



# PARLIAMENTARY PRIVILEGES IN INDIA AND USA: AN ASSESSMENT

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## INTRODUCTION

The term 'parliamentary privilege' refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their members in the performance of their duties. "These privileges are an exception to ordinary law and are intended to allow parliamentarians to perform their duties without fear of intimidation or punishment, and without impediment." According to the Sir Thomas Erskine May, Parliamentary Privilege means "Some of the peculiar rights enjoyed by each House collectively as a constituent part of the parliament and by the members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals".<sup>1</sup> The Parliamentary Privileges are highly essential for the effective functioning of the House. They are enjoyed by individual members because the House cannot perform its functions without their constant co-operation and by each house collectively for the protection of its members and the vindication of its own authority and dignity. They are special right enjoyed by them in the performance of their duties with honour and dignity. They enjoy these rights not because of their exalted position but because these are indispensable for their effective functioning.<sup>2</sup> Parliamentary Privileges in India are available not only to the members of a House but also to those who, though not members of a House, are under the Constitution entitled to speak and take part in the proceedings of a House or any of its committees. The provisions in the Indian Constitution on the privileges and immunities of the Indian Parliament and its members have been modelled on the pattern of privileges and immunities enjoyed by the British Parliament. In the Indian Constitution, the privileges of the Parliament and its members have been left to be determined by law, and until so determined, they have been stated to be the same as those possessed by the British House of Commons on the day of the commencement of the Constitution.<sup>3</sup>

The concept of congressional privilege finds its roots in five hundred years of struggle between the Crown and Parliaments in England. By the time the American Constitution was ratified in 1789, Parliament had gained the upper hand,<sup>4</sup> and its privileges were not only extensive, but largely unfettered by formal definition.<sup>5</sup> At the Constitutional Convention, the delegates considered a proposal of Mr. Pinckney's to make Congress the judge of its own privileges, as in the British system, but the proposal was rejected, apparently because of the strong opposition of Madison, who felt that it was

<sup>1</sup> May, "Parliamentary Practice, Treatise on the Law, Privileges, Proceedings and Usage of Parliament", 17<sup>th</sup> edition, p, 42

<sup>2</sup> K.S.Padhy and GovindaBehera, "Legislative Privileges and Freedom of Press", Dominant Publishers and. Distributors (P) Ltd, New Delhi, 1<sup>st</sup> Edition

<sup>3</sup> Articles 105(3) and 194(3) of the Indian Constitution

<sup>4</sup> Erskine May, the Constitutional History of England 364 (4th ed. 1912)

<sup>5</sup> Blackstone, Commentaries



necessary to define the scope of congressional privilege narrowly.<sup>6</sup> Consequently, what must be thought to be the full extent of the congressional privilege was set forth in three clauses of the Constitution; the publication clause;<sup>7</sup> the immunity from arrest clause;<sup>8</sup> and the speech or debate clause.<sup>9</sup> Historically, the speech or debate clause has been clearly understood to protect the “independence and integrity” of the legislature, allowing Members of Congress the freedom of speech, debate, and deliberation without fear of intimidation by the executive branch and the judiciary.<sup>10</sup> The privileges of Legislative form a special kind of law of the land administered and interpreted by Congress itself without later review from any outside authority. Congress can punish anybody inside or outside the House who is guilty of offending against the right and dignity of the House. These privileges are a necessary condition for every legislative body to enable them to discharge their multifarious duties efficiently on behalf of their respective nations. The question considered in this article whether the members of Parliament enjoy absolute privileges? Whether these privileges are necessary to the members of Parliament and Congress to discharge their duties and functions effectively and why these privileges need to be codified? In this regard this article analyses the legal provisions concerning the privileges of parliament and highlight the nature and scope of the privileges of parliament in India and U.S.A.

### I. PARLIAMENTARY PRIVILEGES IN INDIA: AN OVERVIEW

The Constitution of India provides two important privileges to the members of Parliament and state legislature viz. the Freedom of Speech and Right of Publication of Proceedings in Clauses (1) and (2). Outside the scope of these two clauses, the privileges of members of our Parliament shall be the same as those of members of the English House of Commons as they stood on 26 January 1950, until our parliament itself takes up legislation relating to privileges in whole or in part. Article 105 (1) of the Constitution confers the 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,<sup>11</sup> (Similar Provision Article 194(1) of the State Legislature)<sup>12</sup>. A member of Parliament or of the State Legislature is protected for what he says within the House and he is not protected for the words spoken outside the House.<sup>13</sup> In the case of *TejKiran Jain v.N.Sanjiva Reddy & Others*,<sup>14</sup> the Supreme Court held that the members of Parliament are entitled to speak freely in the House and in its Committees and they cannot be proceeded against in any Court in respect of any utterance made in the proceedings of the House<sup>15</sup>. *Dr Suresh Chandra Banerjee & ors v. Punit Goala*<sup>16</sup> two judges (Harries C.J

<sup>6</sup>. The clause in Pinckney's draft declared that "[E]ach House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same."

<sup>7</sup>. Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their judgment require secrecy. U.S. CONST. art. I, § 5, cL. 3.

<sup>8</sup>. [Senators and Representatives] shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same. ....Art. I. Sec, 6, cl. 1.

<sup>9</sup>. [F]or any Speech or Debate in either House [Senators and Representatives] shall not be questioned in any other Place. Art. I. Sec, 6, cl. 1

<sup>10</sup>. Johnson, 383 U.S. at 181

<sup>11</sup>. Article 105(1) of the Indian Constitution

<sup>12</sup>. M.P. Jain, Indian Constitutional Law, 6<sup>th</sup> Edition, 2010

<sup>13</sup>. *Satishv. Harishadhana*, AIR 1961 SC 613

<sup>14</sup>. AIR 1970 SC 1573

<sup>15</sup>. Clauses (1) and (2) of Article 105



and Banerjee. J), held that Clauses (1) and (2) of Article 194 of the Constitution protect absolutely and completely a member in respect of any speech made by him in the Legislative Assembly. The words spoken within the four walls of the Assembly are absolutely privileged and no proceedings, either civil or criminal, may be taken in respect of them. In *Jagdish Gandhi v. legislative Council of U.P.*<sup>17</sup> Under Article 194 (1), the privilege of freedom of speech of a member of Legislature is absolute. If a person is aggrieved by the speech of a member, it will be settled in the House of Legislature itself and not in Court.

Articles 105(2) and 194(2) says that 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. In *P.V. Narsimha Rao v. State (CBI/SPI)*<sup>18</sup>, a five judges bench of the Supreme Court by 3:2 majority has held that the scope of protection of immunity available to the members of Parliament is quite wide and is not confined only against judicial proceedings but available to them against all civil action and criminal proceedings for anything said or any vote given by them in the House of Parliament.

The right to freedom of speech is subject to certain Constitutional and self-imposed limitations. The restrictive words of Clause (1) “subject to the provisions of the Constitution”<sup>19</sup> imply that privilege is subject to Articles. 19(1) (a),<sup>20</sup> 118<sup>21</sup> and 121<sup>22</sup> (Articles 208 and 211 in case of State Legislatures). The limitations imposed upon the freedom of speech are not only constitutional but also self-imposed and they are enforced by the rules framed by the House to regulate its internal procedures. Rules 352 to 356 of the Lok Sabha regulate its internal procedures. If a member violates these, the Speaker may take action against him by directing him to withdraw from the House or placing him under suspension or ordering expunction of his offending words from the proceedings of the House.

No person shall be liable to any proceedings in Court in respect of the publication of any report, paper, votes or proceedings by or under the authority of a House of Parliament and State legislature.<sup>23</sup> This privilege is available only to the publication made by or under the authority of a House. If a private person publishes the report or proceedings of the House without its authority, he will not be entitled to this privileges and thus cannot be protected under this Article. In *Dr Suresh Chandra Banerjee & orsv.PunitGoala*, in this case the court held that Clause (2) of Article 194 that all person connected with the publication of proceedings of a legislature are protected, if such publication is made by or under the authority of the legislature itself. Article 194(2) has no application to a publication in a newspaper unless it is by or under the authority of the legislative Assembly.

In *Surendrav. Nabakrishna*,<sup>24</sup> the court held that an editor of a newspaper was held guilty of committing Contempt of Court for publishing a statement of the House. It was held that there were many advantages to the public, which has the deepest interest in knowing what passes in Parliament, if

<sup>16</sup>. AIR 1951, Calcutta, 176

<sup>17</sup>. AIR 1966, All.297

<sup>18</sup>. AIR 1998 SC 2120:1998(4) SCC 626

<sup>19</sup>. Articles 105 and 194 of the Indian Constitution

<sup>20</sup>. Article 19(1)(a) Freedom of press-Court duty to protect-Utility of the press-The expression ‘freedom of the press’ has not been used in article 19, but it is comprehended within Article 19(1)(a)

<sup>21</sup>. Article 118 Rules and Procedure,

<sup>22</sup>. Article 121 “No discussion shall take place in Parliament with respect of the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as herein after provided”.

<sup>23</sup>. Articles 105(2) and 194(2) of the Indian Constitution

<sup>24</sup>. AIR 1958 Orissa 168



a true report of parliamentary proceedings are published in a newspaper.<sup>25</sup> Accordingly, The Parliamentary Proceedings (Protection of Publication) Act, 1956 provided that no person shall be liable to any proceedings, whether civil or criminal, in any Court in respect of the publication of a substantially true report of the proceedings of either House of Parliament unless it is proved that the publication of such proceedings was expressly ordered to be expunged by the Speaker.<sup>26</sup> This position has been made much stronger by the insertion of Article 361-A by the Constitution (44th Amendment) Act, 1978.<sup>27</sup> This immunity does not apply to the publication of any report of the proceedings of a secret sitting of any House of Parliament or of the State Legislature. A similar immunity is extended to broadcast on the air. The protection is available only to the newspapers and air broadcasts and not to any other type of publication like a pamphlet or booklet.<sup>28</sup>

Other Privileges are given in clause (3) of article 105. As originally enacted it provided that these “shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom...” as on January 26, 1950. The reference to the House of Commons was omitted in 1978. Clause (3) of the amended article now provides that “in other respects, the powers, privileges and immunities of each House shall until so defined (by parliament by law) 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”. However, this amendment has not made any changes in substance except erasing words the “House of Commons”.<sup>29</sup> Therefer back position to the House of Commons as on January 26, 1950 remains intact. This means that all the privileges available to a House on that date will continue until Parliament makes a law. At present privileges enjoyed by the members of Parliament and State Legislature under Article 105(3) and 194(3), are as follows:-

Freedom from Arrest:-A Member of Parliament and State legislature cannot be arrested or imprisoned on a civil proceeding within a period of 40 days before and 40 days after the session of Parliament.<sup>30</sup> If a member is arrested within this period he should be released so that he might be free to attend parliament.<sup>31</sup> This privilege is available against civil arrest and does not extend to arrest or imprisonment on a criminal charge or for contempt of court or to preventive detention.<sup>32</sup> If a member of a House commits a crime he will be arrested like an ordinary person. This privilege does not extend to arrest or imprisonment on a criminal charge or for detention under preventive detention Act.<sup>33</sup> In *Anandanambiar V. Chief Secretary Government of Madras*.<sup>34</sup> In this case court held that a member of the House imprisoned for a criminal matter has no right to attend a meeting of the House.

It has been laid down that no summons, no legal process, civil or criminal- can be served and no members of parliament and state legislature arrested within the precincts of Parliament, without the permission of the Speaker/Chairman. This immunity is available even to a private person inside the

<sup>25</sup>. This is in line with the decision in *Wason v. Walter*, (1868) 4 IRQB 73

<sup>26</sup>. This Act was repealed by the Congress Government during the Emergency in 1976. However, the Parliamentary Proceedings (Protection of Publication) Act, 1977 was passed by Parliament and it received the assent of the President on 18-4-1977

<sup>27</sup>. W. i.e. 20-6-1979

<sup>28</sup>. Clause (2) of article 361-A

<sup>29</sup>. The Constitution (Forty Fourth Amendment) Act 1978

<sup>30</sup>. Prof. Jatindra Ranjan DE, *“the Growth of Parliament in India”*, Bijan Publishers, Calcutta

<sup>31</sup>. Section 135 (A) of the Civil Procedure Code, 1908

<sup>32</sup>. *Ansumali Majumdar v. State of West Bengal* AIR 1952 Cal, 632

<sup>33</sup>. Loksabha rules, 387; *Smt. Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299

<sup>34</sup>. AIR 1966 SC 657; 1966 2SCR 406



precincts of Parliament. Thus, nobody can be arrested inside the Parliament House without the permission of the Speaker/Chairman because within the precincts of Parliament, only the writ and orders of the House of Parliament or of Speaker/Chairman prevail and not of any other governmental authorities or local administration. Even Section 144 cannot be applied to the precincts of Parliament. The object of this privilege is to ensure the safe arrival and regulate the attendance of members in Parliament.<sup>35</sup>

**The Right to Exclude Strangers:** -The House of Parliament in England has a right to exclude strangers from its proceedings and hold its sittings in camera. This power may be used by the House to go into secret session for reasons of national security. The Speaker/Chairman may, whenever he thinks fit, order the withdrawal of strangers from any part of the house. Any member dissatisfied by the presence of strangers may also draw the Speaker's attention to that fact and in that case, the Speaker will immediately put the question to vote and order withdrawal of the strangers if the vote is carried. The right to exclude strangers may be regarded both as a corollary to the principle of freedom of speech; and as necessary for the orderly conduct of business where there is a danger of disorderly interruption. Since 1998, the procedure for this has been altered, so that it is only the Speaker who has the power whenever he thinks fit, to order the withdrawal of those other than Members or Officers, from any part of the House. In India under the Rules the Speaker or Chairman may, whenever he thinks fit, order the 'withdrawal of strangers from any part of the House'.<sup>36</sup> Rules 386, 387 and 387A are the relevant Rules of Lok Sabha regarding admission of strangers, their removal and taking into custody of strangers in the House.<sup>37</sup>

**Right to Hold Enquiries and Summon Witnesses:** -British House of Commons has power to hold enquiries and summon witnesses for examination by the House. It can also summon the production of papers, documents or records. In India also each House of Parliament and of the State Legislature can hold enquiries, summon the records and witnesses for examination by the House.<sup>38</sup>

**Power to Punish Members and Outsiders:** -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. A House has power to punish a person, whether its members or outsider, for its 'Contempt' or 'Breach of Privileges'. A House can impose the punishment of admonition, reprimand, and suspension from the service of the House for the session, fine and imprisonment.<sup>39</sup> Recently the Supreme Court in *Raja Ram Pal v. The Hon'ble Speaker Lok Sabha*,<sup>40</sup> upheld the action of the Parliament in expelling the members for the cash for query scam (an act of contempt of the House). The power of the House punish for contempt or breach of privileges 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 privileges.<sup>41</sup>

<sup>35</sup>. Subhash C. Kashyap, "Our Parliament", National Book Trust, India

<sup>36</sup>. Rule 265 of the Rules of the Council and Rule 387 of the Rules of the House

<sup>37</sup>. Dr. Durga Das Basu, "Commentary on the Constitution of India", 8<sup>th</sup> Revised Ed., Lexis Nexis Butterworths Wadhwa Nagpur (2008)

<sup>38</sup>. Kailash Rai, "Constitutional Law of India", 11<sup>th</sup> Edition, Central Law Publications, Allahabad, 2013

<sup>39</sup>. *Hardwari Lal v. Election Commission of India*, ILR (1977) 2 P&H 269

<sup>40</sup>. (2007) 3 SCC 184

<sup>41</sup>. Cushing, Legislative Assemblies, paras 532; see also May. p.90



This power is akin in nature and owes its origin to the powers possessed by courts of law to punish for contempt. Without such a power the House “would sink into utter contempt and inefficiency”<sup>42</sup>. The Speaker, who preserves order in the House has “all powers necessary for the purpose of enforcing the decisions”<sup>43</sup>. The disciplinary powers of the Speaker and the House are partly embodied in the Rules which provide for the withdrawal or suspension of any member whose conduct is grossly disorderly or who disregards the authority of the Chair or abuses the rules of the House by persistently and wilfully obstructing its business<sup>44</sup>.

## II. ANALYSIS OF LEGISLATIVE PRIVILEGES IN U.S.A

American Constitution usually guarantee to members of legislative bodies in the National and State governments certain privileges which are deemed essential to the unhampered functioning of the law making branch of the government. Freedom of debate and exemption from arrest are the privileges most often safeguarded. To analyse the nature and extent of these privileges is the purpose of these paragraphs.

The Constitution of the United States provides that for any speech or debate in either House members of Congress shall not be questioned in any other place.<sup>45</sup> The Constitution of forty-three states contain similar provisions. The freedom of speech guaranteed by this provision has been liberally construed on the ground that its object is to secure the freedom of the people’s representatives for the public good as distinguished from the protection of individual members. Thus it has been held that the immunity extends to:- (a) Anything said or done by a member as a part of the business of the House or any committee thereof<sup>46</sup> including the giving of a vote, the making of a written report, or initiating legislation and, in general, to all thing done in a session of the House.<sup>47</sup> (b) The immunity is not lost even though its exercise was contrary to the rules of the House,<sup>48</sup> or guided by an improper Motive.<sup>49</sup> But the immunity offered by the clause would not extend: - (a) to aid a member to violate an otherwise valid criminal law, in preparing for or implementing legislative acts.<sup>50</sup> (b) To immunize a member from liability for any act which does not form an ‘integral part’ of the deliberative or legislative business of either House or in other words, which is not essential to the deliberations of the House.<sup>51</sup> If, therefore a Member arranges for a private publication of any document which forms part of the debate of either House or any committee thereof, he would be punishable under any law which makes it an offence, and also liable to be questioned before a body investigating into that offence.<sup>52</sup>

The members of Congress enjoy the freedom of speech or debate privilege. They cannot be sued for libel or slander or in any other way held legally accountable for statements made in their official capacity except by the House or Senate. Not only words spoken on the floor of Congress but written reports, resolutions offered, the act of voting, and all things “generally done in a session of the House

<sup>42</sup>. See the observation of Lord Ellenborough, C.J., in the case of *Burdett v. Abbott* (14 East, 150)

<sup>43</sup>. Rule 378

<sup>44</sup>. Rules 373 and 374

<sup>45</sup>. Article 1 Section 6(1) of the U.S.A Constitution

<sup>46</sup>. *Tenney v. Brandhove*, (1951) 341 US 363 (377)

<sup>47</sup>. *Kilbourn v. Thompson* (1881) 103 US 168 (204-05)

<sup>48</sup>. Ibid

<sup>49</sup>. Ibid

<sup>50</sup>. *Gravel v. U.S* (1972) 408 US 606

<sup>51</sup>. Ibid

<sup>52</sup>. Dr. Durga Das Basu, “*Commentary on the Constitution of India*”, 8th Edition, 2008 (Revised)



by one of its members in relation to the business before it” are covered.<sup>53</sup>This clause specifically applies to the absolute freedom of speech only in Congress while performing legislative work. For example, A Congressman may not invoke this clause to protect himself from a libel suit if he has committed libel outside of his official duties. The courts have repeatedly upheld this interpretation. According to the Supreme Court, activities are within the sphere of official legislative duty if they are integral to the deliberative and communicative processes by which Members of Congress participate in committee and house proceedings with respect to their legislative work. For instance, the clause protects voting, speaking in committee hearings or on the floor of one of the houses, and even the reading of stolen classified materials into the record<sup>54</sup>. On the other hand, negotiations with federal agencies, issuing a press release, or delivering a speech outside of Congress are not protected. The text of the clause mentions Members of Congress, but the Supreme Court has declared that it applies also to congressional staffers conducting official congressional business. Curiously, the Court has held that if a Member’s actions fall within the “legislative process,” his immunity is absolute—even if the Member has acted contrary to law, he cannot be prosecuted if proof of the crime depends on his legislative acts. Although the clause protects Members of Congress from civil or criminal proceedings, Members of the Congress are absolutely immune from civil or criminal suits or even grand jury investigation promised upon their “legislative acts” this immunity also extends to legislative aids, but only with respect to the “legislative acts” of their aids.<sup>55</sup> The word “legislative acts” includes everything that is integral to deliberations and communicative processes by which the member participate in the official business of the Congress”.<sup>56</sup>

Freedom of Arrest one of the important privilege guaranteed by the Constitution of the United State and State Constitution. The members of the Congress “shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same.”<sup>57</sup>This privilege requires to balance the need for the effective functioning of the ordinary justice system with the need for legislators to be able to perform their public duties. Constitutional provisions in the United States differ in their treatment of the duration of the privilege from arrest. Some of the constitutions merely use such phrases as "going to" and "returning from" the session of the legislature.<sup>58</sup> Other Constitutions provide that the privilege be in operation for a period of fifteen days before the opening of the session,<sup>59</sup> while some provisions specify a given number of days both before and after the session during which the privilege shall be in effect.<sup>60</sup>Where the constitution provides that the privilege exists for a specific number of days in addition to the time of the session of the legislature there is little difficulty.<sup>61</sup>The Privilege from Arrest Clause provides a Member of Congress a privilege from civil arrest only, but not from other civil processes. Even the privilege from civil arrest would be valid only while Congress is in session. Civil arrest is the physical detainment of a person, by lawful authority, to answer a civil

<sup>53</sup>. C.Herman Pritchett, “*the American Constitution*”, 3<sup>rd</sup> Edition, Tata McGraw-Hill Publishing Co.Ltd.New Delhi

<sup>54</sup>. *United State v. Brewster*, 408 U.S. 501. 507(1972)

<sup>55</sup>. Ibid

<sup>56</sup>. Ibid

<sup>57</sup>. U.S. Constitution. Art. I, Section 6(1)

<sup>58</sup>. See, for example, the constitutional provisions of Illinois, Kentucky, and Minnesota.

<sup>59</sup>. The following states have provisions for a certain period before and after the session; California, Connecticut, Michigan, Mississippi, Nebraska, Rhode Island, South Carolina, West Virginia, Wisconsin.

<sup>60</sup>. These states provide for a number of days either before or after, but not both: Idaho, Kansas, Nevada, Utah, Virginia, Washington, Indiana

<sup>61</sup>. Oliver P. Field, “*Constitutional Privileges of Legislators*” Minnesota Law Review.



demand against him. At the time the Constitution was adopted, civil arrests were common.<sup>62</sup> The Framers likely feared this tool could be misused to interfere with the legislative process. Civil arrest is rarely, if ever, practiced, so this clause is virtually obsolete and has little application today.

The Supreme Court interpreted the language "in all Cases, except Treason, Felony, and Breach of the Peace" to encompass all crimes.<sup>63</sup> Tracing the origins of the clause to parliamentary privilege, the Court found this identical language was used to qualify Parliament's privilege from arrest so that the members of Parliament were not immune from criminal prosecution. The Court concluded that the Framers' use of the identical phrase, without any explanation, indicated that Congress's privilege was to have the same limitation regarding criminal actions as did the parliamentary privilege from which the language was borrowed. The clause, therefore, does not provide Congress with any immunity from criminal prosecution. The Supreme Court, applying the Framers' intent, later declared that the clause also did not provide any privilege from civil process.<sup>64</sup> Hence, civil litigants can compel Members of Congress to appear in a court of proper jurisdiction to defend against civil actions. Furthermore, the Court has so narrowly interpreted the clause that Members of Congress may even be compelled by subpoena to testify in criminal and civil actions while Congress is in session.<sup>65</sup> The arrest privilege requires us to balance the need for the effective functioning of the ordinary justice system with the need for legislators to be able to perform their public duties.

In United States the power of expulsion vests in the House of Congress, by virtue of Article 1 section 5 (2) of the U.S.A Constitution provides "Each House may determine the rules of its proceedings, Punish its members for disorderly behaviour, and with the concurrence of two-thirds, expel a member". The Constitution of America, the power to punish its members for contempt belongs to each House of Congress. Even with regard to non-members, the Congress has the power to punish for contempt. In *McGrain v. Daugherty*,<sup>66</sup> the Supreme Court has ruled that each House has such auxiliary powers as are necessary and appropriate to make the express powers effective. Thus, the congress gets the inherent power to punish even non-members.<sup>67</sup>

The House may discipline its Members without the necessity of Senate concurrence. The most common forms of discipline in the House are now "expulsion," "censure," or "reprimand," although the House may also discipline its Members in other ways, including fine or monetary restitution, loss of seniority, and suspension or loss of certain privileges. In addition to such sanctions imposed by the full House of Representatives, the standing committee in the House which deals with ethics and official conduct matters, the House Committee on Ethics—formerly called the Committee on Standards of Official Conduct—is authorized by House Rules to issue a formal "Letter of Reproval" for misconduct which does not rise to the level of consideration or sanction by the entire House of Representatives. Additionally, the Committee on Ethics has also expressed its disapproval of certain conduct in informal letters and communications to Members.<sup>68</sup> Each House of the Congress has the sole authority to determine what conduct on the part of a Member is "inconsistent with the trust and

62. *Long v. Ansell*, 293 U.S. 76 (1934)

63. *Williamson v. United States*, 207 U.S. 425, 446 (1908)

64. *Supra* 63

65. <http://www.heritage.org/constitution/#!/articles/1/essays/26/privilege-from-arrest>. dated on 09-04-2017

66. (1927) 273 U.S. 135

67. T.S. Raja Gopala Iyengar, "Indian Parliament- A Critical study", Published by the Director Prasaranga, manasagangotri, Mysore, 1972

68. Jack Maskell, Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives, <https://fas.org/sgp/crs/misc/RL31382.pdf>



duty of a member<sup>69</sup> and courts will not interfere with authority of Congress even to make it a legal office.<sup>70</sup> In *Anderson v. Dunn*,<sup>71</sup> in this case court held that each House of Congress has the inherent power to punish a non-member for contempt of its authority, e.g., bribing one of its members or ignoring its process<sup>72</sup> or refusing to answer its inquiries.<sup>73</sup>

#### Conclusion

Article 105 and 194 of the Indian Constitution expressly provided for only two privileges, viz., Clause (1) freedom of speech and; Clause (2) no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given in the House or any publication by or under the authority of the House. Article 105(3) and 194(3) provided that the Member of Parliament and State Legislature enjoyed 'other privileges' of the House of Commons in England on January 26, 1950 until defined by Parliament by law. Ultimately, in 1978, the Parliament deleted the reference made to the House of Commons by making a cosmetic change in Clause 3 of Articles 105 and 194 by way of 44<sup>th</sup> Constitutional Amendment; but in the absence of any codified law, the law relating to the privileges in India is being still governed by the English law which prevailed on 26th January, 1950.

In India the demand for codification of Privileges of Parliament and State Legislature has been raised from time to time both inside and outside parliament, because the independent India shall not have her own code of parliamentary privileges instead of relying upon the uncodified law of the British House of Commons. Sixty six years have elapsed since the Commencement of the Constitution in this long period is sufficient to guide the process of codification of legislative privileges. It is, therefore, urged that steps to codify parliamentary privileges in India should be initiated at the earliest as otherwise it may become very difficult for us to fall back on this ancient British practice which may not have any relevance either in England or in India today. The demand for codification of privileges of Congress does not arise because the U.S.A Constitution provide absolute privileges to the members of Senator and Representatives under article 1 section 6(1) the Freedom of Speech and Debate Clause, Freedom of Arrest and Power to Punish Members and Outsiders under article 1 section 5, therefore there is no need of any codification of privileges of Congress.

<sup>69</sup>. May, 16<sup>th</sup> Edition, p.79

<sup>70</sup>. *Burton v. U.S* (1909), 202 U.S 344(669)

<sup>71</sup>. (1821)6WH 204

<sup>72</sup>. *Jurney v. Maccracken* (1935)294 U.S, 125(150)

<sup>73</sup>. *McGrain v. Daugherty* (1927)273 U.S 135