

QUESTION OF PRIVILEGE

What is Parliamentary Privilege and its scope?

In Parliamentary language, the term 'privilege' means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by the members of each House individually without which they cannot discharge their functions efficiently and effectively. The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of Parliament. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members, and by each House collectively for the protection of its members and the vindication of its own authority and dignity. But they are available to individual members only insofar as they are necessary for the House to perform its functions freely without any let or hindrance. They do not exempt the members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws, unless there are good and sufficient reasons in the interest of Parliament itself to do so.

Main Privileges of Parliament

2. Some of the more important privileges of each House of Parliament and of its members and Committees are freedom of speech in Parliament, immunity to a member from any proceedings in any court in respect of anything said or any vote given by her/him in Parliament or any Committee thereof, 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, prohibition on the courts to inquire into proceedings of Parliament and freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion.

The privilege of freedom from arrest does not, however, extend to preventive arrest or detention under statutory authority by executive order and in criminal cases. Intimation regarding arrest, detention, imprisonment and release etc. of members under such cases has to be immediately communicated to the Speaker, Lok Sabha by the concerned authorities in the prescribed form.

Breach of Privilege

3. When any individual or authority disregards or attacks any of the privileges, rights and immunities, either

of the members individually or of the House in its collective capacity, the offence is called a breach of privilege and is punishable by the House. Besides breaches of specific privileges, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its members or officers, are also punishable as contempt of the House.

Contempt of Parliament

4. 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 her/his duty or which has a tendency, directly or indirectly, to produce such results”. Some of the important types of the contempt of Parliament are— speeches or writings reflecting on the House, its Committees or members; reflections on the character and impartiality of the Speaker in the discharge of her/ his duty, publication of false or distorted report of the proceedings of the House; publication of expunged proceedings of the House, molestation of members on account of their conduct in the House or obstructing members while in the performance of their duties as members or while on their way to or from, attending the House or a Committee thereof, offering bribes to members

to influence them in their Parliamentary conduct, and intimidation of members in connection with their Parliamentary conduct.

Consent of Speaker necessary to raise a question of privilege

5. A member may, with the consent of the Speaker, raise a question involving a breach of privilege or contempt either of a member or of the House or of a Committee thereof.

Notice of question of privilege

6. A member wishing to raise a question of privilege has to give notice in writing to the Secretary-General before the commencement of the sitting by 10.00 hours on the day the question is proposed to be raised. Notices received after 10.00 hours will be deemed to have been received at 10.00 hours on the next day on which the House sits. If the question sought to be raised is based on a document, the notice should be accompanied by the document.

Conditions of Admissibility

7. Right to raise a question of privilege is governed by the following conditions, namely:—

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

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

In giving consent, the Speaker is guided by the above conditions of admissibility of question of privilege and the past precedents relevant to the matter.

8. On receipt of the notice the matter is considered by the Speaker who may either give or withhold consent to the raising of the question of privilege in the House. The Speaker, however, before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether consent should be given to the raising of the matter in the House, may give an opportunity to the person incriminated to explain her/his case to the Speaker. The member concerned is then informed of the Speaker's decision. After the decision of the Speaker of withholding consent to the raising of the matter in the House is conveyed to the member, the member is not permitted to raise the matter in the House. However, if the member is not satisfied, she/ he may see the Speaker in her/his Chamber to explain the case.

How to raise a question of privilege?

9. If the Speaker has given 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 Speaker, 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. If objection to leave being granted is taken, the Speaker 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 Speaker declares that leave is granted; otherwise the Speaker informs the member that the House has not given leave for raising the matter.

Leave to raise a question of privilege in the House can be asked for only by the member who has given notice of the question of privilege. No member can be authorized by the said member in this regard.

10. A question of privilege is accorded priority over other items in the List of Business. Accordingly, leave to raise a question of privilege is asked for after the questions and before other items in the List of Business are taken up.

Urgent matters requiring immediate intervention of the House may, however, be allowed by the Speaker to be raised at any time during the course of a sitting after the disposal of questions but such occasions are rare.

Consideration of a question of privilege

11. 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 for examination, investigation and report. The usual practice is, however, to refer the matter of complaint to the Committee of Privileges, and the House defers its judgement until the report of the Committee has been presented to the House. 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 of the matter by deciding not to proceed further in the matter.

Reference to Committee of Privileges by Speaker

12. The Speaker 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 Speaker need not bring the matter before the House for consideration and decision as to whether the matter be so referred to the Committee. Reports of the Committee on matters so referred are presented to the Speaker who may direct that the Report be laid on the Table of the House.

Power of Speaker to give Directions

13. The Speaker may issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the Committee of Privileges or in the House.

[Questions of privilege are governed by article 105 of the Constitution and Rules 222—228 and 229—231 of the Rules of Procedure and Conduct of Business in Lok Sabha.]

15

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**LOK SABHA SECRETARIAT
NEW DELHI**

T.O. No. 91

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Published under Rule 382 of the Rules of Procedure and
Conduct of Business in Lok Sabha (Sixteenth Edition)
and printed by Jainco Art India, New Delhi-110 005.

PREFACE

This Abstract is part of the Parliamentary Procedure Abstracts Series and describes the procedure regarding question to privilege. It is based on the Rules of Procedure and Conduct of Business in Lok Sabha, the precedents and rulings given by the Chair from time-to-time. It is intended to serve as a handy guide for ready reference.

The information contained in this Abstract is, however, not exhaustive. It will, therefore, be prudent to refer to and rely on the original sources for full information.

NEW DELHI

Secretary General