

V

THE POWERS AND PRIVILEGES OF THE LORDS AND THE COMMONS

Both Houses of Parliament enjoy certain privileges in their collective capacity as constituent parts of Parliament and which are necessary for the support of their authority and for the proper exercise of their functions. Besides the privileges enjoyed collectively as members of the two Houses of Parliament, there are other privileges enjoyed by members in their individual capacity and which are intended to protect their person and secure their independence and dignity.

SECTION I

(I) PRIVILEGES OF PARLIAMENT

(1) **Privileges of the House of Commons.**—The right to exclude strangers and to debate within closed doors is one of the privileges claimed by the House of Commons. The origin of this privilege lies in the existence of two different circumstances. One circumstance related to the seating arrangements for members in the House of Commons, which was so defective that strangers and members of Parliament were often mixed together. The result was that the strangers were often counted along with the members in divisions. To prevent this, the House claimed the right to exclude strangers. The second circumstance related to the system of espionage practised by the King over members of the House of Commons. In those days, as reporting of the speeches by the members in the House had not become systematic the King was anxious to know who were his friends and who were his enemies, employed spies, whose duty it was to report to the King the speeches made by members on the floor of the House. This was followed by intimidation of the members by the King or by other acts of displeasure, which had the effect of curtailing the independence of the members. And the only way by which the House could protect itself against the system of espionage practised by the King was to claim the right to exclude strangers.

Under this privilege it did not follow that strangers could not enter the House and listen to the debates. As a matter of fact, they did enter and listen to the debates. The effect of the privilege was that if a member took notice of their presence, the Speaker was obliged to order them to withdraw. This worked inconveniently because the objection of one member to the presence of strangers was enough to compel the Speaker to order them to withdraw. In 1875, therefore, the rule was altered by a resolution of the House, which prescribed that if any member took notice of the presence of the strangers or to use technical language rose to address the Speaker "Sir, I spy strangers", the Speaker shall forthwith put the question that strangers be ordered to withdraw without permitting debate or amendment and take the sense of the House and act accordingly. This resolution while retaining the privilege of excluding strangers, makes its exercise subject to the wishes of the majority of the House, and not to the caprice of an individual member. The rule, however, gives the Speaker the power to order the withdrawal of strangers at any time on his own initiative and without a motion from any member of the House.

The House of Commons claims the privilege of secrecy of debates and have the right to prohibit the publication of their debates and their proceedings. In 1771, an incident occurred which put the privilege beyond debate. A certain printer who resided in the city of London printed the debates of the Commons without their permit. The Commons having taken offence at this breach of their privilege, sent a messenger under the authority of the Speaker to arrest the printer. The printer in his turn handed over the messenger of the House of Commons to the custody of a constable for assaulting him in his own house. In the criminal proceedings that took place, the Mayor and the two aldermen of the city of London who constituted the bench held that the warrant of arrest issued by the House of Commons was not operative within the city on account of its charter and committed the messenger of the Commons though they left him out on bail. The Commons sent for the Mayor and the aldermen who constituted the bench and their clerk who recorded the recognisance of the messenger in his book. They erased from the book

the entry relating to the messenger's recognisance by tearing the page and committed the Mayor and the aldermen to the Tower of London for challenging the authority of the Warrant. Since then no one has ventured to offend against the privilege of the Commons relating to the secrecy of debates. The reports of the debates which one sees today are made on sufferance and published on sufferance, and they could be prohibited any time by the order of the House in that behalf. This was done on some occasions during the last war when many subjects were discussed on the floor of the House in secrecy without any reports being published of the debates.

Another privilege which the House of Commons claims is the right to provide for the proper Constitution of the House. Under this privilege, falls the consideration of three distinct questions.

(1) Filling of Vacancies.—While the holding of a general election for the summoning of a new Parliament is a Prerogative of the King, the filling up of vacancies during the continuance of a Parliament is a privilege of the House of Commons. Consequently, when a vacancy occurs, the writ for the return of a member to supply the vacancy is issued on a warrant by the Speaker in pursuance of an order by the House and not in pursuance of an order from the King. If Parliament is not sitting when the vacancy occurs, the Speaker is authorised to issue the writ subject to certain conditions.

The second question that falls within this privilege is the determination of disputed elections. This question formed for a long time a bone of contention between the King on the one hand and the Commons on the other. Each party claimed the right for itself to the exclusion of the other. Originally the writ issued to a constituency for an election was returned to Parliament, thereby recognizing the right of the Commons to fill a vacancy in that particular constituency. Since the reign of Henry IV, it was returned to Chancery, thereby recognizing the right of the King to fill the vacancy. The matter thus alternated till 1604 when the Commons insisted that the right was theirs and a quarrel arose between them and James I. In that year, the King James I issued a proclamation directing that no bankrupt or out-law be elected to

Parliament. The County of Bucks elected one Mr. Goodwin. He was an outlaw and the King declared his election void and issued another writ. And Mr. Fortesque was returned. The Commons on their own motion resolved that notwithstanding the avoidance of his election by the King, Mr. Goodwin was duly elected a member of the House. The King on the other hand claimed the right to determine the issue. At a conference held between the King, the Lords and the Commons, the Lords advised the King to accept defeat and recognise the right of the Commons. The trial of disputed elections by the House became a source of trouble to the House and anxiety to the candidates because all such trials became matters of party politics and in 1868 the House was pleased by law to leave the adjudication of disputed elections to the Court of Law.

The third right which falls within the purview of this privilege is the right of the House to expel a member who has behaved in a manner which would render him unfit to sit in the House. Expulsion is not a disqualification and the member expelled may be again elected. It must be borne in mind that the right to be elected does not carry with it the right to sit. To be elected is a favour derived from the electors. To be allowed to sit is a favour within the competence of the House and cases have occurred in which persons have been duly elected to the House of Commons but who have not been able to take their seats in the House. The case of Wilkes is an illustration in point. Wilkes was elected four times in succession by the County of Middlesex and on all the four times, he was refused by the House a seat. The next important privilege claimed by the House of Commons is the right to exclusive cognisance of matters arising within the House. Under this privilege, the House has the exclusive right to regulate its internal proceedings and concerns and the mode and manner of carrying on its business and that no Court could take cognisance of that, which passes within its walls. The nature and extent of this privilege are well-illustrated by the case of *Bradlaugh vs. Gosset*. The facts of this case are simple. On the 3rd of May 1880, Mr. Bradlaugh, who was elected a member from Northampton claimed to make the affirmation instead of the oath as he was an atheist. A Committee of the House of Commons

reported that affirmation was confined to proceedings in a Court of Law and that the members of Parliament could not resort to it. Oath was the only thing that was open to them. After this report, Mr. Bradlaugh came to the Speaker's table to take the oath. The house, however, objected on the ground that it would not be binding upon his conscience, and that it would be a mere formality. Another Committee was appointed to report whether Mr. Bradlaugh should be permitted to take the Oath. The Committee reported that he should not be permitted to take the oath but recommended that he should be allowed to affirm subject to its legality being tested in a Court of Law. In accordance with this, a motion was made to allow Mr. Bradlaugh to affirm to which an amendment was made disallowing him either to affirm or to take oath. Bradlaugh, however, insisted upon his right to take the oath, but the Speaker asked him to withdraw. He refused and the sergeant was asked to remove Mr. Bradlaugh. A scuffle ensued between Mr. Gosset, the sergeant and Mr. Bradlaugh in which Mr. Bradlaugh was very badly injured. A standing order was passed allowing affirmation. Mr. Bradlaugh affirmed but the Court declared that affirmation was not permissible to a member of Parliament. His seat was thereafter vacated. Re-elected again in 1881, the same scene was repeated. Whenever he came to the table to take the oath, the House resolved that he be not allowed to do so. On one occasion by the direction of the Speaker, Mr. Bradlaugh was conducted by Sergeant Gosset beyond the precise of the House and subsequently expelled. Bradlaugh brought an action against Gosset in the Queen's bench division for an injunction to restrain Gosset from using force to prevent his taking the oath. The House made the usual order for the defence of the sergeant. The Queen's bench division refused relief to Mr. Bradlaugh on the ground that the order under which Gosset acted related to the procedure of the House and that the Court had no power to interfere in such a matter.

The House of Commons claims the privilege to protect its dignity and authority. It would be in vain to attempt any enumeration of the acts which might be construed by the House as an insult

or an affront to its dignity. But certain principles may be laid down :

- (1) Disobedience of any of the orders or rules which regulate the proceedings of the House is a breach of the privilege. Publication of debates contrary to the resolution of the House, wilful misrepresentation of the debates, publication of evidence taken before a select Committee until it has been reported to the House are examples of the breach of this rule.
- (2) Disobedience to particular orders. Resolutions are agreed to at the beginning of each session which declare that the House will proceed with the utmost severity against persons who tamper with witnesses in respect of evidence to be given to the House or to any Committee thereof, who endeavour to deter or hinder persons from appearing or giving evidence and who give false evidence before the House on any Committee thereof, would be guilty of breach of privilege by reason of disobedience to particular orders.
- (3) Indignities offered to the character or proceedings of Parliament or upon the honour of the House by libellous reflections would be a breach of the privilege. It is not to be supposed that only members of the public can be held guilty for a breach of privilege under this rule. Even members of Parliament could be made punishable if they commit the breach of this rule. In 1819, Mr. Hobhouse, who was an M.P., denounced the resistance offered by the House of Parliamentary Reforms, in a pamphlet which he published anonymously. After his having acknowledged himself as the author of the pamphlet, the House held him guilty of the breach of privilege. In 1838, another instance occurred when Mr. O'Connell an M.P. at a public meeting laid a charge of foul perjury against members of the House in the discharge of their judicial duties in election committees.
- (4) Interference with the members of the House in the discharge of their duties as members of the House.

It is an infringement of the privilege of the House to assault, insult or menace any member of the House in his coming or going from the House or on account of his behaviour in Parliament or to endeavour to compel members by force to declare themselves in favour of or against any proposition then pending or expected to be before the House or bribing members of parliament to vote in a particular manner.

SECTION II

PRIVILEGES OF INDIVIDUAL MEMBERS

(1) *Freedom from arrest.*—This privilege guarantees freedom from arrest for members during the continuance of the session and 40 days before the commencement and after its conclusion. Originally this privilege was not only enjoyed by members but also extended to their servants and their estates. It is now restricted to members only and that too to their persons.

(2) *Freedom of speech.*—The statute of William and Mary S2 C2 enacts that members shall enjoy complete freedom of speech in Parliamentary debates and proceedings and that nothing said by them shall be questioned or impeached in any Court or place out of Parliament.

SECTION III

METHODS OF PUNISHING BREACHES OF PRIVILEGE

There are five different ways in which the House can punish persons who are guilty of a breach of privilege. In cases of breach of privilege which are not grave, the House may release a person arrested for breach of privilege on mere admonition if he is prepared to tender apology. Or secondly, may release him on a reprimand. In cases of a grave character, the House can commit him to prison or inflict a fine or expel him. It is obvious that the last form of punishment namely, expulsion, can apply only to members of parliament who are guilty of a breach of privilege.

SECTION IV

PRIVILEGES OF THE HOUSE OF LORDS

The privileges of the House of Lords are more or less the same as those of the Commons. It is, therefore, unnecessary to discuss them separately in detail. There is only one point of difference between the privileges of the Lords and the Commons which need to be mentioned and which relates to the source of their privileges. The privileges of the Commons are a gift from the

King. They have to be claimed by the Speaker in the name of the Commons in the beginning of every newly elected Parliament. The privileges of the Lords belong to them in their own right. They are not derived from the King.

***SECTION V**

OFFICERS OF THE HOUSE

The House of Lords and the House of Commons possess certain Officers for the general conduct of their business and for the enforcement of their privileges. For the sake of clarity it might be desirable to discuss the status and the functions of the Officers of the two Houses separately.

†SECTION VI

THE HOUSE OF COMMONS

(1) **The Speaker.**—The Speaker is now elected by the House of Commons at its first meeting after the general election and continues to hold the place till the life-time of the Parliament unless removed from Office by a resolution. Originally the King claimed and exercised a virtual right of selection. In 1679, there arose a conflict between the Charles II and the newly elected House of Commons on the right to choose the Speaker. The Commons chose Sir Edward Sey Mour and the King declined to accept him. The King suggested his own nominee to the Commons and the Commons in their turn refused to have him. Eventually a compromise was arrived at, and another person who was an independent choice of the Commons was adopted by them as their Speaker. To him the King raised no objection. From this time onward, the right of the Commons to chose their own Speaker was not contested by the Crown.

SECTION VII

THE FUNCTIONS OF THE SPEAKER

The Speaker of the House of Commons functions in three distinct capacities. As the Spokesman and representative of the House he performs the following duties.—

- (1) He demands its privileges and communicates its resolutions of thanks, ensures admonitions and reprimands.

* Original No. is Section VI—ed.

† Section number is not mentioned in M.S.—ed.

- (2) He issues warrants of commitments whenever a person is punished for breach of privilege. He issues warrants for attendance at the bar for being rebuked or sentenced by the House or for any other purpose as provided for in the order of the House.
- (3) He issues writs for filling up vacancies.—The Parliament Act of 1911 has imposed upon the Speaker a new function which did not belong to him before. Under the Act, he the functions as a judicial officer and in that capacity he has to certify whether any particular bill is a money-bill or not

The Speaker is also the Chairman of the House whenever the House meets to carry on its business. In his capacity as a Chairman he is required:

- (1) To maintain order in debates.
- (2) To decide questions upon points of order.
- (3) To put the question under discussion to the House.
- (4) To declare the determination of the House on the question.

SECTION VIII

OFFICERS UNDER THE SPEAKER

There are two Officers under the Speaker of the House of Commons. One is called the clerk of the House of Commons and the other is called the Sergeant at arms. The duty of the clerk of the Commons is to maintain a record of the proceedings of the House. He maintains what is called the journal of the House of Commons in which are noted all matters brought before the House and discusses by it in their order from day-to-day.

The Sergeant at arms is a sort of a Police Officer whose duty is to enforce the orders of the House and the Speaker in relation to internal order and to breach of privilege.

THE HOUSE OF LORDS

The Speaker.—The Speaker of the House of Lords is not an elected person and the House of Lords has no right to elect its own Speaker. The Speaker of the House of Lords is by prescription the Lord Chancellor or the Lord Keeper of the Great Seal, who can act as Speaker in the absence of the Lord Chancellor. In their absence the place is taken by any one of the Deputy-Speakers

of whom there are always several appointed by the King's Commission and if they should all be absent, the Lords elect a Speaker for the time being. The Speaker of the House of Lords need not necessarily be a Peer, and that office may be discharged by a commoner and has been so discharged when a commoner happened to be the Lord Keeper of the Great Seal or when the Great Seal was in commission. It is singular that the President of this deliberative body is not necessarily a member of it, and the Woolsack on which the Speaker sits is treated as being outside the limits of the House of Lords, so as to permit the office being discharged by a person who is not a member of the House.

THE DUTIES OF THE SPEAKER IN THE LORDS

The position of the Speaker of the House of Lords is totally different from the position of the Speaker of the House of Commons. There is nothing common between them as far as their authority and function is concerned except that both are Chairmen of a deliberative assembly. But so far as their function and authority is concerned, their position is fundamentally different. This is clear from standing order No. 20 which defines the duties of the Lord Chancellor as a Speaker of the House of Lords. The standing order says: "The Lord Chancellor when he speaks to the House is always to speak uncovered and is not to adjourn the House or to do anything else as mouth of the House, without the consent of the Lords first had, except the ordinary thing about bills which are of course wherein the Lords may likewise overrule, as for preferring one bill before another and such like, and in case of difference among the Lords, it is to be put to the question, and if the Lord Chancellor speak to anything particularly, he is to go to his own place as a Peer" and be it noted that the place of the Lord Chancellor if he is a Peer is to the left of the Chamber. It is clear from the standing order how limited is the authority of the Speaker in the Lords.

- (1) In the enforcement of rules for maintaining order the Speaker of the House of Lords has no more authority than any other Peer.

- (2) He cannot decide points of order as is done by the Speaker of the House of Commons. If he is a Peer he may address the House on any point of order raised. But the decision on it is the decision of the Majority of the House.
- (3) Owing to the limited authority of the Speaker in the Lords in directing the proceedings of the House, the right of a Peer to address the House depends not upon him as it does in the House of Commons but depends solely upon the will of the House. When two Peers rise at the same time, unless one immediately gives way to the other, the House calls upon one of them to speak and if each is supported by a party, there is no alternative but division. The issue is not decided by the Speaker, as is done in the House of Commons.

The result of his imperfect powers is that a Peer who is disorderly is called to order by another Peer perhaps of an opposite party and that an irregular argument is liable to ensue in which case, each last Speaker imputes disorder to his predecessor and recrimination takes the place of an orderly debate with the Lord Chancellor sitting but powerless to intervene, as his power is limited to the putting of questions and carrying on other formal business.

OTHER OFFICERS

There are three other officers under the Lord Chancellor as Speaker of the House of Lords.

- (1) **The clerk of the Parliament.**—His duties are similar to those of the clerk of the House of Commons, namely, to keep the record of the proceedings and judgments of the House of Lords in a journal.
- (2) **The Gentleman Usher of the Black rod,** whose duties are analogous to those of the Sergeant at arms in the House of Commons. He does the policing of the House.
- (3) **The Sergeant at arms** is the attendant on the Lord Chancellor.

