a member. The Punjab and Haryana High Court in 1977 declared that the Houses in India had no power of expulsion.<sup>173</sup>

The Madhya Pradesh High Court in 1966 declared that the Houses had such power.<sup>174</sup> Similarly, the Supreme Court in the case of *Raja Ram Pal V. Hon'ble Speaker, Lok Sabha and others* (2007) upheld the powers of Parliament to expel its members from the House. The Court observed that it has no jurisdiction to issue a writ, direction or order which affects the internal affairs of the House. Similarly the Presiding Officer of the House is also not subject to jurisdiction of any Court for failure to exercise his power to regulate the proceedings of the House.

### **Disturbances from Visitors' Gallery**

Disruption of the proceedings of the House by the visitors either by shouting slogans or by throwing leaflets, etc. are treated by the House as a grave offence and gross contempt of the House. In all such cases, since

the contempt is committed in the actual view of the House, the House generally proceeds at once to punish the offender for his act without hearing him. The punishment awarded in such cases is imprisonment of the person committing the contempt, for a specified period or a warning depending on the gravity of the offence.

On 21 December 1967, a person who shouted slogans and threw some leaflets into the Chamber from the Visitors' Gallery was, upon adoption of a motion, found guilty of committing a grave offence and a gross contempt and sentenced to simple imprisonment till the conclusion of the session and detained in Tihar Jail, Delhi. While the discussion on the motion was going on, the Leader of the House who had moved the motion pointed out that a similar incident had occurred. He accordingly, moved another motion in respect of the second incident. Both the motions were adopted by a division. The offenders were accordingly lodged in the jail upon warrants issued by the Chairman and addressed to the Superintendent of the jail. On a clarification sought by the Superintendent of the jail as to the date and time when the two persons should be released, the House, after discussion, passed a motion that the persons concerned should be released at 5.00 p.m. on the date of that motion, since the session was concluding on that day.<sup>175</sup>

In another incident two persons who had thrown leaflets from the Gallery into the Chamber were ordered by the House, by a motion, to be detained in the custody of the Watch and Ward Officer till the rising of the House that day.<sup>176</sup>

In yet another incident on 18 March 1982, fourteen persons shouted slogans from the Visitors' Gallery. They were immediately taken into custody by the Watch and Ward Staff. Members expressed their concern over the incident. The Leader of the House held consultations with leaders of other parties during the lunch-recess and after the House reassembled he moved a motion of contempt of the House committed by the persons to sentence them to simple imprisonment till 12 noon on 24 March 1982, to be detained in Tihar Jail, Delhi.<sup>177</sup>

On 23 March 1982, a lady visitor who shouted slogans from the Visitors' Gallery was let off with a warning (according to the report of the Watch and Ward Officer, she was in a state of mental distress).<sup>178</sup>

A visitor, a youngman, who tried to shout from the gallery was apprehended before he could cause disturbance. He was let off with a stern warning as suggested by the Deputy Chairman and agreed to by the House.<sup>179</sup>

On 21 November 1983, a visitor in the Visitors' Gallery shouted slogans and threw a *chappal* on the floor of the House. The House resolved to sentence him to simple imprisonment till the conclusion of the session (which concluded on 22 December 1983).<sup>180</sup>

### **Making a deliberately misleading statement in the House**

It is well-settled that making a misleading statement deliberately may be treated as breach of privilege and contempt of the House. According to May, the House may treat the making of a deliberately misleading statement as a contempt. In 1963, the House of Commons resolved that in making a personal statement which contained words which he later admitted not to be true, a former member had been guilty of a grave contempt.<sup>181</sup> The Committee of Privileges of the Rajya Sabha while examining an issue on this point elaborated the implications of the observations of May as follows:

In the opinion of the Committee it follows from the above observation that acts which mislead or tend to mislead must be done wilfully with the intention to mislead or deceive. Thus, the element of deliberateness is an essential ingredient implicit in the alleged offence of deliberately misleading the House. The Committee is aware that a number of statements which come up before the House are sometimes found not wholly true. There may be many statements made before the House which may in the end be found to be based on wrong information given to those who made them. Such statements will not, therefore, in the opinion of the Committee constitute a contempt if the persons had made them in the belief that the information contained in the statements was true. In this connection Kaul and Shakhder have also observed as follows:

If any statement is made on the floor of the House by a member or Minister which another member believes to be untrue, incomplete or incorrect, it does not constitute a breach of privilege. If an incorrect statement is made, there are other remedies by which the issue can be decided. In order to constitute a breach of privilege or contempt of the House, it has to be proved that the statement was not only wrong or misleading but it was made deliberately to mislead the House. A breach of privilege can arise only when the member or the Minister makes a false statement or an incorrect statement wilfully, deliberately and knowingly, (Kaul and Shakhder, 6<sup>th</sup> Edn., Vol. I, p. 305).

The Committee also cited various observations/rulings of the Speaker, Lok Sabha, made from time to time and opined that in the context of a breach of privilege arising out of misleading statements, deliberateness or intention to mislead was the crux of the offence.<sup>182</sup>

In disposing two cases of alleged misleading statements of Ministers regarding the reported arrest of a police officer and rape of a woman at Baghpur raised in the House, the Chairman elucidated the concept thus:

'Mislead' in this connection must mean only that the Ministers drew the House into error by falsely stating... which was contrary to fact. The test to apply is not a general one but in relation to the conduct of the maker of the statement.<sup>183</sup> The charge of misleading the House is only sustained on one of the following grounds namely:

- (i) that the Minister made a statement which he knew was false; or
- (ii) that he made a statement which he did not himself believe to be true; or
- (iii) that he made a statement without due care and attention and negligently asserting something as true which turned out to be false.<sup>184</sup>

In the first two situations, it is evident, there should be deliberate misleading by the Minister. In the third which is a borderline case, the maker of statement is utterly indifferent whether what he is saying is true or false. No person is expected to make a statement about a fact as to which he made no enquiry to ascertain its truth or falsehood. If he does so, he must pay the price for his negligence and indiscretion should it later turn out that what he asserted was false and thus misled the House. This proposition would not apply if a person after making due enquiry in proper quarters where he must make his inquiries and approaching those who were likely to know the facts makes a statement believing it to be true, he is then saved because he was himself misled by others from whom he enquired. The gravamen of the charge, therefore, is a deliberate misrepresentation of a fact knowing it to be false or not believing it to be true or being so indifferent to truth as not to care what he said is false or true.<sup>185</sup>

Some of the other important cases raised in the House on the ground of alleged misleading statements of Ministers and disposed by the Chairman may also be mentioned in this connection.

An allegation against a Minister for deliberately making misleading Statement in the House does not amount to breach of privilege if the Minister claims that he made the Statement in the House on the basis of information he had at that time.<sup>186</sup>

An Editorial in a newspaper repudiated the statement of the concerned Minister denying that certain information regarding the CBI was given by his Ministry. Two members gave notice of breach of privilege against the Minister. The Minister concerned then made a statement in the House, *inter alia*, maintaining that he made the impugned statement according to his knowledge at that time. The Chairman in his ruling stated that he was unable to hold that a case had been made out to

prove that the Minister made any statement in the House which he believed to be untrue on that day and he attempted to mislead the House. The consent for raising the question of breach of privilege was withheld.<sup>187</sup>

In another case arising out of an alleged incorrect reply to a question, the Chairman stated that the complaining member's misapprehension seemed to arise out of a possible misunderstanding of the position in respect of the original prosecution in a court of law and the subsequent adjudication proceedings.<sup>188</sup>

In yet another case of allegedly misleading the House, the Minister concerned laid on the Table a statement correcting his answer to a question and the Chairman did not consider that there was any intention on the part of the Minister to mislead the House.<sup>189</sup>

A privilege issue, arising out of allegedly misleading of the House by the Prime Minister in the matter of correspondence between the President and the Prime Minister, was raised in the House by members, which was disposed by the Chairman with reference to the provisions of the Constitution and precedents in UK and India. In the end he observed, "This Chair will only be fulfilling its sacred trust, if, in disregarding the heat of the passing moment, it adheres to the path charted for it by the framers of our Constitution."<sup>190</sup>

In another case regarding an alleged misleading statement by the Prime Minister in the matter of non-existence of a middleman in the Bofors deal, the Chairman, after calling for comments of the Prime Minister, gave a detailed ruling in the House and held that the Prime Minister's statement was neither incorrect nor deliberately made to mislead the House and hence the charge of breach of privilege against him was not sustainable.<sup>191</sup>

## Cases not amounting to breach of privilege

### *Interception of members' mail*

On 26 August 1981, notices of breach of privilege were given by two members alleging that their postal mail was being intercepted, opened and censored which amounted to obstruction in the performance of their parliamentary duties. In his ruling (which was delivered by the Deputy Chairman) the Chairman referred to section 26(1) of the Indian Post Office Act, 1898, which authorised Government to intercept or detain postal articles on the occurrence of any public emergency or in the interest of public safety or tranquility and stated, *inter alia*, that "the section does not exempt any person or class of persons from the operation of the section. A claim to special privilege as individuals does not exist and it is, therefore,

being claimed *qua* members of this House or in other words of Parliament. It has been well-settled that Members of Parliament have no special status in the application of the laws of the land.” After referring to the rulings in the Lok Sabha and elsewhere, the Chairman ruled that there was no question of privilege involved in the matter. He, however, observed:

...any *mala fide* action or interference with the legitimate duties of honourable members of this House, if proved, will not have the protection of this ruling. I also repeat with respect the observations of the hon'ble Speaker, “I would permit myself one observation before concluding the subject and that is about communications sent by my office including the Lok Sabha Secretariat to members. I hope the concerned authorities realise that such communications would not attract the attention of censoring authorities.” The same will apply to this House *mutatis mutandis*.<sup>192</sup>

After a few years when again a similar question was raised by a member who complained that the Tamil Nadu Chief Secretary had passed orders to subject the concerned member's postal articles to censorship, the Chairman reiterated his observations quoted above.<sup>193</sup>

#### *Attempt to defame members in a charge sheet*

Some members had given notices of breach of privilege pointing out that their names were mentioned in the charge sheet in the *Ram Swaroop espionage* case which had been given wide publicity thereby tarnishing their public image and deterring them from their parliamentary duties. It was also contended that their conduct as members was sought to be questioned in the charge sheet and there was a motive to defame them, etc. The Chairman, *inter alia*, observed that mere mention of names of members in the charge sheet establishing the *modus operandi* adopted by the accused for establishing contacts for furtherance of his dubious pursuits *per se* did not involve any *mala fides* on the part of the members concerned. Moreover, these members had neither been implicated as co-accused persons nor even cited as witnesses. The members concerned had already clarified their positions by personal explanations on the floor of the House and he, therefore, allowed the matter to rest there.<sup>194</sup>

#### *Party matters*

As per the established convention, the Chairman does not take cognizance of what transpires at party meetings. Some of the rulings when members have sought to refer to or raise matters of party meetings are given below:

A member referred to a news item that the Deputy Minister of Finance (Shrimati Tarkeshwari Sinha) against whom some charges were made

in the House during question hour the previous day, would raise the matter in the Congress Parliamentary Party. The member wanted the Minister to make a statement in the House. The Chairman ruled that what happened in the party was not their concern. If for public reasons, in the interests of the public, the Minister did not make a statement in the House and made a statement in the Parliamentary Party, the Chair would ask her for that.<sup>195</sup>

A member drew the Chairman's attention to a news report that two Congress members were taken to task and intimidated by the Prime Minister and other Ministers for their speeches attacking the Government in the House. This, the member felt, amounted to interference with the normal parliamentary functions of the members, and, therefore, constituted a breach of privilege. The Chairman observed, "I do not think that normal happenings in a party meeting can be made the subject matter of a question of breach of privilege."<sup>196</sup>

A member sought to raise a question of privilege on the reported proposal to take disciplinary action against another member by the Congress Party for certain observations made by that member in the House criticising the Deputy Prime Minister in connection with the debate on the affairs of the Birla Group of companies. The Chairman withheld the consent.<sup>197</sup>

A member sought to raise a question of privilege against the President and the General-Secretary of the Congress Party for intimidating another member in connection with the voting in the Presidential election after that member had publicly announced his intention to vote according to his conscience during the election. The Deputy Chairman disallowed the question of privilege.<sup>198</sup>

A member sought to raise a question of privilege regarding alleged harassment of another member by his party for asking a question in the House on a matter concerning the Ministry of Steel. The member concerned denied the allegation and the Deputy Chairman disallowed the question of privilege.<sup>199</sup>

When a member referred to elections in the Congress Parliamentary Party, the Chairman ruled, "It is a party matter; the party has its own autonomy and does what it likes. It does not come within our purview and we cannot do anything about it." The reference was that the Prime Minister had passed on a list of members to be elected to the Congress Parliamentary Party.<sup>200</sup>

#### *Non-fulfilment of assurances*

A member sought to raise a question of privilege that in the formation of the Company Board, the Minister of Finance had disregarded an assurance

given by him to the House. The Deputy Chairman, after going through the relevant proceedings and examining the matter refused permission to raise it in the House.<sup>201</sup>

#### *Banning procession before Parliament House*

On 14 November 1966, a member sought to raise a question of privilege regarding reported statement by the Lt. Governor of Delhi that processions would be banned within a radius of two miles of Parliament. The member contended that the Lt. Governor had no right to do so and thus had committed a breach of privilege of Parliament and its members. The Leader of the House clarified that the Lt. Governor was in-charge of law and order and what he said was on the question of dealing with law and order. He was not saying anything to impede Parliament from performing its functions or prevent anybody from approaching Parliament. Under Section 144 CrPC he was entitled to ban a procession. The Chairman disallowed the question of privilege.<sup>202</sup>

#### **Some typical privilege issues raised in Rajya Sabha**

##### *Allegedly laying of distorted minutes of the Committee on Public Undertakings*

Notices of breach of privileges were given against a member of the Rajya Sabha, who by virtue of being a member of the Committee on Public Undertakings had laid on the Table of the Rajya Sabha a copy of the minutes of the sittings of the Committee relating to its 47<sup>th</sup> Report. It was alleged that the minutes were not true to facts and did not faithfully reflect what transpired in the meeting of the Committee and that it amounted to a complete distortion and suppression of vital and critical information given to the Committee. A question of privilege was sought to be raised against the Chairman of the Committee on Public Undertakings as well. The Chairman thereupon stated that the member against whom notices of breach of privilege had been given had performed a purely ministerial function on behalf of the Committee in this House and that the minutes were authenticated by the Chairman of the Committee. The member, therefore, could not be held personally responsible for inaccuracies, if any, in the minutes. The Chairman withheld the permission for raising the question of privilege in the case.<sup>203</sup>

##### *Non-disclosure of information in the House*

On two occasions the question of non-disclosure of certain information by a Minister in the House or alleged withholding of information from the

House by a Minister during a discussion were raised. In one case, the Chair ruled that there was no *prima facie* case for breach of privilege and in the other case the matter was closed after the concerned Minister clarified the position.<sup>204</sup>

#### *Disrespect to members*

A point of privilege was raised in the Rajya Sabha regarding disrespect shown to members at a function in the Rashtrapati Bhawan. The Prime Minister, Shri Jawaharlal Nehru, explained the position and expressed sorry if any member was evicted. The Chairman closed the matter by saying that the Prime Minister had said that no disrespect or discourtesy was ever intended to any Member of Parliament and they were expected to be treated with the utmost courtesy and respect.<sup>205</sup>

On another occasion, objection was taken to a Minister leaving the House in the midst of discussion without Chair's permission. The Leader of the House explained the circumstances but apologised and expressed regret on behalf of the Government. The matter was closed.<sup>206</sup>

#### *Exclusion of members of Rajya Sabha from certain committees of a State Government*

On 9 August 1983, several members raised in the House a matter regarding exclusion of members of the Rajya Sabha from certain committees of the Government of Orissa. After the Government of Orissa clarified the position and took a decision to include the nominee of each member of the Rajya Sabha as a member of a committee from which earlier members were excluded by reason of absence of territorial constituency of a Rajya Sabha member, the Chairman stated that the House should not occupy itself any further with the matter.<sup>207</sup>

#### *Breach of privilege by a civic body*

For the first time in the Rajya Sabha a complaint of breach of privilege was raised against a civic body (Pune Municipal Corporation) which had adopted an adjournment motion condemning an alleged statement made by a member of the Rajya Sabha during a Calling Attention on Pune riots. Copies of the speeches of the Councillors made on that adjournment were called and the Chairman, after being satisfied that a *prima facie* case of breach of privilege existed, gave his consent to the member for raising the question. However, while doing so, the member stated that he would be satisfied if the Chairman made certain observation. The Leader of the House also agreed. Thereupon, the Chairman, *inter alia*, observed that it

was expected of the Municipal Corporation to take proper care (ascertaining the facts) before proceeding to criticise the House or any of its members. The Chairman, however, stated that the House should not be troubled to take action and he was sending the proceedings of both the days to the Corporation so that it would make suitable amends. The House agreed with the Chairman's conclusion.<sup>208</sup>

#### *Reflections on the President*

On 27 April 1987, some members raised in the House a matter regarding reflections cast on the then President of India, Giani Zail Singh, as reported in a newspaper of the previous day. The Chairman remitted the matter to the Committee of Privileges for examination of certain points. The Committee, however, decided to treat the matter as closed and allowed it to rest there.<sup>209</sup>

On an earlier occasion, the Committee of Privileges examined certain writings in a weekly, which had also denigrated the person of the President. The Committee, however, did not consider in detail whether reflections on the President amounted to reflections on Parliament and as such breach of its privilege.<sup>210</sup>

#### **Breach of propriety**

##### *Increase of postal tariff on the eve of the Budget*

On 19 February 1982, when the Deputy Minister of Communications sought to lay certain Notifications regarding increase in postal tariff on the Table of the House, points were raised that the increase amounted to bypassing Parliament and undermining its authority. The Chairman, *inter alia*, ruled that Government had the power and the authority under the Indian Telegraph Act to raise the tariff. No question of legality was involved; it was a question of propriety. He, therefore, observed, "... propriety demands that if there is an increase in the rates of levies of this type, it should be done not on the eve of the Budget session, but well in advance, so that the people will know that this is not a part of the Budget being shoved in."<sup>211</sup>

##### *Exempting certain items from customs duty on the eve of the Budget*

On 25 February 1986, when a set of forty-two Notifications under the Customs Act, 1962, was sought to be laid on the Table of the Rajya Sabha, members raised a matter regarding propriety of exempting various items from payment of customs duty just on the eve of the Budget. The Finance Minister contended that some of the Notifications were merely extension

and/or continuation of exemptions or duty rates which would be expiring if no such Notifications were made. If the contention was factually correct, the Chairman in his ruling observed, there would be no breach of propriety in such cases. If, on the other hand, these Notifications had revenue implications, such as increasing or decreasing the levy, such Notifications on the eve of the Budget would offend the canons of parliamentary propriety. The Chairman accordingly ruled:

- (a) notifications issued in pursuance of the Customs Act were legal;
- (b) notifications issued when Parliament was not in session and placed on the Table of the House within seven days of the session in accordance with the recommendations of the Committee on Subordinate Legislation were both valid and proper;
- (c) notifications of formal nature extending the life of an existing duty rate and which did not have a fresh or new revenue implications were valid and proper; and
- (d) notifications with revenue implications such as increasing or decreasing the duty structure on the eve of the budget were contrary to parliamentary propriety.

As regards the merits or contents of the Notifications, he stated that they could be gone into by the Public Accounts Committee as was done in 1981.<sup>212</sup>

Accordingly, a reference was made to the Public Accounts Committee. The Chairman apprised the House of the observations of the Public Accounts Committee and invited particular attention to its concluding observations to the effect that post-notification approval by Parliament was no substitute for a prior debate and discussion of taxation proposals, specially when they departed from the approved budget. In the end, the Chairman observed, "I do hope that Government will take due note of this and endeavour to ensure that resort to issuing Notifications having revenue implications will be minimal."<sup>213</sup>

#### *Issue of Notifications with revenue implications on the eve of the Budget*

Again on 25 February 1987, when seventeen Notifications relating to customs and excise duties were being laid on the Table, the question of propriety of issuing them on the eve of the Budget was raised in view of the ruling of the Chairman quoted above (on the previous day sixty-one Notifications of similar nature were also laid on the Table). The Chairman directed that the Committee on Papers Laid on the Table of the Rajya Sabha should examine the factual position of the Notifications (seventy-eight in all).<sup>214</sup> The Committee accordingly considered the matter and

submitted its report to the Chairman on 9 October 1987. The Committee upheld the propriety of issuance of sixty Notifications. As regards other eighteen Notifications, the Committee found that there did not exist circumstances warranting their issue and those Notifications could, therefore, have been held back until Parliament had an opportunity to consider them. The Committee also made some other general suggestions in this regard.<sup>215</sup> The Chairman in his ruling given on 28 March 1988, reiterated the observations of the Public Accounts Committee quoted above and stated that Government would take due notice of the suggestions made by the Committee on Papers Laid on the Table and ensure that in the matter of issuing Notifications it would adhere to the criteria laid down by the previous Chairman in his rulings of 4 March and 11 November 1986.<sup>216</sup>

*Policy/important statements/announcements outside the House when Parliament is in session*

Many a time, questions of contempt of the House are raised by members for making important announcements/policy statements by the Government outside the House while Parliament is in session. In all such cases, it has generally been held that “no privilege of the House is involved if statements on matters of public interest are not made first in the House. However, it is a breach of propriety for a Minister to make a statement outside the House while it is in session.” It has also been held that policy statements should first be made on the floor of the House when the House is in session before releasing them to the press or to the public but Ministers cannot be prohibited from making the statements outside the House if such statements are not contrary to the declared policy of the Government.

When the Minister rose to make a statement regarding the manufacture of cars in the public sector, a member interrupted him saying that the statement had already appeared in the newspapers and thus a breach of privilege of the House had been committed. After some discussion, the Deputy Chairman disallowing the question of privilege *inter alia* observed:

So far as parliamentary practice is concerned if any information regarding important policy matters or policy decisions appears in the press, it is decided that this does not amount to any breach of privilege of the House...it is a sort of highly improper thing that such a thing the press should issue or such information should be leaked out to the press before it is given to the House, it may amount to a highly improper thing...Therefore, if any information has leaked out to the press before coming to the House, according to the procedure, of course, it can never be a breach of privilege but it is highly improper thing. It may amount to breach of courtesy but not breach of privilege.<sup>217</sup>

In a similar case regarding the Minister's statement on the manufacture of scooters in the country, the Minister stated that the statement was merely about implementation of the decision which was taken in October 1969 and known to the Press and to everybody in the country. The Vice-Chairman upheld the Minister's contention and stated that though no breach of privilege or contempt of the House was involved, it would be proper if further vigilance was kept so that such things did not recur and the Government was more careful in such matters.<sup>218</sup>

In a case regarding announcement about the constitution of the Press Commission outside the House, while Parliament was in session, the Chairman ruled:

...If there is any important announcement to be made by the Government, they should make it in the House when the House is in session as early as possible. I hope this will be followed in future...if there is a policy statement, the Minister should not make it outside the House.<sup>219</sup>

In another case the privilege issue related to the making of certain policy announcements outside the House on a Saturday when the House was in session. The Minister concerned contended that those announcements did not amount to policy statements; they were administrative decisions. While referring to the established practice that policy statements should first be made on the floor of the House when it was in session, before releasing them to the Press or the public, the Chairman stated that Ministers could not be prohibited from making statements outside the House if such statements were not contrary to the declared policy of the Government. The question at issue, therefore, was whether the announcements made by the Minister either amounted to an announcement of a new policy, change in policy or contrary to declared policy. Considered in this context, the Chairman held that there had been no breach of accepted proprieties involved in the Minister's announcements. As regards the contention of the Minister, however, that these were administrative decisions, and that, therefore, no breach of propriety was involved in the case, the Chairman observed. "Such a broad proposition is not warranted by the earlier rulings in Parliament. It is conceivable that some administrative decisions may involve either a change or infringement of an existing policy and may have to be made first in the House." He, however, did not rule on that point, having already held that the impugned announcements of the Minister were not statements of policy.<sup>220</sup>

## **Procedure for dealing with questions of privilege**

### *Prior consent of the Chairman*

A member may, with the consent of the Chairman, raise a question involving a breach of privilege either of a member or of the House or of

a Committee thereof.<sup>221</sup> A member who wishes to raise a question of privilege is required to give notice in writing to the Secretary-General, before the commencement of the sitting on the day the question is proposed to be raised.<sup>222</sup> If the question of privilege is based on a document, the notice must be accompanied by that document.<sup>223</sup> On receipt of the notice, the matter is considered by the Chairman who may either give or withhold his consent to the raising of the question of privilege in the House.

A matter of privilege, which is being considered by the Chairman, cannot be raised in the House.

On 25 March 1992, Shri Pramod Mahajan rose to speak on a matter of privilege for which notice was submitted to the Chairman. The Deputy Chairman did not permit the member to raise the issue on the ground that the matter was being considered by the Chairman and Rules did not permit any member to raise a matter of privilege in the House without the consent of the Chairman.<sup>224</sup>

The question whether a matter complained of is actually a breach of privilege or contempt of the House is entirely for the House to decide. The Chairman in giving his consent to the raising of a matter in the House as a question of privilege considers only whether the matter is fit for further inquiry and whether it should be brought before the House. The right to raise a question of privilege is governed by two conditions, namely, (i) the question shall be restricted to a specific matter of recent occurrence and (ii) the matter requires the intervention of the House.<sup>225</sup> Before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether consent to raise the same in the House be given, the Chairman may give an opportunity to the person incriminated to explain his case to the Chairman. The Chairman may, if he thinks fit, also hear views of members before deciding upon the admissibility of the question of privilege.<sup>226</sup>

Also the Chairman may seek information on the notice from the Minister concerned to satisfy himself before taking a decision on the admissibility of a notice of privilege.<sup>227</sup>

However, the Chair is not required to give reasons for rejecting a privilege notice.

On 1 March 1982, Shri Shiva Chandra Jha raised a point of order under rule 190 and wanted to know the reasons for disallowing his privilege motion against Shri M.S. Gujral, Chairman, Railway Board, in the House. In this regard the Deputy Chairman ruled that 'the Chairman gives his consent or does not give his consent and, therefore, it is always said

that consent is withdrawn under rule 187. So far as rule 190 is considered it is quite clear under the proviso that it is not obligatory on the Chairman to do so in the House.<sup>228</sup>

If a newspaper is involved either on the score of alleged distortion or misrepresentation of proceedings or for comments casting reflection on the House or its members, the Chairman may, and generally does, in the first instance give an opportunity to the Editor of the newspaper to present his case before giving the consent to raise the privilege question in the House. The Chairman normally withholds his consent to the raising of the question of privilege after the concerned Editor or press correspondent has expressed regret or published a correction (*supra*).

As already stated, members have raised questions of privilege on matters affecting them personally at the hands of the police, *i.e.*, for alleged abuses, ill-treatment or obstruction by the police authorities. In such cases, the Chairman may, if he is satisfied, permit the members to make a statement in the House by way of special mention,<sup>229</sup> or personal explanation.<sup>230</sup> Thereafter, an opportunity may be given to the concerned Minister to get the version of facts and apprise the Chairman or the House.<sup>231</sup> In the light of facts, the matter may be decided by the Chairman or the House.<sup>232</sup>

#### *Leave of the House*

After the Chairman has given consent and held that the matter proposed to be discussed is in order, he calls upon the member concerned to ask for leave of the House to raise the question of privilege. The concerned member is permitted to make a short statement relevant to the issue. Leave to raise a question of privilege is asked for after the Question Hour is over and before the list of business is taken up.<sup>233</sup> However, the Chairman may, if he is satisfied about the urgency of the matter, allow a question of privilege to be raised at any time during the course of a sitting after the disposal of questions.<sup>234</sup>

A member was permitted to raise a point of privilege arising out of an answer to a supplementary question asked that morning (Starred Question No. 183 regarding trade relations between India and European Economic Community (EEC) for half-an-hour (from 2.56 p.m. to 3.26 p.m.). However, the Deputy Chairman did not treat it as a privilege motion.<sup>235</sup>

If the Chairman is of the opinion that the matter proposed to be discussed is not in order, he may, if he thinks it necessary, read the notice of question of privilege and state that he withholds consent.<sup>236</sup>

After the matter is raised with the consent of the Chairman, the Chairman asks whether the member has leave of the House to raise the question. If no one dissents, the leave is presumed to be granted.<sup>237</sup> If objection to leave being granted is taken, the Chairman requests those members who are in favour of leave being granted to rise in their places and if not less than twenty-five members rise accordingly, the Chairman intimates that leave is granted,<sup>238</sup> otherwise he informs the member that he has not the leave of the House.<sup>239</sup>

#### *Consideration of the question*

After leave is granted as above, the House may consider the question and come to a decision,<sup>240</sup> or the matter may be referred by the House to the Committee of Privileges on a motion made either by the member who has raised the question of privilege or by any other member.<sup>241</sup> The usual practice is to refer the matter to the Committee of Privileges, and the House defers its judgment until the report of the Committee has been presented. On occasions without a formal leave of the House or a motion, the House has agreed that the matter be referred to the Committee of Privileges.<sup>242</sup>

#### *Complaints against members*

When a complaint of an alleged breach of privilege or contempt of the House is made by a member against another member, a notice is given to the member complained against before hand and the member concerned is given an opportunity to place before the Chairman or the House such facts as the member may have on the question.

On 5 June 1967, a member sought to raise a question of privilege against another member for making defamatory statements against a member of the Lok Sabha. Since the member complained against was not present in the House, the Chairman did not allow the complaining member to raise it as a question of privilege observing that he would like to have views of the member complained against.<sup>243</sup>

On 23 December 1980, some members gave notice of a breach of privilege against another member for making certain allegations against a Minister in the House. The Chairman referred the matter to the Committee of Privileges under rule 203. However, next day, he stayed the consideration of the matter by the Committee so that he could give an opportunity to the concerned member to offer her comments and decide on the future course of action. Only after considering the member's comments, the Chairman directed the Committee to proceed with the consideration of the question.<sup>244</sup>

Where a complaint was raised against a member for having cast aspersions on another member in a public statement as appeared in newspapers, the Chairman allowed the member on whom aspersions were cast to make a personal explanation to clarify his position.<sup>245</sup>

The Committee of Privileges in its fifty-fourth report presented to the House on 7 July 2009 considered two matters pertaining to complaints against members (i) complaint against a particular member for allegedly preventing/interrupting another member during his speech in the House, and (ii) complaint made by some members regarding their inability to raise questions due to continuous interruptions caused by some members. The Committee observed that though such incidents were not uncommon in the Houses of Parliament, they brought down the image of Parliament and its members in the eyes of those very people who sent them to the highest institution of democracy. The Committee was of the view that every member has the right to express his views in the House, but certainly that does not give him the right to prevent other members, who have the similar right to speak when called by the Chair. The Committee was of the view that while agitating over a particular matter the member should not violate the rules of the House and that there were ways to express dissent without violating the rules. The Committee urged the members to be more circumspect and abide by the directions of the Chair to avoid recurrence of such incidents.<sup>246</sup>

#### *Complaints against members or officers of the other House*

In a landmark case, a question of privilege arising out of a speech made outside Parliament by Shri N.C. Chatterjee, a member of the Lok Sabha was sought to be raised in the Rajya Sabha on 11 May 1954, for describing Parliament as 'wonderful Parliament' and Upper House as a 'pack of urchins'. The members of the Rajya Sabha took serious exception to the statement made regarding the Rajya Sabha and its members.<sup>247</sup> The member in question also raised a point of privilege in the Lok Sabha next day on the ground that he was served with a notice by the Secretary, Rajya Sabha, seeking certain explanation/clarification regarding the impugned statement. Thus he said it was usurpation of the rights and privileges of the Lok Sabha by the other House.<sup>248</sup>

After considering the matter in detail it was decided by the Chairman and the Speaker that the Privileges Committees of both the Houses should evolve an agreed common procedure for such matters when any complaint regarding breach of privilege is made against a member of either House of Parliament. The Committees of Privileges of the Lok Sabha and the Rajya Sabha in their Joint Report presented to both the Houses on 23 August 1954, recommended the following procedure to be followed in case where

a member, officer or servant of one House is alleged to have committed breach of privilege or contempt of the other House:

- (a) When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document where the complaint is based on a document, he is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.
- (b) Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof.
- (c) The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised a report about the enquiry, if any, and the action taken on the reference.
- (d) It is the intention of the Committees that if the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which the question of privilege is raised or the Presiding Officer of the other House to which the reference is made, no further action in the matter may be taken after such apology is tendered.<sup>249</sup>

On 2 December 1954, the Chairman of the Joint Sitting of the Committees of Privileges (Dr. Kailash Nath Katju) moved in the Lok Sabha and on 6 December 1954, the Leader of the House (Shri C.C. Biswas) moved in the Rajya Sabha motions for approval of the recommendations contained in the Report. The motions were adopted.<sup>250</sup> Subsequently, the Chairman received a letter from the Speaker, Lok Sabha, enclosing a statement by the concerned member in which he stated that he did not intend any disrespect to the Rajya Sabha or the members thereof and if a wrong impression had been created he was sorry for that. The Chairman thought that in view of the statement, they might treat the matter as closed.<sup>251</sup>

On 21 May 1979, the Chairman informed the House that he had received a communication from the Speaker, Lok Sabha, about a question of privilege raised in the Lok Sabha regarding an alleged misleading statement made in the Lok Sabha on 19 January 1976, by Shri Pranab Kumar Mukherjee, a member of the Rajya Sabha when he was functioning as a Minister, on the subject of voluntary disclosure of income and wealth. After considering the matter in the light of the comments received from Shri Mukherjee, the Chairman referred it to

the Committee of Privileges. The Committee felt that Shri Mukherjee had not committed any breach of privilege by making the impugned statement and reported accordingly. No further action was taken by the Rajya Sabha in the matter. A copy of the report of the Committee was forwarded to the Speaker, Lok Sabha, by the Chairman. No further action was taken in the matter by the Speaker, Lok Sabha, also.<sup>252</sup>

On 24 August 1987, the Deputy Chairman informed the House that she had received a communication from the Speaker, Lok Sabha, about a privilege notice given by Shri Somnath Chatterjee, a member of the Lok Sabha, regarding an allegedly misleading statement made by Shri Arun Singh, a member of the Rajya Sabha when he was functioning as a Minister, on the subject of payment of commission in a defence deal. After considering the matter in the light of Shri Arun Singh's explanation in the context of the debates and his statements in both the Houses of Parliament, the Chairman ruled that Shri Singh had not made any statement which could be construed as deliberately misleading the Lok Sabha and committing a breach of privilege of that House. He, therefore, felt that the matter need not be pursued further.<sup>253</sup> A copy of the Chairman's ruling together with Shri Arun Singh's comments was forwarded to the Speaker, Lok Sabha, by the Chairman. No further action was taken by the Speaker, Lok Sabha.<sup>254</sup>

On 11 September 1992, the Chairman received a communication from the Speaker, Lok Sabha, along with a copy of a notice given by Shri George Fernandes, member of the Lok Sabha, against Shri Rameshwar Thakur, Minister of State in the Ministry of Finance for allegedly attempting to influence some members of the Joint Parliamentary Committee on Securities Scam with a view to obstructing the work of the Committee. After calling for comments of Shri Thakur, the Chairman referred the matter to the Committee of Privileges. The Committee considered it and concluded that it did not involve any breach of privilege. No further action was taken by the House in the matter.<sup>255</sup>

On 7 July 2008, the Chairman received a communication from the Speaker, Lok Sabha enclosed therewith copies of separate notices, one given by Shri Devendra Prasad Yadav, member, Lok Sabha (which was also signed by 17 other members, Lok Sabha) against Shri Balasaheb Thackeray, leader of the Shiv Sena Party, for allegedly lowering the dignity of the Lok Sabha and committing a breach of privilege by criticizing in his newspaper 'Saamana' the members who discussed in Parliament the issue of violence against North Indians in Maharashtra. The other notice was given by Shri Ram Kripal Yadav, member, Lok Sabha on the same subject. However, on careful perusal of the newspaper in question it was found that the impugned comments criticizing the members were made in an article/editorial written by Shri Sanjay Raut, Executive Editor 'Saamana' and a member of

Rajya Sabha. The Chairman referred the matter to the Committee of Privileges. The Committee considered the matter and in view of the expression of regret by Shri Raut during his oral submission as well as in writing, the Committee opined that the matter need not be pursued further and recommended no action.<sup>256</sup> The Speaker, Lok Sabha was informed accordingly.

No case of a breach of privilege or contempt of the House can be founded on a speech made by a member in the other House or in any State Legislature in India, because the proceedings of each House of Parliament and all Legislatures are matters of privilege and no action can be taken in one House for anything that is said in another House.

At a meeting of the Congress Parliamentary Party, a member (of the Rajya Sabha), had made some allegations against two Ministers. On 20 June 1967, the Prime Minister made a statement in the Lok Sabha that the allegations had not been substantiated on the basis of the material furnished by the member. Next day a question of privilege was raised in the Lok Sabha, that since the allegations against two Ministers, who were members of that House, had not been substantiated, the entire House had been brought into disrepute. A motion was moved that the question of privilege be referred to the Chairman, Rajya Sabha, for action in accordance with the procedure evolved by the Joint Sittings of the Privileges Committees of both Houses. After a lengthy debate the motion was put to vote and negatived.<sup>257</sup> In the Rajya Sabha, a member sought to raise a question of privilege on the ground that another member of the Rajya Sabha was made the subject matter of privilege motion and accused in the Lok Sabha for some charges levelled by him against the two Ministers. The Chairman closed the discussion with the following observations:

...No action was taken by the other House against our member. If action had been taken, we would have taken notice. We should not discuss what has happened in the Lok Sabha. The Speaker stated that he could have taken action himself but he was in doubt and he thought it better to leave the matter to the judgment of the House whether the complaint should be referred to the Chairman of the Rajya Sabha for necessary action.<sup>258</sup>

On 30 March 1970, during the course of a debate, a member made certain allegations against a member of the Lok Sabha. The matter was raised in the Lok Sabha and after some discussion there, the Speaker observed that he would take up the matter with the Chairman of the Rajya Sabha. The Speaker, accordingly addressed a letter to the Chairman observing, *inter alia*, that it was not desirable for a member of one House to make allegations or cast reflections on the floor of the House on the members of the other House. The Chairman, in reply,

agreed with the observations of the Speaker and informed him that the Deputy Chairman had already disapproved of what the concerned member had said in the Rajya Sabha. The matter was thereafter closed.<sup>259</sup>

In another case, on 2 September 1970, Shri Bhupesh Gupta, member of the Rajya Sabha, made the following remarks during the course of a debate in the Rajya Sabha:

Last night several MPs were taken to the houses of some Princes and Maharajas and I know in one case where a member of a certain party was taken to the residence of one Maharaja, the Rajmata offered him bribe. I am ready to present him to you. I can ask him to come and tell you...

On 3 September 1970, Shri Ram Charan, member of the Lok Sabha sought to raise a question of privilege against Shri Gupta, on the ground that in his above remarks made in the Rajya Sabha, as reported in the *Nav Bharat Times* of 3 September 1970, Shri Gupta had alleged that four *Adivasi* and other MPs had voted in the Lok Sabha against the Constitution (Twenty-fourth Amendment) Bill, 1970, because they had been bribed. On the matter being referred by the Speaker to the Chairman, the latter, in reply to the Speaker's communication, observed:

The allegations by Shri Bhupesh Gupta to which Shri Ram Charan, MP apparently refers, did not relate to any particular member of either the Lok Sabha or the Rajya Sabha...You would thus see that Shri Bhupesh Gupta did not refer personally to any member of either House. I have always held the view that member of one House should not make allegations or cast reflections on the floor of the House, or outside, on the members of the other House. In the Rajya Sabha, the Chair has invariably deprecated such conduct on the part of any member.<sup>260</sup>

So far as contempts committed by a Member of Parliament against a State Legislature or by a member of a State Legislature against a Member of Parliament or against a member of Legislature of another State is concerned, a convention on the lines developed in Parliament has been evolved and similar procedure is followed when a complaint is made against a Member of Parliament by a member of State Legislature or against a member of a State Legislature by Member of Parliament. When such a reference is received by the Chairman from a State Legislature, he examines the matter, calls for the comments from the concerned member of the House, if necessary, and decides the case accordingly. The Chairman's decision is then conveyed to the Speaker/Secretary of the State Legislature from whom the reference was received.<sup>261</sup>

## One House not to comment upon the proceedings of the other House

Since each House of Parliament has the exclusive jurisdiction over its own proceedings, no House can sit over judgment on the proceedings of the other House or of a State Legislature. Similarly, State Legislatures also cannot comment on the proceedings of either House of Parliament. Rules of Procedure and Conduct of Business in the Rajya Sabha specifically forbids a member to use offensive expressions about the conduct or proceedings of the Lok Sabha or any State Legislature while speaking on the floor of the House.<sup>262</sup> Members are expected to exercise restraint while expressing opinion or making any comment on proceedings of the other House. Such references or comments on the proceedings of the other Houses have been invariably ruled to be out of order and expunged from the proceedings of the House. In some of the cases involving the proceedings of the State Legislatures, however, the Chairman, has permitted discussion on constitutional issues without going into the merits of the case.

On an occasion the issue of disqualification of some members of Tamil Nadu Legislative Assembly on the grounds of defection as a result of the Speaker's ruling, was permitted to be raised. At the end of the debate, the Chairman observed:

The Presiding Officers of State Legislatures are independent authorities. They are not subject to the appellate jurisdiction of the Presiding Officers of Parliament. In fact, they have equal powers like any of us. However, why I allowed this discussion to be raised is that suggestions be made by the hon'ble members as to what should be done if similar cases arise in future and since this is the first time that a case of this kind has arisen, some suggestions have been made... But this House does not express any opinion on the merits or demerits of the action taken by the Speaker of the Tamil Nadu Assembly and the discussion is confined purely to the suggestions to meet situations like this.<sup>263</sup>

Similarly, on another occasion a special mention on "situation arising out of failure to discharge constitutional responsibility under article 178 to elect Speakers of Legislative Assemblies of Uttar Pradesh and Rajasthan" was admitted by the Chairman, Rajya Sabha. But objection was raised by some members on the ground that the House did not have the jurisdiction over matters involving the State Legislatures. The Chairman, while defending admission of the special mention, clarified that in the election of a Speaker, two entities are involved, they are the members as a whole on the one hand and the Governor on the other.. He drew the attention of the House to article 355 which provides that it shall be the duty of the Union to ensure that the Government of every State is carried on in accordance with the

provisions of the Constitution. The Chairman explained that the phrase “the Government of every State”, included among others, the Governor of the State concerned, and if he was not able to perform duties assigned to him, the Union Government was duty bound to ensure that the Governor performed his duties. Accordingly, the Rajya Sabha *ipso facto* had competence to discuss this fact. The Chairman, however, clarified that the Rajya Sabha could not reflect upon the Assembly as such.<sup>264</sup>

The practice in respect of proceedings of the House, is also followed in respect of the committees. One House is not to raise a question of breach of privilege related to a matter affecting the committee of the other House.

In July 1982, some members of Rajya Sabha gave notices of breach of privilege against the Prime Minister and her office and some Ministers in connection to an issue which was the subject matter of the Committee of Public Undertakings. The Chairman withheld his consent to the raising of the matter as a question of privilege. He ruled:

The notices purport to raise a question of privilege under rule 187 of our Rules which provides that subject to the provisions of these Rules, a member may with the consent of the Chairman raise a question involving a breach of privilege either of a member or of the Council or a committee thereof. Stated briefly a question of breach of privilege has to be restricted only to a matter affecting the committee of our House. Now the Committee on Public Undertakings is a committee set up under rule 312A of the Rules of Procedure and Conduct of Business in Lok Sabha. It functions under the direction and control of the Speaker, Lok Sabha. Although seven members of our House are nominated to associate with the Committee and have equal rights with the members of the Lok Sabha to vote and take part in the proceedings of that Committee, the fact remains that this Committee is essentially and primarily a Committee of Lok Sabha. Under rule 187 which has been referred to earlier, a question of breach of privilege can only arise in respect of our committee. Rajya Sabha does not have any jurisdiction in respect of the committee of Lok Sabha in the matter of its privileges. The appropriate forum to raise a matter of breach of privilege on ground of withholding information or any file from the committee or casting any reflection thereon can only be Lok Sabha.<sup>265</sup>

### Reference of questions of privilege to Committee of Privileges by Chairman

The Chairman is empowered to refer *suo motu* any question of privilege or contempt of the House to the Committee of Privileges for examination, investigation and report.<sup>266</sup> There have been a number of cases when the

Chairman has referred the matter directly to the Committee without first bringing the same before the House.<sup>267</sup> There are cases also when the Chairman has permitted the matter to be raised in the House by a member and then announced that he was referring it to the Committee in exercise of his discretionary power.<sup>268</sup> As per the established practice whenever the Chairman refers a matter to the Committee of Privileges in exercise of his discretionary power members are informed of the same through a paragraph in the Bulletin.<sup>269</sup> The reports of the Committee in such cases are also presented to the House in the same way as when the matters are referred to the Committee by the House.

Usually, the Chairman refers a matter to the Committee of Privileges under rule 203 for “examination, investigation and report”. However, on occasions the Chairman has referred the matters to the Committee, “to report to him”,<sup>270</sup> “for view of the Committee”,<sup>271</sup> or for “laying down an appropriate procedure” in a case where a member of the Rajya Sabha was requested to appear to tender evidence before the other House or a House of a State Legislature or a committee thereof.<sup>272</sup>

There have been a couple of occasions when the Chairman himself has inquired into a breach of privilege matter instead of referring it to the Committee and apprised the House of the result of his inquiry and closed the matter.

On 5 June 1967, a member sought to raise a question of privilege against another member for making a defamatory statement against a member of the Lok Sabha. The member complained against made a statement on the next day, without dropping the allegation or expressing regret as advised by the Chairman. Thereupon, the Chairman asked the member to substantiate the allegations made. The Chairman made the inquiry and the concerned member filed a written statement. On the basis of the statement, the Chairman closed the case by making an announcement in the House on 19 June 1967, observing, *inter alia*, “...members who are not in a position to substantiate charges...should not make such statements. Allegations and counter-allegations...by members detract from the dignity of Parliament.” He also quoted Erskine May who had stated “Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.”<sup>273</sup>

Starred Question No. 87 regarding the award of highway contract in Jordan to a private company and the Metals and Minerals Trading Corporation (MMTC) was answered in the Rajya Sabha on 3 March 1987. The thrust of the interpellations was that the concerned Ministry had favoured a private company at the cost of a public sector

undertaking in awarding of the contract. The Minister concerned and some members desired that the matter be looked into by the Chairman. The Chairman accordingly did, by not only calling records but also giving a personal hearing to the member who had made allegation of favouritism and the Chairman of the concerned Public Undertaking, and gave a ruling in the matter.<sup>274</sup>

### **Procedure for calling a member of Rajya Sabha for appearing as witness before a Committee of State Legislature**

The Chairman received a letter from the Chairman, Maharashtra Legislative Council, requesting him for leave of the House to Dr. Shrikant Ramchandra Jichkar, a former member of the Maharashtra Legislative Council and a sitting member of the Rajya Sabha to tender evidence before the Committee of Privileges of that Council relating to question of breach of privilege and contempt of the Chairman of the Council as Dr. Jichkar happened to be one of the two sponsors of the privilege notice in the Council. As there was no precedent in the Rajya Sabha in the matter, the Chairman referred the matter to the Committee of Privileges for laying down an appropriate procedure for the purpose. The Committee of Privileges laid down the following procedure:

The Committee is of the opinion that the House should not permit any one of its members to give evidence before the other House of Parliament or a committee thereof or before a House of a State Legislature or a committee thereof, without receiving a specific request clearly stating the cause and purpose for which his attendance is required and without the consent of the member whose attendance is required.

No member of the House should also give evidence before the other House or a House of State Legislature or a committee thereof without the leave of the House being first obtained. Further, whenever a request is received seeking leave of the House to a member to tender evidence before the other House or before a House of a State Legislature or a committee thereof, the matter may be referred by the Chairman to the Committee of Privileges. On a report from the Committee, a motion may be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

The Committee in the present case recommended that since Dr. Jichkar has confirmed his willingness to appear before the Privileges Committee of the Maharashtra Legislative Council, he may be permitted to do so.<sup>275</sup> The report of the Committee was adopted by the House on 30 March 1993.<sup>276</sup>

## Supreme Court and matter of privilege

The Supreme Court in a majority judgment in a Presidential Reference under Article 143 arising out of a conflict between the Uttar Pradesh Legislative Assembly and the Allahabad High Court (*Keshav Singh's case*), held that the powers and privileges conferred on State Legislatures by article 194(3) were subject to the fundamental rights and that the legislatures did not have the privilege or power to the effect that their general warrants should be held conclusive. The Supreme Court held in the case of *Sharma*,<sup>277</sup> that the general issue as to the relevance and applicability of all the fundamental rights was not raised at all in that case. According to the Court, the majority decision in that case must be taken to have settled that article 19(1)(a) would not apply and article 21 would. The Court further held<sup>278</sup>:

In dealing with the effect of the provisions contained in Clause (3) of article 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction.

The opinion of the Supreme Court was discussed during the Presiding Officers Conference in 1965. The Conference adopted a resolution suggesting that the Constitution should be amended to clarify beyond doubt that powers, privileges and immunities of Legislatures and their members and committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution. In the meantime, the Allahabad High Court upheld the power of the Legislative Assembly to commit for its contempt. No action was, therefore, taken on the resolution.<sup>279</sup> In 1984 again, in the context of cases pending in the Supreme Court, the Conference passed another resolution reiterating, *inter alia*, that legislatures in India had exclusive jurisdiction to decide all matters relating to privileges of the House, their members and committees without any interference from the courts of law or any other authority.<sup>280</sup>

## Legal process

As per well established practice and convention the Chairman does not respond to a notice from a Court requiring his appearance. Some of the instances are:

In 1964, the Chairman received a notice from the Supreme Court in the matter of the *Special Reference* (No. 1 of 1964) by the President under article 143 of the Constitution (*Keshav Singh's case*). The notice was discussed at an informal meeting of leaders of various parties/

groups in the Rajya Sabha. The consensus of opinion at the meeting was that the Rajya Sabha need not be represented in the *Reference* before the Supreme Court. The House agreed. The Secretary of the House was directed to inform the Supreme Court accordingly.<sup>281</sup>

In 1974, the Chairman received a notice from the Supreme Court in the matter of *Special Reference* under article 143 of the Constitution regarding Presidential election. As recommended by the General Purposes Committee, no action was taken on the notice. The House also agreed.<sup>282</sup>

In 1987, a notice was received by the Chairman from the Supreme Court in connection with a Transfer Petition filed by the Union of India seeking transfer of a writ petition filed by two members of Parliament wherein they had challenged the validity of the Constitution (Fifty-second Amendment) Act, 1985. The Chairman informed the House that “as per the practice, we do not propose to respond to the notice or put in an appearance in the Court” and that he was passing on the relevant papers to the Minister of Law and Justice for taking such action as he might deem fit in the matter. The House agreed.<sup>283</sup>

### Privilege jurisdiction on a foreign national

In the *Swaraj Paul* case, notices of a question of privilege were given against Shri Swaraj Paul, a London-based industrialist for allegedly casting reflections on two members of the Rajya Sabha in a Press interview in a weekly published from Bombay. The Chairman referred the matter to the Committee of Privileges, as it was the first case of its kind and there was no guidance as to the jurisdiction over a person who was not an Indian national or a citizen of India and the procedure to be followed in such cases. While the Committee accepted the words of explanation of Shri Paul in a spirit of forgiveness and recommended no further action in the matter, in jurisdictional respects the Committee obtained the opinion of the Attorney-General which was that Parliament can exercise jurisdiction *in personae* against a foreign national for contempt committed by him within the country.<sup>284</sup>

### Codification of privileges

As already stated, article 105(3) of the Constitution, *inter alia*, leaves powers, privileges and immunities of each House of Parliament, and of the members and committees thereof, to be defined by Parliament by law. No comprehensive law has so far been enacted by Parliament. In this context the question of undertaking legislation on the subject has been considered from time to time at various Conferences of Presiding Officers. The plea for codification of privileges has also been made by the Press Commission.

Various arguments have been advanced in favour of or against codification.<sup>285</sup> In 1994, the Committee of Privileges of the Lok Sabha undertook a study of various opinions on the subject. The Committee was “inclined to hold that preponderance of opinion is against codification of parliamentary privileges” and recommended that it was not advisable to do so.<sup>286</sup>

Further, the Committee of Privileges, Lok Sabha took up for consideration the matter regarding codification of Parliamentary Privileges and the 11th Report of the Committee in this connection was laid on the Table of the House (Lok Sabha) on 30 April 2008. The Committee in the matter elicited opinion from eminent persons/institutions belonging to Legislature, legal profession, media, academia and also foreign parliaments. The Committee having considered the entire gamut of aspects relating to Parliamentary Privileges, case law, ground realities and opinion of experts came to the conclusion that the majority of those who expressed their opinion in the matter did not favour codification of Parliamentary Privileges. The Committee finally opined that there does not arise any occasion for codification of Parliamentary Privileges and recommended against its codification.<sup>287</sup>

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