



सत्यमेव जयते

PARLIAMENT OF INDIA RAJYA SABHA

PARLIAMENTARY PRIVILEGES





“BOOKLETS IN THIS SERIES”

1. Information – At a Glance
2. Rajya Sabha – Its Contribution to Indian Polity
3. The Law Making Process
4. Committee System in Rajya Sabha
5. Parliamentary Privileges
6. Members – Do’s & Don’ts
7. Role of the Leader of the House, Leader of the Opposition and Whips
8. Executive – Its Accountability to Parliament
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10. How to be an Effective Legislator



**PARLIAMENT OF INDIA
RAJYA SABHA**

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PREFACE

This booklet is part of the series of booklets brought out for the benefit of the newly elected Members of Rajya Sabha. It covers briefly different aspects of privileges enjoyed by Parliament as a collective body as also by the individual Members. For detailed information, original sources may be referred to.

It is intended to serve as a handy guide for ready reference. I hope the Members will find the booklet useful.

New Delhi
July, 2020

DESH DEEPAK VERMA
Secretary-General

CONTENTS

	PAGE(S)
1. Definition and Scope of Privilege	1-4
2. Main Privileges of Parliament	5-7
3. Breach of Privilege and Contempt of Parliament	8-10
4. Power of Parliament to punish for Contempt.....	11-12
5. Freedom of Speech	13
6. Parliamentary Privileges and the Press.....	14-16
7. Privilege of Freedom from arrest or molestation	17-18
8. Use of handcuffs	19
9. Points of Propriety.....	20-22
10. Questions of Privilege and working of Committee of Privileges.....	23-26
11. Procedure when a Breach of Privilege is committed by a Member of the other House.....	27-28
12. Select Bibliography	29

DEFINITION AND SCOPE OF PRIVILEGE

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of Parliament and by members of each House individually, without which they could not discharge their functions, efficiently and effectively, and which exceed those possessed by other bodies or individuals. When any of these rights and immunities, both of the members, individually, and of the assembly in its collective capacity which are known by the general name of privileges, are disregarded or denied by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Articles 105 and 194 of the Constitution deal with the powers, privileges and immunities of Members of Parliament/State Legislatures and their House, Members and Committees. Each House also claims the right to punish actions which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its members. Such actions, though called 'breaches of privilege' are aptly distinguished as 'contempts'.

2. Article 105 of the Constitution which provides for the powers, privileges and immunities of the Houses of Parliament and of the Members and the Committees thereof reads as follows:—

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

- (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- (3) In other respects, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its Members and Committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
- (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any Committee thereof as they apply in relation to Members of Parliament.

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

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

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

No law has so far been enacted by Parliament (and State Legislatures) in pursuance of clause (3) of articles 105 and 194 of the Constitution to define the powers, privileges and immunities of each House and of the Members and the Committees thereof. In the absence of any such law, therefore, the powers, privileges and immunities of the Houses of Parliament and State Legislatures and of the Members and the Committees thereof continue in actual practice to be governed by the precedents of the British House of Commons as they existed on the date our Constitution came into force.

5. It may be observed that article 105(3) stipulates that Parliament may from time to time define its privileges by law and it has been urged particularly by the Press that there should be codification of the law of privilege so as to make the position clear and free from ambiguity. The question of undertaking legislation on the subject has also engaged the attention of the Presiding Officers of Parliament and State Legislatures in India since 1921. The dominant view, however, has all along been that any codification is more likely to harm the prestige and sovereignty of Parliament/ State Legislatures without any benefit being conferred on

the Press and that in the present circumstances, codification of Parliamentary privileges is neither necessary nor desirable.

6. It may be mentioned that the Committee of Privileges, Lok Sabha in its 11th Report presented to the House on 30 April 2008 considered the matter regarding codification of Parliamentary Privileges. The Committee after considering the entire gamut of aspects relating to Parliamentary Privileges, case law, opinion of experts and ground realities 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.¹

¹ Chapter 8 – Parliamentary Privileges in '*Rajya Sabha At Work*', Third Edition, Rajya Sabha Secretariat, 2017, p. 305.

MAIN PRIVILEGES OF PARLIAMENT

7. Some of the important privileges of each House of Parliament and of its Members and Committees as enshrined in the Constitution, other statutes, Rules and Procedures of the House and parliamentary reports are as follows:

- (i) Freedom of Speech in Parliament [Article 105(1)].
- (ii) Immunity to a Member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof [Article 105(2)].
- (iii) Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings [Article 105(2)].
- (iv) Prohibition on the Courts to inquire into proceedings of Parliament [Article 122(1)].
- (v) Freedom from arrest of Members in civil cases 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 (Section 135A of the Code of Civil Procedure, 1908).
- (vi) Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a Member [Rules

222A and 222B of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)].

- (vii) Immunity from arrest and service of legal process within the precincts of the House without obtaining the permission of the Chairman/Speaker.
- (viii) Protection of publication of the proceedings of a secret sitting of the House [Article 361A (Proviso)].
- (ix) Members or Officers of the House cannot give evidence or produce in courts of law, documents relating to the proceedings of the House without the permission of the House (First Report of Committee of Privileges of Rajya Sabha presented to the House on 1 May, 1958).
- (x) Members or Officers of the House cannot be compelled to attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (Sixth Report of the Committee of Privileges, Second Lok Sabha, adopted by the Lok Sabha on 17 December, 1958 and Thirty-third Report of the Committee of Privileges of the Rajya Sabha, adopted by the House on 30 March, 1993).
- (xi) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these

have been laid on the Table of the House (Rule 275 of the Rules of Procedure and Conduct of Business in the Lok Sabha and Twenty-ninth Report of the Committee of Privileges of the Rajya Sabha).

8. In addition to the above-mentioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are as follows:—

- (i) to commit persons, whether they are Member or not, for breach of privilege or contempt of the House (R.S. Deb. 30.3.1973 and 21.11.1983);
- (ii) to compel the attendance of witnesses and to call for papers and records [Rules 84, 196, 208, 212E, 212L and 212T of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)];
- (iii) to regulate its own procedure and the conduct of its business (Article 118(1) of the Constitution);
- (iv) to prohibit the publication of its debates and proceedings; (*M.S.M. Sharma vs. Shri Krishna Sinha*, AIR 1959 SC 395); and
- (v) to exclude strangers from the House [Rule 265 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)].

BREACH OF PRIVILEGE AND CONTEMPT OF PARLIAMENT

9. When any individual or authority disregards or undermines any of the privileges, rights and immunities, either of the Members individually or of the House in its collective capacity, the offence is called a breach of privilege and is punishable by the House. Besides, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its Members, Committees or Officers also constitute breach of privilege.

10. Contempt of the House may be defined generally as “any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or (which obstructs or impedes) any Member or Officer of such House in the discharge of his duty, or which has a tendency directly or indirectly, to produce such results”. It may be stated that it is not possible to enumerate exhaustively every act which might be construed by the House as a contempt of the House. Some of the important types of contempt of Parliament are, however, mentioned below:—

- (i) Speeches or writings reflecting on the character or proceedings of the House or its Committees, or any member of the House relating to his character or conduct as a member of Parliament;
- (ii) Reflections on the character or impartiality of the Chairman/Speaker in the discharge of his/her duties as the Chairman/Speaker;

- (iii) Publication of false or distorted report of the debates and proceedings of the House;
- (iv) Publication of expunged proceedings of the House;
- (v) Publication of proceedings of secret Sessions of the House;
- (vi) Premature publication of proceedings, evidence or report of a Parliamentary Committee;
- (vii) Reflections on the report of a Parliamentary Committee;
- (viii) Molestation of Members on account of their conduct in the House or obstructing Members in the performance of their duties or while on their way to or coming after, attending the House or a Committee thereof;
- (ix) Offering bribes to Members to influence them in their Parliamentary conduct;
- (x) Intimidation of Members by threats with a view to influence them in their Parliamentary conduct;
- (xi) Obstructing or molesting officers of the House in the discharge of their duties;
- (xii) Giving false or misleading evidence or information deliberately to mislead the House or a Committee thereof, by a Member or a Minister;
- (xiii) Prevaricating, giving false evidence, or willfully suppressing truth or persistently misleading a Committee by a witness; and

- (xiv) Molesting any witness during his evidence before a Committee of the House or later, on account of his attendance or evidence as such witness.

POWER OF PARLIAMENT TO PUNISH FOR CONTEMPT

11. Each House of Parliament is the guardian of its own privileges. Courts of law in India have recognised that a House of Parliament (or of a State Legislature) is the sole authority to judge as to whether or not there has been a breach of privilege or contempt of the House in a particular case.² The House may punish a person found guilty of breach of privileges or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own Members, two other punishments can be awarded by the House, namely, suspension from the service of the House and expulsion.

The penal jurisdiction of the House is not confined to its own Members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by Members or any persons who are not Members, irrespective of whether the offence is committed within the House or beyond its walls. The power to punish any person who commits a contempt of the House or a breach of any of its privileges is the most potent weapon in the hands of a House of legislature. This power gives reality to privileges of Parliament, emphasises its sovereign character and vindicates its own authority and dignity. Therefore, it has aptly been described as the ‘keystone of Parliamentary Privilege’.

² M.S.M. Sharma vs. Sri Krishna Sinha, A.I.R. 1959, S.C. 395; Homi D. Mistry vs. Nafisul Hassan, I.L.R. 1957, Bombay 218.

Though a breach of privilege is punishable under the law of Parliament, it is a tradition that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempts of the House are accepted by the House. In such cases the House normally decides to protect its own dignity by taking no further notice of the matter.

FREEDOM OF SPEECH

12. The most important privilege of Members of Parliament is freedom of speech in Parliament. This privilege is embodied in clauses (1) and (2) of Article 105 of the Constitution.

According to this privilege, no action can be taken against a Member of Parliament in any court or before any authority other than Parliament in respect of anything said or any vote given by him in Parliament or any Committee thereof. It is also a breach of privilege to molest a Member or to take any action against him or to threaten him on account of anything said by him in Parliament or any Committee thereof. It would be breach of privilege to institute any legal proceedings against a Member in respect of anything said or any vote given by him on the floor of the House.

13. Besides, a Member cannot be held accountable/questioned in any court or by any agency outside Parliament for any disclosures he may make in Parliament.

PARLIAMENTARY PRIVILEGES AND THE PRESS

14. Freedom of the Press has not been expressly provided for in the Constitution, but is implicit in the fundamental right of the 'freedom of speech and expression' guaranteed to the citizens under article 19(1)(a) of the Constitution. It has been settled by judicial decisions that freedom of speech and expression includes freedom of the Press.

15 Normally, no restrictions are imposed on reporting the proceedings of the House. It is, however, a breach of privilege and contempt of the House to publish expunged proceedings of the House. This question came up for consideration before the Supreme Court in the 'Searchlight case' wherein the Court ruled that a report of the whole speech including the expunged portion though factually correct, may in law be regarded as perverted and unfaithful and the publication of such a report may, *prima facie*, be regarded as constituting a breach of privilege of the House.³

16. Absolute immunity from proceedings in any court of law has been conferred under the Constitution on all personnel connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of House [Article 105(2)]. This immunity does not, however, extend to the publication of reports of Parliamentary Proceedings in newspapers, whether published by a Member of the House or by any other person, unless such publication is expressly authorised by either House.

³ M.S.M. Sharma vs. Sri Krishna Sinha, A.I.R. 1959, S.C. 395.

17. Constitutional protection has been given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament, provided the reports are for the public good and are not actuated by malice. Article 361A of the Constitution provides as follows:—

“361A. (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation—In this Article ‘newspaper’ includes a news agency report containing material for publication in a newspaper.”

18. The above protection has been accorded within the overall limitation that the House has the power to control and, if necessary, to prohibit the publication of its debates or

proceedings and to punish for the violation of its orders. Though no restrictions are normally imposed on reporting the proceedings of the House, however, if debates or proceedings of the House or its Committees are reported *mala fide* or there is wilful misrepresentation or suppression of speeches of particular Members, it is a breach of privilege and contempt of the House and the offender is liable to punishment. Further, the press is forbidden to publish any part of the proceedings or evidence given before, or any document presented to Parliamentary Committees before such proceedings or evidence or document has been reported to the House. The Committee of Privileges in its 29th Report *inter alia* considered a question of breach of privilege arising out of the premature publication of the proceedings of the Committee before they were reported to the House by some newspapers. The Committee observed that the proceedings of a Parliamentary Committee are confidential and should not be disclosed or given any publicity unless the same is presented to the House or is otherwise treated as not confidential and therefore constitutes a breach of privileges and contempt of the House. Taking a note of the apology tendered by the newspapers concerned, the Committee recommended that no further action should be taken but cautioned all concerned that any premature publication or disclosure of the proceedings of the Committee will be dealt with seriously if such occasions arise in future. It is also incumbent on the Press not to disclose the proceedings or decisions of a secret sitting of the House, until the ban on secrecy is lifted by the House. Any such publication or disclosure is treated as a gross breach of privilege of the House.

PRIVILEGE OF FREEDOM FROM ARREST OR MOLESTATION

19. Section 135A of 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. The object of this privilege is to ensure the safe arrival and regular attendance of Members in Parliament. The arrest of a Member of Parliament in civil proceedings during the period when he is exempted from such arrest is a breach of privilege and the Member concerned is entitled to her/his release. The privilege of freedom from arrest does not, however, extend to criminal offence or cases of detention under the preventive detention legislation.

20. Although Members do not have any privilege or immunity from arrest on a criminal charge or under any law for preventive detention, the House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a Member. This position is stated in Rules 222A and 222B of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha).

21. The failure on the part of a Judge or a Magistrate or other authority to inform the House of the arrest/detention or imprisonment of a Member would constitute a breach of privilege of the House.

22. Another privilege which a Member under custody enjoys is her/his right to correspond without any let or hindrance with the Chairman/Speaker, Secretary-General or the Chairperson of a Parliamentary Committee. It is a breach of privilege to withhold any communication addressed by a Member in custody to the Chairman/Speaker, Secretary-General or the Chairperson of Parliamentary Committee as long as the person detained continues to be a Member of the House.

23. No arrest of a Member can be made within the precincts of the House without obtaining the prior permission of the Chairman/Speaker and that too in accordance with procedure laid down by the Home Ministry in this regard. Similarly, no legal process, civil or criminal can be served within the precincts of the House without obtaining the prior permission of the Chairman/Speaker whether the House is in Session or not. As a corollary to this rule, the Court of Law should not seek to serve a legal process, civil or criminal, on Members of Parliament through the Chairman/Speaker or the Rajya Sabha/Lok Sabha Secretariat. The appropriate procedure is that the summons be served directly on Members concerned outside the precincts of Parliament, that is, at their residence or at some other place. A Court of Law should also not ask the Chairman/ Speaker of the Rajya Sabha/Lok Sabha Secretariat to inform a Member about initiation of a legal process against him or seek to utilise in any manner the agency of the Chairman/ Speaker or of the Secretariat of the House in the Service or execution of a legal process, civil or criminal, against a Member.

USE OF HANDCUFFS

24. There is no privilege specifically exempting a Member of Parliament, who is under arrest on a criminal charge, from being handcuffed. The Committee of Privileges of the Fifth Lok Sabha, in their Nineteenth Report presented to the House on 31 August 1976, observed that the instructions regarding handcuffing of prisoners by the Union Ministry of Home Affairs from time to time should be strictly followed by all the authorities concerned and there should ordinarily be no occasion to handcuff prisoners such as Members of Parliament, Members of State Legislatures, peaceful *satyagrahis*, persons occupying good positions in public life and professionals like jurists, journalists, doctors, writers and educationists.

POINTS OF PROPRIETY

25. While certain privileges are enjoyed by the Parliament, its Members and Committees, there are certain parliamentary practices, usages and conventions which should be followed by the Members and others. The violation of such parliamentary practices, usages and conventions would not technically constitute a breach of privilege or contempt of the House but such violations would be termed as 'impropriety'.

Some typical instances under this category are listed below which, however, are not exhaustive:

- (i) Giving a premature publicity to various matters connected with the business of the House is an act of impropriety but not a breach of privilege or contempt of the House;
- (ii) 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. A breach of privilege can arise only when the Member or the Minister makes a false statement or an incorrect statement willfully and deliberately;
- (iii) Leakage of budget proposals or official secrets does not form any basis for a breach of privilege;

- (iv) Statements made by Ministers at party meetings are not a privileged matter;
- (v) No privilege of Parliament is involved if statement on Matters of Public Interest are not first made in the House and are made outside. Such actions are against conventions and propriety but do not constitute any basis on which breach of privilege can be established;
- (vi) It is not a breach of privilege if documents intended for Members are circulated to the Press and non-members first, but such acts are deprecated;
- (vii) Where the report of a Committee has been presented to the House, its publication by the Press before copies of the report have been made available to Members, is undesirable, but it is not a breach of privilege of the House;
- (viii) No breach of privilege is involved if a Member's speech has not been covered in full or has been covered in a summary form in the Press or over the Radio or T.V. It is also not a breach of privilege if a particular speech is not covered as adequately as other speeches, or is not given prominence;
- (ix) Non-implementation of an assurance given by a Minister on the floor of the House is neither a breach of privilege nor a contempt of the House, for the process of implementation of a policy matter is conditional on a number of factors contributing to such policy; and

- (x) No question of privilege is involved if letters of Members are intercepted by censors because censorship is provided under the law. Section 26 of the Post Office Act, 1898, authorises censorship on the occurrence of any public emergency or in the interest of public safety or tranquillity.

QUESTIONS OF PRIVILEGE AND WORKING OF COMMITTEE OF PRIVILEGES

26. The procedure for dealing with questions of privilege is laid down in Rules 187 to 203 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha).

27. A question of privilege may be raised in the House only after obtaining the consent of the Chairman. This has been made obligatory so that the time of the House is not taken up by raising a matter which *prima facie*, is not admissible. A Member who wishes to raise a question of privilege is, therefore, required to give advance notice in writing to the Secretary-General.

28. 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, as the House alone is the custodian of its privileges. In giving consent to the raising of a matter in the House as a question of privilege, the Chairman considers only whether there is a *prima facie* case for further inquiry and whether it should be brought before the House. In giving his consent, the Chairman is guided by the following conditions prescribed for the admissibility of questions of privilege:

- (i) not more than one question shall be raised at the same sitting;

- (ii) the question shall be restricted to a specific matter of recent occurrence; and
- (iii) the matter requires the intervention of the House.

A question of privilege should thus be raised by a Member at the earliest opportunity and should require the interposition of the House.

29. The Chairman, before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether he/she should give his consent to the raising of the matter in the House, may give an opportunity to the person sought to be incriminated to explain his/her case to the Chairman. When a Member seeks to raise a question of privilege against another Member, the Chairman before giving her/his consent to the raising of the matter in the House, always gives an opportunity to the Member complained against to place before him or the House such facts as may be germane to the matter. Likewise, when a complaint is made against a Minister for making misleading statements in the House or on other grounds, the Chairman invariably seeks the comments of the Minister concerned before deciding whether a *prima facie* case exists or not.

If a newspaper reports incorrectly the proceedings of the House or makes comments casting reflections on the House or its Members, the Chairman, in the first instance, gives an opportunity to the editor of the newspaper to present her/his case before giving her/his consent to the raising of a question of privilege in the House. The Chairman may withhold her/his consent to raising a question of privilege after the editor or press correspondent of the newspaper concerned has expressed regrets or published a correction.

30. After the Chairman has given his consent to the raising of a matter in the House as a question of privilege, the Member who tabled the notice has, when called by the Chairman, to ask for leave of the House to raise the question of privilege. While asking for such leave, the Member concerned is permitted to make only a short statement relevant to the question of privilege. 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, it is presumed to be granted. 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. If twenty-five or more Members rise accordingly, the House is deemed to have granted leave to raise the matter and the Chairman declares that leave is granted; otherwise the Chairman informs the Member that he does not have the leave of the House to raise the matter.

31. After leave is granted by the House for raising a question of privilege, the matter may either be considered and decided, by the House itself, or it may be referred by the House, on a motion made by any Member, to the Committee of Privileges and the House defers its judgement until the report of the Committee has been presented. However, in cases where the House finds that the matter is too trivial or that the offender has already tendered an adequate apology, the House itself disposes off the matter by deciding to proceed no further in the matter.

The Chairman is empowered to refer, *suo motu*, any question of privilege or contempt to the Committee of Privileges for examination, investigation and report. In doing so, the Chairman need not bring the matter before the House

for consideration and decision as to whether the matter be referred to the Committee. The Chairman can also himself inquire into a breach of privilege matter instead of referring it to the Committee and apprise the House of the result of his inquiry and close the matter.

The Committee of Privileges examines every question of privilege referred to it and determines with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the circumstances leading to it and make such recommendations as it may deem fit. The Committee of Privileges has the power to send for persons, papers and records and can take evidence of the persons involved in the matter and call for any documents concerning the question of privilege under consideration of the Committee. In cases where the facts are in dispute, the Committee of Privileges takes evidence of witness.

32. After the report of the Committee has been presented to the House, the Chairman or any Member of the Committee may move that the report be taken into consideration. After the report is taken into consideration, the Chairman or any Member of the Committee or any other Member may move that the House agrees or disagrees or agrees with amendments, with the recommendations contained in the report. The motion that the report of the Committee of Privileges be taken into consideration is given the same priority as is given to a question of Privilege under Rule 190 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha). Further action is taken in accordance with the decision of the House on the report of the Committee.

PROCEDURE WHEN A BREACH OF PRIVILEGE IS COMMITTED BY A MEMBER OF THE OTHER HOUSE

33. In 1954, the Committees of Privileges of the Lok Sabha and the Rajya Sabha examined the procedure which should be followed in cases where a breach of privilege or contempt of the House was alleged to have been committed by a Member of the other House. The Committees, in their Joint Report presented to both the Houses on 23 August 1954, recommended the following procedure to be followed in case a Member, officer or servant of one House is alleged to have committed breach of privilege or contempt of the other House:

- (i) When a question of breach of privilege is raised in any House in which a Member, officer or servant of the 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 pursuing 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;
- (ii) 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 the House or of a Member thereof; and

- (iii) 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.

The Committee further observed that if the offending Member, officer or servant tenders any 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.

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DEFINITION AND SCOPE OF PRIVILEGE

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of Parliament and by members of each House individually, without which they could not discharge their functions, efficiently and effectively, and which exceed those possessed by other bodies or individuals. When any of these rights and immunities, both of the members, individually, and of the assembly in its collective capacity which are known by the general name of privileges, are disregarded or denied by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Articles 105 and 194 of the Constitution deal with the powers, privileges and immunities of Members of Parliament/State Legislatures and their House, Members and Committees. Each House also claims the right to punish actions which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its members. Such actions, though called 'breaches of privilege' are aptly distinguished as 'contempts'.

2. Article 105 of the Constitution which provides for the powers, privileges and immunities of the Houses of Parliament and of the Members and the Committees thereof reads as follows:—

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

- (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- (3) In other respects, the powers, privileges and immunities of each House of Parliament and of the Members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its Members and Committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
- (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any Committee thereof as they apply in relation to Members of Parliament.

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

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

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

No law has so far been enacted by Parliament (and State Legislatures) in pursuance of clause (3) of articles 105 and 194 of the Constitution to define the powers, privileges and immunities of each House and of the Members and the Committees thereof. In the absence of any such law, therefore, the powers, privileges and immunities of the Houses of Parliament and State Legislatures and of the Members and the Committees thereof continue in actual practice to be governed by the precedents of the British House of Commons as they existed on the date our Constitution came into force.

5. It may be observed that article 105(3) stipulates that Parliament may from time to time define its privileges by law and it has been urged particularly by the Press that there should be codification of the law of privilege so as to make the position clear and free from ambiguity. The question of undertaking legislation on the subject has also engaged the attention of the Presiding Officers of Parliament and State Legislatures in India since 1921. The dominant view, however, has all along been that any codification is more likely to harm the prestige and sovereignty of Parliament/ State Legislatures without any benefit being conferred on

the Press and that in the present circumstances, codification of Parliamentary privileges is neither necessary nor desirable.

6. It may be mentioned that the Committee of Privileges, Lok Sabha in its 11th Report presented to the House on 30 April 2008 considered the matter regarding codification of Parliamentary Privileges. The Committee after considering the entire gamut of aspects relating to Parliamentary Privileges, case law, opinion of experts and ground realities 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.¹

¹ Chapter 8 – Parliamentary Privileges in '*Rajya Sabha At Work*', Third Edition, Rajya Sabha Secretariat, 2017, p. 305.

MAIN PRIVILEGES OF PARLIAMENT

7. Some of the important privileges of each House of Parliament and of its Members and Committees as enshrined in the Constitution, other statutes, Rules and Procedures of the House and parliamentary reports are as follows:

- (i) Freedom of Speech in Parliament [Article 105(1)].
- (ii) Immunity to a Member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof [Article 105(2)].
- (iii) Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings [Article 105(2)].
- (iv) Prohibition on the Courts to inquire into proceedings of Parliament [Article 122(1)].
- (v) Freedom from arrest of Members in civil cases 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 (Section 135A of the Code of Civil Procedure, 1908).
- (vi) Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a Member [Rules

222A and 222B of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)].

- (vii) Immunity from arrest and service of legal process within the precincts of the House without obtaining the permission of the Chairman/Speaker.
- (viii) Protection of publication of the proceedings of a secret sitting of the House [Article 361A (Proviso)].
- (ix) Members or Officers of the House cannot give evidence or produce in courts of law, documents relating to the proceedings of the House without the permission of the House (First Report of Committee of Privileges of Rajya Sabha presented to the House on 1 May, 1958).
- (x) Members or Officers of the House cannot be compelled to attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (Sixth Report of the Committee of Privileges, Second Lok Sabha, adopted by the Lok Sabha on 17 December, 1958 and Thirty-third Report of the Committee of Privileges of the Rajya Sabha, adopted by the House on 30 March, 1993).
- (xi) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these

have been laid on the Table of the House (Rule 275 of the Rules of Procedure and Conduct of Business in the Lok Sabha and Twenty-ninth Report of the Committee of Privileges of the Rajya Sabha).

8. In addition to the above-mentioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are as follows:—

- (i) to commit persons, whether they are Member or not, for breach of privilege or contempt of the House (R.S. Deb. 30.3.1973 and 21.11.1983);
- (ii) to compel the attendance of witnesses and to call for papers and records [Rules 84, 196, 208, 212E, 212L and 212T of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)];
- (iii) to regulate its own procedure and the conduct of its business (Article 118(1) of the Constitution);
- (iv) to prohibit the publication of its debates and proceedings; (*M.S.M. Sharma vs. Shri Krishna Sinha*, AIR 1959 SC 395); and
- (v) to exclude strangers from the House [Rule 265 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)].

BREACH OF PRIVILEGE AND CONTEMPT OF PARLIAMENT

9. When any individual or authority disregards or undermines any of the privileges, rights and immunities, either of the Members individually or of the House in its collective capacity, the offence is called a breach of privilege and is punishable by the House. Besides, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its Members, Committees or Officers also constitute breach of privilege.

10. Contempt of the House may be defined generally as “any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or (which obstructs or impedes) any Member or Officer of such House in the discharge of his duty, or which has a tendency directly or indirectly, to produce such results”. It may be stated that it is not possible to enumerate exhaustively every act which might be construed by the House as a contempt of the House. Some of the important types of contempt of Parliament are, however, mentioned below:—

- (i) Speeches or writings reflecting on the character or proceedings of the House or its Committees, or any member of the House relating to his character or conduct as a member of Parliament;
- (ii) Reflections on the character or impartiality of the Chairman/Speaker in the discharge of his/her duties as the Chairman/Speaker;

- (iii) Publication of false or distorted report of the debates and proceedings of the House;
- (iv) Publication of expunged proceedings of the House;
- (v) Publication of proceedings of secret Sessions of the House;
- (vi) Premature publication of proceedings, evidence or report of a Parliamentary Committee;
- (vii) Reflections on the report of a Parliamentary Committee;
- (viii) Molestation of Members on account of their conduct in the House or obstructing Members in the performance of their duties or while on their way to or coming after, attending the House or a Committee thereof;
- (ix) Offering bribes to Members to influence them in their Parliamentary conduct;
- (x) Intimidation of Members by threats with a view to influence them in their Parliamentary conduct;
- (xi) Obstructing or molesting officers of the House in the discharge of their duties;
- (xii) Giving false or misleading evidence or information deliberately to mislead the House or a Committee thereof, by a Member or a Minister;
- (xiii) Prevaricating, giving false evidence, or willfully suppressing truth or persistently misleading a Committee by a witness; and

- (xiv) Molesting any witness during his evidence before a Committee of the House or later, on account of his attendance or evidence as such witness.

POWER OF PARLIAMENT TO PUNISH FOR CONTEMPT

11. Each House of Parliament is the guardian of its own privileges. Courts of law in India have recognised that a House of Parliament (or of a State Legislature) is the sole authority to judge as to whether or not there has been a breach of privilege or contempt of the House in a particular case.² The House may punish a person found guilty of breach of privileges or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own Members, two other punishments can be awarded by the House, namely, suspension from the service of the House and expulsion.

The penal jurisdiction of the House is not confined to its own Members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by Members or any persons who are not Members, irrespective of whether the offence is committed within the House or beyond its walls. The power to punish any person who commits a contempt of the House or a breach of any of its privileges is the most potent weapon in the hands of a House of legislature. This power gives reality to privileges of Parliament, emphasises its sovereign character and vindicates its own authority and dignity. Therefore, it has aptly been described as the ‘keystone of Parliamentary Privilege’.

² M.S.M. Sharma vs. Sri Krishna Sinha, A.I.R. 1959, S.C. 395; Homi D. Mistry vs. Nafisul Hassan, I.L.R. 1957, Bombay 218.

Though a breach of privilege is punishable under the law of Parliament, it is a tradition that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempts of the House are accepted by the House. In such cases the House normally decides to protect its own dignity by taking no further notice of the matter.

FREEDOM OF SPEECH

12. The most important privilege of Members of Parliament is freedom of speech in Parliament. This privilege is embodied in clauses (1) and (2) of Article 105 of the Constitution.

According to this privilege, no action can be taken against a Member of Parliament in any court or before any authority other than Parliament in respect of anything said or any vote given by him in Parliament or any Committee thereof. It is also a breach of privilege to molest a Member or to take any action against him or to threaten him on account of anything said by him in Parliament or any Committee thereof. It would be breach of privilege to institute any legal proceedings against a Member in respect of anything said or any vote given by him on the floor of the House.

13. Besides, a Member cannot be held accountable/questioned in any court or by any agency outside Parliament for any disclosures he may make in Parliament.

PARLIAMENTARY PRIVILEGES AND THE PRESS

14. Freedom of the Press has not been expressly provided for in the Constitution, but is implicit in the fundamental right of the 'freedom of speech and expression' guaranteed to the citizens under article 19(1)(a) of the Constitution. It has been settled by judicial decisions that freedom of speech and expression includes freedom of the Press.

15 Normally, no restrictions are imposed on reporting the proceedings of the House. It is, however, a breach of privilege and contempt of the House to publish expunged proceedings of the House. This question came up for consideration before the Supreme Court in the 'Searchlight case' wherein the Court ruled that a report of the whole speech including the expunged portion though factually correct, may in law be regarded as perverted and unfaithful and the publication of such a report may, *prima facie*, be regarded as constituting a breach of privilege of the House.³

16. Absolute immunity from proceedings in any court of law has been conferred under the Constitution on all personnel connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of House [Article 105(2)]. This immunity does not, however, extend to the publication of reports of Parliamentary Proceedings in newspapers, whether published by a Member of the House or by any other person, unless such publication is expressly authorised by either House.

³ M.S.M. Sharma vs. Sri Krishna Sinha, A.I.R. 1959, S.C. 395.

17. Constitutional protection has been given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament, provided the reports are for the public good and are not actuated by malice. Article 361A of the Constitution provides as follows:—

“361A. (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

Explanation—In this Article ‘newspaper’ includes a news agency report containing material for publication in a newspaper.”

18. The above protection has been accorded within the overall limitation that the House has the power to control and, if necessary, to prohibit the publication of its debates or

proceedings and to punish for the violation of its orders. Though no restrictions are normally imposed on reporting the proceedings of the House, however, if debates or proceedings of the House or its Committees are reported *mala fide* or there is wilful misrepresentation or suppression of speeches of particular Members, it is a breach of privilege and contempt of the House and the offender is liable to punishment. Further, the press is forbidden to publish any part of the proceedings or evidence given before, or any document presented to Parliamentary Committees before such proceedings or evidence or document has been reported to the House. The Committee of Privileges in its 29th Report *inter alia* considered a question of breach of privilege arising out of the premature publication of the proceedings of the Committee before they were reported to the House by some newspapers. The Committee observed that the proceedings of a Parliamentary Committee are confidential and should not be disclosed or given any publicity unless the same is presented to the House or is otherwise treated as not confidential and therefore constitutes a breach of privileges and contempt of the House. Taking a note of the apology tendered by the newspapers concerned, the Committee recommended that no further action should be taken but cautioned all concerned that any premature publication or disclosure of the proceedings of the Committee will be dealt with seriously if such occasions arise in future. It is also incumbent on the Press not to disclose the proceedings or decisions of a secret sitting of the House, until the ban on secrecy is lifted by the House. Any such publication or disclosure is treated as a gross breach of privilege of the House.

PRIVILEGE OF FREEDOM FROM ARREST OR MOLESTATION

19. Section 135A of 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. The object of this privilege is to ensure the safe arrival and regular attendance of Members in Parliament. The arrest of a Member of Parliament in civil proceedings during the period when he is exempted from such arrest is a breach of privilege and the Member concerned is entitled to her/his release. The privilege of freedom from arrest does not, however, extend to criminal offence or cases of detention under the preventive detention legislation.

20. Although Members do not have any privilege or immunity from arrest on a criminal charge or under any law for preventive detention, the House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a Member. This position is stated in Rules 222A and 222B of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha).

21. The failure on the part of a Judge or a Magistrate or other authority to inform the House of the arrest/detention or imprisonment of a Member would constitute a breach of privilege of the House.

22. Another privilege which a Member under custody enjoys is her/his right to correspond without any let or hindrance with the Chairman/Speaker, Secretary-General or the Chairperson of a Parliamentary Committee. It is a breach of privilege to withhold any communication addressed by a Member in custody to the Chairman/Speaker, Secretary-General or the Chairperson of Parliamentary Committee as long as the person detained continues to be a Member of the House.

23. No arrest of a Member can be made within the precincts of the House without obtaining the prior permission of the Chairman/Speaker and that too in accordance with procedure laid down by the Home Ministry in this regard. Similarly, no legal process, civil or criminal can be served within the precincts of the House without obtaining the prior permission of the Chairman/Speaker whether the House is in Session or not. As a corollary to this rule, the Court of Law should not seek to serve a legal process, civil or criminal, on Members of Parliament through the Chairman/Speaker or the Rajya Sabha/Lok Sabha Secretariat. The appropriate procedure is that the summons be served directly on Members concerned outside the precincts of Parliament, that is, at their residence or at some other place. A Court of Law should also not ask the Chairman/ Speaker of the Rajya Sabha/Lok Sabha Secretariat to inform a Member about initiation of a legal process against him or seek to utilise in any manner the agency of the Chairman/ Speaker or of the Secretariat of the House in the Service or execution of a legal process, civil or criminal, against a Member.

USE OF HANDCUFFS

24. There is no privilege specifically exempting a Member of Parliament, who is under arrest on a criminal charge, from being handcuffed. The Committee of Privileges of the Fifth Lok Sabha, in their Nineteenth Report presented to the House on 31 August 1976, observed that the instructions regarding handcuffing of prisoners by the Union Ministry of Home Affairs from time to time should be strictly followed by all the authorities concerned and there should ordinarily be no occasion to handcuff prisoners such as Members of Parliament, Members of State Legislatures, peaceful *satyagrahis*, persons occupying good positions in public life and professionals like jurists, journalists, doctors, writers and educationists.

POINTS OF PROPRIETY

25. While certain privileges are enjoyed by the Parliament, its Members and Committees, there are certain parliamentary practices, usages and conventions which should be followed by the Members and others. The violation of such parliamentary practices, usages and conventions would not technically constitute a breach of privilege or contempt of the House but such violations would be termed as 'impropriety'.

Some typical instances under this category are listed below which, however, are not exhaustive:

- (i) Giving a premature publicity to various matters connected with the business of the House is an act of impropriety but not a breach of privilege or contempt of the House;
- (ii) 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. A breach of privilege can arise only when the Member or the Minister makes a false statement or an incorrect statement willfully and deliberately;
- (iii) Leakage of budget proposals or official secrets does not form any basis for a breach of privilege;

- (iv) Statements made by Ministers at party meetings are not a privileged matter;
- (v) No privilege of Parliament is involved if statement on Matters of Public Interest are not first made in the House and are made outside. Such actions are against conventions and propriety but do not constitute any basis on which breach of privilege can be established;
- (vi) It is not a breach of privilege if documents intended for Members are circulated to the Press and non-members first, but such acts are deprecated;
- (vii) Where the report of a Committee has been presented to the House, its publication by the Press before copies of the report have been made available to Members, is undesirable, but it is not a breach of privilege of the House;
- (viii) No breach of privilege is involved if a Member's speech has not been covered in full or has been covered in a summary form in the Press or over the Radio or T.V. It is also not a breach of privilege if a particular speech is not covered as adequately as other speeches, or is not given prominence;
- (ix) Non-implementation of an assurance given by a Minister on the floor of the House is neither a breach of privilege nor a contempt of the House, for the process of implementation of a policy matter is conditional on a number of factors contributing to such policy; and

- (x) No question of privilege is involved if letters of Members are intercepted by censors because censorship is provided under the law. Section 26 of the Post Office Act, 1898, authorises censorship on the occurrence of any public emergency or in the interest of public safety or tranquillity.

QUESTIONS OF PRIVILEGE AND WORKING OF COMMITTEE OF PRIVILEGES

26. The procedure for dealing with questions of privilege is laid down in Rules 187 to 203 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha).

27. A question of privilege may be raised in the House only after obtaining the consent of the Chairman. This has been made obligatory so that the time of the House is not taken up by raising a matter which *prima facie*, is not admissible. A Member who wishes to raise a question of privilege is, therefore, required to give advance notice in writing to the Secretary-General.

28. 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, as the House alone is the custodian of its privileges. In giving consent to the raising of a matter in the House as a question of privilege, the Chairman considers only whether there is a *prima facie* case for further inquiry and whether it should be brought before the House. In giving his consent, the Chairman is guided by the following conditions prescribed for the admissibility of questions of privilege:

- (i) not more than one question shall be raised at the same sitting;

- (ii) the question shall be restricted to a specific matter of recent occurrence; and
- (iii) the matter requires the intervention of the House.

A question of privilege should thus be raised by a Member at the earliest opportunity and should require the interposition of the House.

29. The Chairman, before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether he/she should give his consent to the raising of the matter in the House, may give an opportunity to the person sought to be incriminated to explain his/her case to the Chairman. When a Member seeks to raise a question of privilege against another Member, the Chairman before giving her/his consent to the raising of the matter in the House, always gives an opportunity to the Member complained against to place before him or the House such facts as may be germane to the matter. Likewise, when a complaint is made against a Minister for making misleading statements in the House or on other grounds, the Chairman invariably seeks the comments of the Minister concerned before deciding whether a *prima facie* case exists or not.

If a newspaper reports incorrectly the proceedings of the House or makes comments casting reflections on the House or its Members, the Chairman, in the first instance, gives an opportunity to the editor of the newspaper to present her/his case before giving her/his consent to the raising of a question of privilege in the House. The Chairman may withhold her/his consent to raising a question of privilege after the editor or press correspondent of the newspaper concerned has expressed regrets or published a correction.

30. After the Chairman has given his consent to the raising of a matter in the House as a question of privilege, the Member who tabled the notice has, when called by the Chairman, to ask for leave of the House to raise the question of privilege. While asking for such leave, the Member concerned is permitted to make only a short statement relevant to the question of privilege. 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, it is presumed to be granted. 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. If twenty-five or more Members rise accordingly, the House is deemed to have granted leave to raise the matter and the Chairman declares that leave is granted; otherwise the Chairman informs the Member that he does not have the leave of the House to raise the matter.

31. After leave is granted by the House for raising a question of privilege, the matter may either be considered and decided, by the House itself, or it may be referred by the House, on a motion made by any Member, to the Committee of Privileges and the House defers its judgement until the report of the Committee has been presented. However, in cases where the House finds that the matter is too trivial or that the offender has already tendered an adequate apology, the House itself disposes off the matter by deciding to proceed no further in the matter.

The Chairman is empowered to refer, *suo motu*, any question of privilege or contempt to the Committee of Privileges for examination, investigation and report. In doing so, the Chairman need not bring the matter before the House

for consideration and decision as to whether the matter be referred to the Committee. The Chairman can also himself inquire into a breach of privilege matter instead of referring it to the Committee and apprise the House of the result of his inquiry and close the matter.

The Committee of Privileges examines every question of privilege referred to it and determines with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the circumstances leading to it and make such recommendations as it may deem fit. The Committee of Privileges has the power to send for persons, papers and records and can take evidence of the persons involved in the matter and call for any documents concerning the question of privilege under consideration of the Committee. In cases where the facts are in dispute, the Committee of Privileges takes evidence of witness.

32. After the report of the Committee has been presented to the House, the Chairman or any Member of the Committee may move that the report be taken into consideration. After the report is taken into consideration, the Chairman or any Member of the Committee or any other Member may move that the House agrees or disagrees or agrees with amendments, with the recommendations contained in the report. The motion that the report of the Committee of Privileges be taken into consideration is given the same priority as is given to a question of Privilege under Rule 190 of the Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha). Further action is taken in accordance with the decision of the House on the report of the Committee.

PROCEDURE WHEN A BREACH OF PRIVILEGE IS COMMITTED BY A MEMBER OF THE OTHER HOUSE

33. In 1954, the Committees of Privileges of the Lok Sabha and the Rajya Sabha examined the procedure which should be followed in cases where a breach of privilege or contempt of the House was alleged to have been committed by a Member of the other House. The Committees, in their Joint Report presented to both the Houses on 23 August 1954, recommended the following procedure to be followed in case a Member, officer or servant of one House is alleged to have committed breach of privilege or contempt of the other House:

- (i) When a question of breach of privilege is raised in any House in which a Member, officer or servant of the 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 pursuing 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;
- (ii) 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 the House or of a Member thereof; and

- (iii) 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.

The Committee further observed that if the offending Member, officer or servant tenders any 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.

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