

**COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

12

TWELFTH REPORT

ON

**“Requests from Courts of Law and investigating agencies,
for documents pertaining to proceedings of House, Parliamentary Committees or which are in the custody of
Secretary General, Lok Sabha, for production in Courts of Law and for investigation purposes”.**

**(Presented to Speaker, Lok Sabha on 28 April, 2008)
(Laid on the Table on 30 April, 2008)**

SEAL

**LOK SABHA SECRETARIAT
NEW DELHI**

April, 2008/Vaisakha, 1930 (Saka)

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**PERSONNEL OF THE COMMITTEE OF PRIVILEGES
(FOURTEENTH LOK SABHA)**

Shri V.Kishore Chandra S.Deo - Chairman

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SECRETARIAT

- | | | |
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| 2. Shri Ravindra Garimella | - | Deputy Secretary |
| 3. Shri Ashok Sajwan | - | Deputy Secretary-II |
| 4. Smt. Geeta Parmar | - | Legislative Officer |

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**TWELFTH REPORT OF THE COMMITTEE OF
PRIVILEGES
(FOURTEENTH LOK SABHA)**

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I. INTRODUCTION

I, the Chairman of the Committee of Privileges, having been authorised to submit the Report on their behalf, present this their Twelfth report to the Speaker on the subject **“Requests from Courts of Law and investigating agencies, for documents pertaining to proceedings of House, Parliamentary Committees or which are in the custody of Secretary General, Lok Sabha, for production in Courts of Law and for investigation purposes”**.

2. The Committee held seven sittings on the subject. The relevant minutes of these sittings form part of the Report and are appended hereto.

3. At their first sitting held on 13 September, 2006, the Committee directed the Secretariat to prepare a note on the subject **“Requests from Courts of Law and investigating agencies, for documents pertaining to proceedings of House, Parliamentary Committees or which are in the custody of Secretary General, Lok Sabha, for production in Courts of Law and for investigation purposes”**, for their consideration.

4. At their second sitting held on 10 October, 2006, the Committee considered the note prepared by the Secretariat on the subject and

approved the same. The Committee authorized the Chairman to request the Speaker, Lok Sabha to refer the matter to the Committee of Privileges for consideration and report.

5. On 10 November, 2006, the Speaker, Lok Sabha, in exercise of his powers under rule 227 of the Rules of Procedure and Conduct of Business in Lok Sabha, referred the matter to the Committee of Privileges for consideration and report.

6. The Committee at their third sitting held on 15 November, 2006 deliberated on the matter and directed the Secretariat to prepare a questionnaire and background note on the subject.

7. At their fourth sitting held on 23 July, 2007, the Committee took up for consideration, the draft questionnaire together with the background note prepared by the Secretariat on the subject which was proposed to be sent to Parliaments of foreign countries for eliciting their views with regard to the procedure adopted in their Parliaments and approved the same. The Committee, thereafter, directed the Secretariat to send a copy each of the questionnaire, together with a background note, to the Foreign Parliaments for eliciting their opinion on the matter.

8. At their fifth sitting held on 16 November, 2007, the Committee further deliberated on the above matter and considered analysis of responses to the questionnaire received from Foreign Parliaments, which was prepared by the Secretariat.

9. At their sixth sitting held on 16 April, 2008, the Committee considered the broad scheme of Chapterisation of the draft Report on the matter and approved the same. The Committee decided to consider the draft Report on the matter at their next sitting. The Committee directed the Secretariat to prepare the draft Report and circulate the same so that they could consider it at their next sitting.

10. At their seventh sitting held on 28 April, 2008, the Committee considered their draft Report and adopted the same.

II. FACTS

11. At present, requests received from Courts of Law for documents relating to proceedings of the House etc., for production in Courts are dealt with as per the procedure laid down in the First Report of the Committee of Privileges (Second Lok Sabha). Such requests are acceded to only with the leave of the House. Further, requests from investigating agencies for documents are dealt with as per procedure laid down in First and Second Reports of Committee of Privileges (Eighth Lok Sabha).

12. The Committee of Privileges, at their sitting held on 10 October, 2006, deliberated upon the matter regarding requests from Courts of Law and investigating agencies for documents pertaining to proceedings of House/Committees or documents which are in the

custody of Secretary General, Lok Sabha for production in Courts of Law or for investigative purposes. The Committee observed that the procedure for dealing with requests from the Courts of Law for documents pertaining to House/Committees or which are in the custody of the Secretary General, was laid down way back in 1957, during Second Lok Sabha, making it incumbent upon the Courts, or parties to the legal proceedings to *inter- alia* specifically state the purpose for which the documents are required.

13. The Committee, however, felt that with the coming into force of the Right to Information Act, 2005 with effect from 15 June, 2005, the position has materially changed. In terms of sub-section (2) of Section 6 of the Act “An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.” Any person can make a request for obtaining information by making a written application with the prescribed fee to the designated Information Officer. Section 2(f) of the Act says ‘information’ means any material in any form, including records, documents, reports, papers, data material etc.

14. After due deliberations, the Committee were of the view that it was about time that the procedure for dealing with the requests for documents relating to proceedings of the House, its Committees etc. received from Courts of Law and investigating agencies, needed to be given a fresh look, particularly in the light of the provisions of the Right to Information Act, 2005.

15. The Committee accordingly took up the matter for consideration after it being referred to the Committee of Privileges by the Speaker, Lok Sabha, for consideration and report.

III. QUESTIONNAIRE

16. The Committee, with a view to ascertaining the procedure adopted in Foreign Parliaments with regard to dealing with requests from courts and investigating agencies for documents pertaining to proceedings of House/Committees or in the custody of the Clerk of the House, sent the following questionnaire to 35 Foreign Parliaments:

"Q. 1. Have there been any instances in your Parliament/Legislature where requests were received from Courts of Law/investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House?

Q. 2. If yes, are there any provisions in the Constitution/Statute/Rules of Procedure/Standing Orders etc., laying down the procedure for dealing with such requests? If so, kindly give details and also enclose

extracts of relevant Constitutional/Statutory or other provisions.

Q. 3. If no, have any conventions been evolved in this regard? If yes, kindly give details.

Q. 4. If answer to question Nos. 2 & 3 is **No**, kindly state the manner in which requests from Courts/investigating agencies for documents pertaining to proceedings of House/Committees etc., are dealt with?

Q. 5. Is there any Statute/Law in your Country providing a right to a citizen to seek any information pertaining to or copy of documents in the custody of a public office?

Q. 6. If the answer to Question 5 is **Yes**, has there been any conflict between the provisions of such a law and Constitutional/Statutory provisions/conventions, if any, governing requests from Courts etc., for documents? If so, how such conflicts are resolved?

Q. 7. Any other comments which you may like to offer in the matter?"

17. The questionnaire was sent to the following Foreign Parliaments:

1. House of Representatives, Antigua

2. House of Representatives, Parliament of Australia
3. House of Assembly, Barbados
4. National Assembly of Belize, Central America
5. House of Assembly, Bermuda
6. National Assembly, Botswana
7. The Senate of Canada
8. House of Commons, Canada
9. House of Representatives, Republic of Cyprus
10. House of Representatives, Parliament of Fiji
11. Office of Parliament, Accra(Ghana)
12. National Assembly, Guyana
13. Houses of Parliament, Jamaica
14. National Assembly of Kenya
15. The House of Assembly Kingstown, St. Vincent & the Grenadines.
16. House of Representatives, Malaysia
17. Mauritius National Assembly
18. Legislative Assembly, New South Wales
19. Legislative Council, New South Wales
20. House of Representatives, New Zealand
21. National Assembly, Nigeria
22. The Senate, Nigeria
23. The Legislative Assembly, Samoa
24. National Assembly of Seychelles
25. Parliament, Freetown, Sierra Leone
26. Parliament, Singapore
27. National Assembly, Republic of South Africa

28. Parliament, Sri Lanka
29. Parliament, St. Lucia
30. National Assembly, Tanzania Parliament
31. The Senate of Trinidad & Tobago
32. Tynwald, Isle of Man
33. National Assembly of Uganda
34. House of Lords, U.K.
35. House of Commons, U.K.

The replies to the above mentioned questionnaire, however have been received from 22 Foreign Parliaments/Legislative Bodies. [List of persons/institutions from whom responses have been received may please be seen at Appendix I. Original responses may pl. be seen at Appendix II]

IV. Position in Foreign Parliaments as per the response received to the questionnaire

18. The position stated by the Foreign Parliaments in response to Q. Nos. 1 to 4 is as under:

- Q. 1. *Have there been any instances in your Parliament/Legislature where requests were received from Courts of Law/investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House?*
- Q. 2. *If yes, are there any provisions in the Constitution/Statute/Rules of Procedure/Standing Orders etc., laying down the procedure for dealing with such requests? If so, kindly give details and also*

enclose extracts of relevant constitutional/statutory or other provisions.

Q. 3. *If no, have any conventions been evolved in this regard? If yes, kindly give details.*

Q. 4. *If answer to question Nos. 2 & 3 is No, kindly state the manner in which requests from Courts/investigating agencies for documents pertaining to proceedings of House/Committees etc., are dealt with?*

House of Representatives, Antigua have not come across any instance in their Parliament/Legislature where requests were received from the Courts of Law and investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House. However, if courts or investigating agencies require documents regarding proceedings of the House, called Hansards, the pertinent Hansard, *per se*, will be officially stamped and signed by the Clerk of the House, to show authenticity of the document.

Parliament of Australia, House of Representatives, Office of the Clerk of the House have replied in affirmative with regard to receiving requests from the Courts of Law and investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House. They are further stated to be having well established practices in these matters. A petition seeking permission to produce specified records

into evidence may be received, but a request by letter or e-mail is also sufficient for consideration to be given to such a request. These requests always come from or on behalf of a party to proceedings, rather than from a court itself. The request is first considered by officers, and the Speaker is briefed on it. The House has not abandoned the position that approval should be given for such matters, although it is recognized that there is judicial authority for the view that such permission is not necessary. If a motion is to be moved, it is drafted by House staff and sent to the Leader of the House, together with background information. The Manager of Opposition Business is also informed about the matter. It is not usual for such motions to be debated; they are usually agreed to without any discussion.

By conveying the decision of the House to the petitioner, it is made clear that the court is obliged to ensure that the provisions of Article 9 of the Bill of Rights are observed – *i.e.* the use that can be made of 'parliamentary material' is quite limited.

If the record sought by a party is related to a Committee, it is usual for the request to be referred to the Committee concerned, so that the Committee have an opportunity to express a view before the House takes a decision on the matter.

House of Representatives, Parliament of Australia (Standing Committee of Privileges),* have informed that they have received a number of requests from Courts and investigating bodies, for

* Questionnaire had not been addressed to the Committee. Reply has been furnished *suo motu*

documents pertaining to proceedings of House and Committees. They have supplied certain references in support of their statement. As regards the constitutional provisions that deal with such requests, they have informed as under:

Article 9 of the Bill of Rights 1689 prevents proceedings from being examined or questioned or used to support a cause of action. Apart from court proceedings in respect of civil and criminal matters, the issue of references to parliamentary records has also arisen in respect of Royal Commissions, and the documents involved have included the votes and proceedings, the Hansard report of proceedings, documents presented in the House, a Committee report, the transcript of Committee evidence, documents submitted to parliamentary Committee, and the documents related to a speech in the Senate.

It has been added that Article 9 protects not only Members, but other participants also in 'proceedings in Parliament'. For example, witnesses who give evidence to parliamentary committees.

Section 3 of the *Parliamentary Privileges Act 1987* defines the terms 'court' (a federal state or territory court) and 'tribunal' (essentially a person or body having power to examine witnesses on oath).

In 1987 the Parliament enacted legislation to restore and enshrine the traditional interpretation of Article 9, which it believed

should be upheld in the interests of the Parliament. Section 16 of the Parliamentary Privileges Act provides, *inter alia*:

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

(4) A court or tribunal shall not -

(a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or

(b) admit evidence concerning any oral evidence taken by a House or a Committee in camera or

require to be produced or admit into evidence a document recording or reporting any such oral evidence, unless a House or a Committee has published, or authorized the publication of, that document or a report of that oral evidence.

The Parliamentary Privileges Act provides that in relation to proceedings that relate to a question arising under section 57 of the Constitution (provision relating to disagreements between the two Houses about the passage of legislation) or the interpretation of an Act, neither the Parliamentary Privileges Act nor the Bill of Rights shall be taken to prevent or restrict the admission in evidence of a record of proceedings published by or with the authority of the House or a Committee, or the making of statements, submissions or comments based on that record. Similar provisions apply in relation to a prosecution for an offence against the Parliamentary Privileges Act or an Act establishing a Committee.

The Senate of Canada have stated not to have received any request from Courts of Law or investigating agency for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House. A request was, however, made by the Police. After conducting an internal investigation and concluding that Senator had used Senate resources for personal purposes, the Senate referred the matter to the Police and provided documentation. When the Police decided to conduct an investigation and, during course of that investigation, requested further information,

the Steering Committee of the responsible Senate Committee declined to provide the requested material. The Police also did not follow up.

As regards any provisions in the Constitution/Statute/Rules of Procedure/Standing Orders etc. to deal with such requests, it has been informed that debates and journals of the Senate and the evidence and minutes of Senate Committee proceedings are public documents and there is no express provisions for dealing with requests to use these publications for court purposes; nor there are any express provisions to deal with requests to access transcripts of in camera proceedings. The law of parliamentary privilege operational in the Senate, that no proceedings in Parliament shall be questioned in any court or place outside Parliament, is a limitation that would be taken into account in considering such a request. Chapter 2:06 of the Senate Administrative Rules is entitled "Access to information & Privacy" and governs the Senate's conduct with respect to requests from public information about the Senate or Senators. Regarding the manner in which such requests would be dealt with, it has been mentioned that such requests are rare and would be taken on case to case basis like whether such requests would be dealt with by the Committee or officer or it would require a decision of the whole Senate.

House of Commons, Canada have stated to have received a number of requests for documents in the possession of the House of Commons or its Committees from administrative bodies, investigators

and lawyers for use in court proceedings. In all recent cases, the House of Commons have affirmed its position that such documents form part of a parliamentary proceedings and as a result are protected by parliamentary privilege. The most notable requests include a request, in 2005 by the public Inquiry into alleged misuse of sponsorship funds (“the Gomery Commission”) and in 2007, from Royal Canadian Mounted Police during an investigation of alleged perjury by one of its Senior Officers before a parliamentary Committee.

Though there are no specific provisions in the Constitution or Statute that deal with such requests, there are provisions in Parliament of Canada Act that establish protection of the House and its Members for matters contained in parliamentary papers. In addition, Supreme Court of Canada has confirmed that the provisions of the Bill of Rights, 1689, form part of the parliamentary privileges enjoyed by the House of Commons. The courts have affirmed that Article 9 of the Bill of Rights is the governing law in Canada too which provides: “That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”. As regards any convention to deal with such requests it has been stated that much of the position in Canada falls to be determined by the general law as it relates to parliamentary privilege, including the effects of Article 9, the right of the House of Commons to control its internal affairs, and the position of the House of Commons to enjoy constitutional independence from the court and the Crown. In the event when a court, tribunal, commission or

investigators request for documents that form part of a parliamentary proceedings, they must request that House of Commons waive its Privileges over such documents or evidence. The matter is then referred to a Committee of the House, usually the one in which the evidence was presented. Since the privilege in question belongs to the House of Commons itself, the entire House must vote on the question, usually by adopting the report of the Committee to which the question was referred.

House of Representatives, Republic of Cyprus have stated that Courts and police authorities frequently make requests for documents pertaining to proceedings of House that may be needed in a Court case or hearing. Though there is stated to be no specific law or provision regarding the procedure that is followed in instances when a Court or other investigating authority requests for documents pertaining to the proceedings of the House, the Standing Order of the House of Representatives regulates all matters pertaining to the functioning of the House and its Committees. Such requests are then examined on case-to-case basis and decides whether it shall disclose pertinent information for judicial purposes and/or inquiries.

Parliament of Fiji have no formal instance in this regard. However, there is stated to be a provision in the “Parliamentary Powers and Privileges Act dealing with such requests. Section 16 states:

“Evidence of Proceeding in House of Representatives or the Senate or committee not to be given without leave.”

16(1) Save as provided in this Act, no member or officer of the House of Representatives or the Senate and no person employed to take minutes of evidence before the House of Representatives or the Senate or any committee shall give contents of any document laid before the House of Representatives or the Senate or such committee, as the case may be, or in respect of any proceedings or examination held before the House of Representatives or the Senate or such committee, as the case may be, without special leave of the House of Representatives or the Senate first had and obtained.

(2) The special leave referred to in subsection (1) may be given during a recess or adjournment by the Speaker or the President or, during any dissolution of the House of Representatives or the Senate, by the "Governor-General."

Office of Parliament, Accra(Ghana) have quoted the following instances in this regard:

- (i) The Clerk to Parliament was summoned to give evidence and also produce document before Court in respect of a loan agreement approved by Parliament.
- (ii) The Serious Fraud Office, a State Investigative Agency requested the Public Accounts Committee of Parliament to provide it with information regarding alleged tax evasion by a telecommunication company which was under investigation by both the institutions(*i.e.* Serious Fraud Office and Public Accounts Committee of Parliament).
- (iii) There was a request to Parliament by the Commission of Human Rights and Administrative Justice to furnish it with information regarding loans guaranteed by the Government of Ghana for MPs to purchase means of transport.

As regards constitutional provisions that deal with such requests, references has been made to Article 121 (4) of the 1992 Constitution of the Republic of Ghana to deal with such requests which provides that:

“(4) an answer by a person to a question put by Parliament shall not be admissible in evidence against him in any civil or criminal proceedings out of Parliament, except proceedings for perjury brought under the criminal law”.

The provisions of Order 26 (3) of the Standing Orders of the Parliament of Ghana are similar in content and effect as the above constitutional provision and is as follows:

“(3) an answer by any person to a question put by Parliament shall not be admissible in evidence against him in any civil or criminal proceedings out of Parliament, unless they are proceedings for perjury brought under the criminal law”.

In case such requests are not backed by constitutional or Statutory provisions, they are normally made to the Speaker who in his considered view gives directives for the respective Parliamentary authorities to respond appropriately. The Speaker in turn determines as follows:

- (i) If in his opinion it is of a privileged nature, he refers the matter to the Privileges Committee for advice, otherwise

- (ii) He directs the Clerk or a Committee of the House to respond.

National Assembly, Republic of Kenya have replied in affirmative as far as receiving of requests from the Courts of Law and investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House is concerned. There are stated to be no constitutional or statutory provisions or rules laying down the procedure for dealing with such requests. Neither conventions have been evolved in this regard. As regards the manner in which such requests are dealt with, it has been stated that when such requests are received, the Clerk's office processes them and will avail such information if it is not of a private nature. This is because the Clerk of the National Assembly is the custodian of all official documents and papers of parliament as provided by Standing Order 27. Once documents are laid on the floor of the House, they cease being private and the public can have access to them. However, the Speaker may, if he feels that any information is secret, direct to exclude it from the journals of the House and from Hansard in which case it cannot be accessed by the public.

Further, National Assembly (Powers and Privileges) Act, section 19(1) provides that the staff of Kenya National Assembly are not allowed to give evidence elsewhere of proceedings in the National Assembly or any Committee without leave from the Speaker or the Clerk of the National Assembly.

Mauritius National Assembly have stated that they have received such requests only on a few occasions for production of extracts in Courts of Law. Such requests are made by way of a formal summons issued by the Court. As regards conventions, they have replied in negative. Regarding the procedure adopted to deal with such requests, it has been stated that on receipt of the summons, documents asked for are photocopied. The Clerk certifies its correctness and then on the day of trial, the Clerk or any officer designated by him attends courts to produce the same. It has been specifically mentioned that as obtaining in all jurisdictions, debates are public.

Legislative Assembly, New South Wales have stated that from time to time, the Clerk and Members have been issued with subpoena to produce documents relating to proceedings of the House before a Court or investigating agencies such as Independent Commission Against Corruption. On one occasion a subpoena sought papers that had been laid on the Table of the House(1954).

Occasions when requests were made by Royal Commission:

(a) In 1973, the Clerk of the Legislative Assembly was summoned to produce a number of documents to the Royal Commissions. When the matter was reported to the House, a resolution was passed enabling the Clerk to give papers tabled in the House to the Royal Commission. The resolution agreed to by the House also gave the

Commissioner control over the documents and enabled Members to appear as witnesses.

(b) In 1994, the Legislative Assembly agreed to a resolution to release in camera evidence taken before the Joint Select Committee upon Police Administration to a Royal Commission inquiring into New South Wales Police Service. The resolution provided that the evidence was to be released on condition, agreed to in writing to the Presiding officers, that it be treated as highly confidential and not published. The resolution also provided that the in camera evidence could only be used for intelligence and investigative purposes, including derivative use.

(c) In 1995, the Legislative Assembly passed a resolution to authorize the release of in camera evidence of the Select Committee upon Prosecution following a request from the Royal Commission into NSW Police Service. The resolution provided "That this House grant leave to officers assisting the Royal Commission into NSW Police Service to inspect in camera evidence taken before the Select Committee upon Prosecution on conditions that:

- (i) The evidence is inspected at Parliament House;
- (ii) Any information obtained be used by the Royal Commission to pursue appropriate further inquiry without revealing to any other person other than the Royal Commissioner and officers of the Royal Commission, the contents of the in camera evidence, and its contents not made public; and

(iii) before adducing into evidence of the Royal Commission any evidence taken before the Select Committee upon Prosecution, the Royal Commission, his Honour Justice Wood QC, seek leave of the Legislative Assembly.

(d) On April, 1996, a resolution in similar terms to that passed by the House in 1995 was agreed to by the Legislative Assembly enabling access to in camera evidence taken before the Committee on the independent Commission Against corruption.

As regards the constitutional provisions to deal with such requests, it has been replied in negative. Such requests are dealt with on case-to-case basis. As regards conventions in this regard, it has been stated that for documents that are publicly available, the House would generally accede to such request. However, for confidential documents or relating to in-camera evidence, the House may agree to the request but place conditions on use of that evidence as was the case in relation to in camera evidence provided to the Royal Commission into NSW Police Force. As regards the procedure to deal with such requests, they have stated that requests are dealt with on case-to-case basis. Leave to produce documents relating to proceedings in the House of Committee should be given by the House. The process enables the House to consider parliamentary privilege issues, if any. If the House is not sitting, the documents may be produced with the authority of the Speaker, who subsequently informs the House of the action.

Legislative Council, New South Wales have recorded no such instance where such request was made by the court or investigating agencies. However, they have received requests from parties to legal proceedings seeking to use parliamentary records such as Hansards or the Minutes of the proceedings in Courts of Law. The way to deal such requests has been changed in 1995. Before that it was a usual practice to petition the House to obtain leave to adduce official parliamentary records into evidence in Court. However, after enactment of Evidence Act, 1995(NSW), the official parliamentary records, as public documents, have been admissible in evidence without the need to petition. Further, there is no statutory or other provisions laying down the procedure for dealing with such requests. The procedure followed in the Council is based on parliamentary practice and precedent.

In certain circumstances, however, for abundant caution, the Legislative Council continues to require the presentation of a petition seeking the production of documents in matters of a particularly serious nature, notwithstanding the adoption of the Evidence Act, 1995. In two recent cases, members presented the petitions to the House for the release of the documents and, on the following day, the House agreed to a motion that leave be granted to produce the required material.

House of Representatives, New Zealand have stated that no such direct requests for documents pertaining to proceedings of the House, its Committees or in the custody of the Clerk were received.

Issues concerning the use of the parliamentary proceedings in civil proceedings, such as defamation, have been argued in the courts. These cases involved parliamentary proceedings that were publicly available (such as records of debates), so no request for the information was required.

As regards constitutional provisions to deal with such requests, it has been informed that the principle of freedom of speech recognized in Article 9 of Bill of Rights 1688 protects the proceedings in Parliament from external review by Courts.

In October, 2006 the police executed a search warrant as part of the investigation into the activities of an MP. The search involved material held in parliamentary and electorate offices and was conducted in accordance with a search warrant and an *interim* agreement between the Speaker and the Commissioner of Police.

Legislative Assembly, Samoa have replied in affirmative with regard to receiving requests from the Courts of Law and investigating agencies for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House. Further, Standing Order 37, "Custody of Journals and Records" lays down the procedure to deal with such requests which states:

"(1) The custody of the Journals and records, and of all papers and accounts whatsoever presented to or belonging to the Assembly, shall be in the Clerk, who shall neither take, nor permit to be taken, any of such

Journals, records, papers or accounts from the Assembly or offices without any order of the assembly or by leave or order of the Speaker.”

National Assembly of Seychelles do not have any instance whereby the Courts of Law have requested them for documents pertaining to proceedings of House or any other Committee. As regards constitutional provisions, such provisions exist in their National Assembly Standing Orders and the National Assembly Privileges & Immunities Act, but there are strict limitations for access to the records in the custody of the Clerk of the House subject to the leave of the Speaker.

National Assembly, Republic of South Africa are stated to have received a number of such requests from the Courts of Law and investigating agencies, for documents pertaining to proceedings of House/Committees of the House or documents in the custody of the Clerks of the House. As regards constitutional provisions to deal with such requests, the Powers, Privileges, and Immunities of Parliament and Provincial Legislatures Act No.4 of 2004 regulates the procedure for dealing with such requests.

Section 5 - requires the express permission of the Presiding Officer for the execution or service of any summons or subpoena;

Section 10 - provides that no member or staff of Parliament may give evidence in any court or place outside Parliament regarding evidence, documents submitted to Parliament, a House or a

committee without having obtained the leave of the House/s. If Parliament is in recess, the Speaker or Chairperson may grant such leave. Besides legislation regulating the procedure for dealing with such requests, they have quoted certain interesting practices that have evolved in this respect.

Parliament of Sri Lanka have not received any such request from the Courts of Law and investigating agencies. Nevertheless, documents pertaining to proceedings of House or Committees are placed in the Library as public documents. If a copy is requested, it can be obtained on written approval of the Hon'ble Speaker. As regards constitutional provisions to deal with such requests, they have stated that Section 17 of the Parliament (Powers and Privileges) Act says "no member or officer of Parliament shall give evidence elsewhere in respect of the contents of such evidence or of the contents of any manuscript or documents laid before Parliament or any Committee or in respect of any proceedings or examination had at the Bar or before any Committee of parliament without special leave of Parliament first had and obtained." No conventions have been evolved to deal with such requests. However, usually the permission of the House or the relevant Committee is obtained to produce such documents before courts. As regards procedure adopted to deal with such requests, it has been submitted that the extracts of Section 3 and 4, of the "Parliament(Powers and Privileges)Act are relevant in this context, which are as follows:

Section 3. There shall be freedom of speech, debate and proceeding in Parliament and such freedom of speech, debate or proceedings

shall not be liable to be impeached or questioned in any court or place out of Parliament.

Section 4. No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of anything which he may have said in Parliament or by reason of any matter or thing which he may have brought before Parliament by petition, bill, resolution, motion or otherwise.

Tanzania Parliament in their reply have stated that they do come across instances whereby Courts of Law request for documents pertaining to proceedings of House or Committees of the House. Such documents particularly Hansards, are requested when there is a case before it, and that, the Court would want to know what exactly was said or decided upon by the House. They do not have constitutional or Statutory provisions or Rules which govern or lay down procedures for dealing with such matters. Normally, business is debated and decided by the House publicly, and therefore, Hansards Reports are public documents and, therefore, any citizen can ask and get a copy of it, unless such business is still under Committee stage. There is no statute which governs this situation and that there is no conflict whatsoever in this kind of exercise.

Tynwald, Isle of Man have stated to have received no such requests. However, there is a Standing Order to deal with such requests which says that neither the Secretary of the House, nor any Hansard Clerk or any other person authorized by House to record the proceedings of the House or any Committee thereof, may give

evidence elsewhere in respect of any such proceedings or of any examination had at the Bar or before a Committee of the House, without special leave either of the House, or (in case of urgency) of the Speaker who shall then report the matter to the House at the earliest opportunity.

Parliament of Uganda have informed that they have received such requests during the Constitutional Petition on the Referendum Act 1999 and Jim Muhwezi Petition. Further, Constitution Article 41 provides for the right to access information under the control of a public body. Besides, Section 14 of Parliament(Powers and Privileges) Act, Cap 258 prohibits evidence of proceedings in Parliament or Committee being given without leave (i) of Parliament, (ii) of Speaker, in case the House is in recess or adjournment and (iii) of the Clerk, in case of Speaker's incapacity or dissolution of Parliament.

House of Lords, U.K. have no recent record of a Court or investigating agency requesting a parliamentary document. Such documents on the one hand are stated to be mostly available for public inspection, and on the other hand mostly protected by parliamentary privilege from use in the court. Hence such request are unlikely.

Regarding provisions to deal with such requests, it has been stated that with regard to the Journals of the House, the Companion to Standing Orders says,

3.59 The journals are the permanent official record of the proceedings of the House, compiled from the Minutes of Proceedings. The journals differ from the Minutes in that they include a daily record of members present, reports of the domestic committees of the House, the letters patent of peers on introduction, and an index. All copies of the Journals of either House are admitted as evidence by the courts and others (Evidence Act 1845, s.3). If required in evidence, a copy or extracts of the journals, authenticated by the Clerk of Parliaments, may be supplied on payment of a fee.

The Evidence Act 1845, section 3, provides as follows:

3. **Copies of private Acts, printed by Queen's printer, journal of parliament and proclamations, admissible as evidence.** All copies of private and local and personal Acts of Parliament not public Acts, if purporting to be printed by Queen's printers, and all copies of the journals of either House of Parliament, and of royal proclamations, purporting to be printed by the printers to the crown or by printers to either House of Parliament, or by any, or either of them, shall be admitted as evidence thereof by all courts, judges, justices, and others without any proof being given that such copies were so printed.

House of Commons, U.K. have stated that most recently, a request was made in 1995. As regards procedure for making requests, it has been stated that parties to suit who desire to produce evidence or any other document in the custody of officers of the House petition the House praying that the proper officer may attend and produce the

material. Following the presentation of a petition, an appropriate motion may be made for the leave of the House to be granted. As regards constitutional provisions that deal with these requests, it has been stated that Standing Order No. 154 relates to the time and manner of presenting petitions. They have invited attention to the First Report of their Committee of Privileges, 1978 in which it has been recommended that the practice of presenting petitions for leave to make reference to the Official report in Court proceedings be not followed in the future and that such reference be not regarded as a breach of the privileges of the House.

19. The position in Foreign Parliaments with regard to Q. No.5 and 6 is as under:

Q. 5. *Is there any Statute/Law in your country providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office?*

Q. 6. *If the answer to Question 5 is Yes, has there been any conflict between the provisions of such a law and Constitutional/statutory provisions/conventions, if any, governing requests from Courts etc., for documents? If so, how such conflicts are resolved?*

House of Representatives, Antigua have informed that there is “The Freedom of Information Act, 2004”, which gives right to access of information. However, there does not exist any conflict between the

provisions of such a law and Constitutional/Statutory provisions/conventions.

Parliament of Australia, House of Representatives (Office of the Clerk of the House) have stated that the Freedom of Information Act (FoIA) confers rights on citizens to seek information pertaining to or copy of documents in the custody of a public office, but the records to which it applies are records held by executive departments and agencies; **it does not apply to records held by Members of Parliament or Parliamentary Departments.**

Parliament of Australia, Standing Committee of Privileges, House of Representatives have informed that 'The Freedom of Information Act' provides the general arrangements for requests from citizens to access the information and documents which are official documents of the Commonwealth of Australia. Section 46 of the Freedom of Information Act states:

A document is an exempt document if public disclosure of the documents would, apart from this Act and any immunity of the Crown...

- (a) be in contempt of court;
- (b) be contrary to an order made or direction given by a Royal Commission or by a tribunal or other person or body having power to take evidence on oath; or
- (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of the House of such a Parliament or of the

Legislative Assembly of the Northern Territory or of Norfolk Island.

The Department of House of Representatives, along with other parliamentary departments, is excluded from the operation of the Act, being neither a department of state nor a 'prescribed authority' as defined in the Act. It seeks, however, to comply with the intent of the Act where practicable in relation to the release of administrative information. The Department has released documents unless they would have fallen within an exemption under the Act or where a request would have been refused under the Act.

The Senate of Canada have stated that there is a federal statute entitled the Access to Information Act. **However, it does not apply to the State.** Chapter 2:06 of the Senate Administrative Rules, entitled "Access to Information and Privacy", governs such matters in the Senate. There is stated to be no conflict between the provisions of a law providing a citizen right to seek any information and Constitutional/statutory provisions/conventions governing requests from courts etc., **as the access to Information Act does not apply to the Senate.** The potential for conflict exists where an access to information request made to the executive government is wide enough to cover a Senate document in the government's possession. The Act provides for the Senate to be asked whether it agrees to a release, and allows it to make representations as to why the documents should not be released.

House of Commons, Canada have stated that in Canada there is an Access to Information Act that applies to information in the control of the government and other listed government agencies. As noted above, **the courts have recognized the independence of the House of Commons from the government, and it is not listed in the schedules to Access to Information Act.** As regards any conflict between the provisions of such a law giving right to citizens to seek information and Constitutional/statutory provisions/conventions governing requests from Courts etc., for documents, it has been stated that unless an Act specifically or by necessary implication restricts parliamentary privilege, an Act cannot apply so as to interfere with parliamentary privilege. These privileges are constitutional in nature, and a statute cannot abrogate a constitutional provision.

House of Representatives, Republic of Cyprus have stated that private persons are entitled to access all public documents of the House, including minutes of the plenary session. Moreover, draft bills are published weekly in the Official Gazette of the Republic and are accessible to all. Committee working documents however are confidential. The Office of Ombudsman has suggested that documents should be accessible to individuals in circumstances when there are lawful vested interests.

House of Representatives, Parliament of Fiji have stated that Section 4 of the “Public Documents Act(Cap.44) states that –

“4. No public officer shall be compellable to produce before any such court or person having authority to hear, receive and examine evidence any book or document under his official custody unless a judge specially orders the production of such books or documents.”

This however will have to be read in conjunction with the “Official Secrets Act”, which limits the kinds of documents etc. that can be accessed from a public officer.

Standing Orders of the House of Representatives and the Senate further state that evidence taken before a Committee or document presented to the Committee may not be published by a member of that Committee or any person before the Committee has presented its report to Parliament.

There is stated to be a provision in the “Constitution of the Republic of Fiji-July 1998” which states that –

174. As soon as practicable after the commencement of this Constitution the Parliament should enact a law to give members of the public rights of access to official documents of the Government and its agencies.”

It has been added that in spite of commitments by successive Governments, no such bill has yet been tabled in Parliament. These provisions will now be tested and furthered, until Parliament which is currently dissolved following the military takeover, is resumed.

Office of Parliament, Accra (Ghana) have replied in negative with regard to Constitutional provisions, Statutes or Rules providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office. However, Ghana is in process of enacting a Right to Information Act.

National Assembly of Kenya have informed that there is currently before the National Assembly a Freedom of Information Bill which would provide for members of the public, a right to information and an obligation on public officers to provide such information.

Mauritius National Assembly have stated that as a rule, citizens have a right to information. In certain sensitive cases which require privacy, the applicant may have to apply to the Judge in Chambers for an order compelling the Authorities to produce certain documents.

Legislative Assembly, New South Wales have informed that “The Freedom of Information Act, 1989 was enacted to extend the rights of the public to obtain access to information held by Government agencies and to ensure that records regarding individuals are accurate. Certain documents are exempt from the legislation including those which are confidential for a legitimate reason or where another person’s privacy would be invaded by the release of documents. **However, the Act does not apply to Parliament, Presiding Officers or Members.** Section 7 of the Act specifically excludes the Parliament from the definition of ‘public authority’ and section 8 excludes Members of the Legislative Assembly and

Legislative Council, committee chairs, the Presiding Officers, Ministers, Parliamentary Secretaries and members of the Executive Council from the definition of “holder of public office”. Further in view of exemption of Parliament and its members from the Freedom of Information Act 1989, no conflict has arisen between the provisions of the Act and the way the Parliament deals with requests for documents by courts and other investigative authorities.

Legislative Council, New South Wales have stated that the Freedom of Information Act, 1989 enables members of the public to obtain access to documents held by the Government in certain circumstances. Further the Privacy and Personal Information act 1998 requires public sector agencies which hold personal information about individuals to provide the individual with access to the information, on request without excessive delay or expense. As regards any conflict between the provisions of the Act and the way the Parliament deals with requests for documents by courts and other investigative authorities, they have replied in negative.

House of Representatives, New Zealand have informed that the Official Information Act 1982 and the Privacy Act 1993 provide persons with access to official and personal information held by government agencies. These Acts do not bind the House as records of the debates and committee reports are publicly available. The sittings of the House have recently been made more publicly accessible through a project launched recently to televise and *webcast* the proceedings of Parliament. As regards any conflict

between the provisions of the Act and the way the Parliament deals with requests for documents by courts and other investigative authorities, it has been explained that it is likely that such a matter would be dealt with through the courts. By convention, the courts and Parliament recognize the comity of each institution, and there is a reluctance by the courts to interfere in the internal working of Parliament.

Legislative Assembly of Samoa have stated that there is no statute/law providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office.

National Assembly of Seychelles have replied that a Party or litigants in any proceedings before the Supreme Court, may use the Seychelles Code of Civil Procedure and also the Evidence Act, to summon Public Officers to produce official records to their cases. However, it is subjected to certain rules of protection on ground of national security of Public Policy.

National Assembly, Republic of South Africa have informed that Section 32 of the Constitution guarantees everyone the right of access to any information held by the State. It obliges the State to enact a national legislation to give effect to this right, and states that the legislation may provide for reasonable measures to alleviate the administrative and financial burden on the state. In this regard, the Promotion of Access to Information Act No. 2 of 2000 was promulgated. There are stated to be certain instances where parties

litigated on section 32 of the Constitution, the Promotion to Information Act and the common law regarding the scope and the contents of the right to access to information. However, Parliament was not involved in any of the litigations.

Parliament of Sri Lanka have informed that that they do not have any Freedom of Information Act.

Tanzania Parliament have stated that there are no Constitutional provisions, Statutes or Rules providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office. Normally business debated and decided by the House are done publicly, and therefore, Hansard Reports are public documents. Any citizen can ask and get a copy of it, unless such business is still under Committee stage.

Tynwald, Isle of Man have replied in affirmative as regards existence of a statute/law providing a right to a citizen to seek information pertaining to or copy of documents in the custody of public office. As regards any conflict between the provisions of the Act and the way the Parliament deals with requests for documents by courts and other investigative authorities, it has been replied in negative.

National Assembly of Uganda have informed that there is a Statute/Law providing a right to a citizen to seek information pertaining to or copy of documents in the custody of public office. As

regards any conflict between the provisions of the Act and the way the Parliament deals with requests for documents by courts and other investigative authorities, it has been stated that the Access to Information Act has not been put into operation.

House of Lords, U.K. have informed that there is Freedom of information Act 2000 providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office. The Act applies to both the Houses of Parliament. Further, there is stated to be potential for conflict between the Freedom of Information Act(FIA) and parliamentary privilege. The Companion to Standing Orders explains how this is dealt with:

12.22 *The Freedom of information Act 2000 gives a general right to access information held by public authorities, sets out exemptions from that right and places a number of obligations on public authorities. The House of Lords is a separate public authority under FIA 2000 and therefore has a separate scheme and arrangements for implementing and complying with the Act. The Clerk of the Parliaments has entrusted day-to-day responsibility for House of Lords' arrangements to the Freedom of Information Officer. The Act requires every public authority to maintain a publication scheme setting out the classes of information which it publishes or intends to publish, the form in which it intends to publish the information, and details of any charges. The initial House of Lords' publication scheme was approved by the Information Commissioner and was laid before the House by the Clerk of the parliaments in Novemebr, 2002.*

12.23 *The Clerk of the Parliaments as the authorized officer of the House may refuse to disclose information on the ground of either parliamentary privilege (section 34) or prejudice to the effective conduct of public affairs(section*

36). A certificate signed by him is conclusive of the fact, and a dissatisfied applicant has no right of appeal to the Information Commissioner. Where the Clerk of the Parliaments is minded to refuse to disclose information, he refers the matter to a panel for advice. The panel, appointed by the House Committee, comprises one member from each of the three main parties and a Crossbencher, and is chaired by the Chairman of the Committee.

House of Commons, United Kingdom have informed that there is Freedom of information Act 2000 providing a right to a citizen to seek information pertaining to or copy of documents in the custody of a public office. Subject to certain provisions, the Act applies to both the House of Parliament. Further, there has been no conflict between the provisions of such a law and Constitutional/Statutory provisions/conventions, if any, governing requests from Courts etc. for documents.

Section 34 of The Freedom of Information Act 2000(FOIA) states:

”34 parliamentary privilege

- (1) Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either Houses of Parliament.*
- (2) The duty to confirm or deny does not apply if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of avoiding infringement of the Privileges of either House of Parliament.*
- (3) A certificate by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b),*

is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact,

(4) In subsection(3) “the appropriate authority” means-

(a) in relation to the House of Commons, the Speaker of that House, and

(b) in relation to the House of Lords, the Clerk of the Parliaments.”

It has further been stated that the Ministry of Justice has issued guidance on the application of parliamentary privileges.

20. The responses to the Q. No.7 received from the 22 Foreign Parliaments are as under:

Q.7 *Any other comments which you may like offer in the mater.*

Only three Parliaments have furnished additional comments.

Legislative Assembly, New South Wales have stated that Article 9 of the Bill of Rights does not prohibit the use of Hansard, or publicly available committee proceedings, in courts to establish something as fact. Accordingly, courts no longer seek the permission to use Hansard to prove matters of fact. The parliament would however intervene if the courts sought to use documents related to the proceedings in Parliament in any way which infringed Article 9 such

as if speeches made in the House or evidence given to a committee were questioned.

It has been apprised that MPs in New South Wales have no immunity against subpoena, an order for the discovery of documents or search warrants. However, the use of material seized in such a manner before a court or tribunal is limited to those documents to which parliamentary privilege is not attached.

The New South Wales Parliament has not passed any legislation defining its privileges and there is no definition of what constitutes “proceedings in Parliament”. Accordingly, it is up to the courts to determine whether documents are privileged.

Legislative Council, New South Wales have stated that where evidence of parliamentary proceedings is adduced in a court or other external investigation, it may only be used to establish the existence of a fact and may not be used in a way which amounts to an ‘impeaching or questioning’ of proceedings in Parliament within the meaning of article 9 of the Bill of Rights 1989. Despite this, however, there have been several recent cases in New South Wales where investigatory bodies purportedly acting within their statutory powers have sought to use documents relating to proceedings in Parliament in course of their investigation in a manner contrary to article 9, necessitating intervention by the President or the House. The most recent case, involved the execution of a search warrant on the office of a member and the seizure of documents relating to proceedings in Parliament found in the member’s office. It has been further informed that the New South Wales Legislative Council’s Privileges Committee

considered the issue of search warrants and its ramifications for parliamentary privilege in 2005-2006. Its report, tabled in February, 2006, recommended protocols and procedures that should be followed by law enforcement agencies and investigative bodies when they are executing search warrants on the offices or Members of Parliament.

Tynwald, Isle of Man have stated that as a matter of constitutional convention, the courts and the legislature are at pains to avoid invading each other's sphere of jurisdiction regarding each as mutually exclusive.

21. The Committee note that in the Countries following the Westminster model, the practice generally is that the documents relating to proceedings of the House or its Committees are not made available to courts of law or investigating agencies without the leave of the House. While the proceedings of the House or its Committees may be referred to in courts to establish a fact, it is not permissible to question the same in courts. Judicial notice of public documents relating to the Parliament, like printed debates or Reports of Committees etc. may, however, be taken. Barring the United Kingdom, in most of the Countries the proceedings relating to the House or its Committees are outside the purview of the Statutes similar to Right to Information Act.

V. Procedure in India to deal with the requests from Courts of Law and investigating agencies, for documents in the custody of Secretary General, Lok Sabha, proceedings of the House/Committees for production in Courts of Law and for investigative purposes.

22. **In Lok Sabha**, requests are received from time to time, from Courts of Law and investigating agencies for documents pertaining to proceedings of the House or to its Committees or in the custody of Secretary General, Lok Sabha, for production in Courts of Law and for investigative purposes.

23. **During Second Lok Sabha**, the Committee of Privileges dealt with three requests viz. (i) The Additional Magistrate, 1st Class Tiruchirapalli, sent a summons addressed to the Speaker, "to cause the production of the letter dated 20th December, 1956, signed by accused R. Govindan and addressed to Shri H.V. Kamath, the then Member of Lok Sabha and passed on to the Speaker on the floor of the House during discussion of Ariyalur Train Disaster." The document was required in connection with a defamation case filed by Shri P.K.Madhavan Menon, Divisional Superintendent, Tiruchirapalli against Shri R. Govindan. The document was required to be produced in the court (ii) the Registrar, City-Sessions Court, Bombay had sent a letter to the Secretary, Lok Sabha, requesting him to send

a responsible officer for giving evidence before the court, supported by Register or relevant documents to show the dates of the sessions of Lok Sabha in December, 1950, January, February and March, 1951, and to show dates on which Shri Damodar Swarup Bahadurmal Seth, a member and an accused, in a case before the court, attended the sessions of Lok Sabha. The evidence was required to be given in the court and (iii) Sarvashri A.B.Vajpayee and Shivadin Drohar, Members of Lok Sabha, had sent letters requesting for supply of certified copies of answer to Unstarred Question No. 965 given on the 27th August, 1957. The document was required for production in courts with election petitions. All these requests were referred to the Committee of Privileges.

24. The Committee, in their first Report, which was laid on the Table of the House on 12 September, 1957 and adopted by Lok Sabha on 13 September, 1957, while recommending the production of documents in Courts in first two cases and supply of certified copies in the third case referred to above laid down the procedure regarding production of documents connected with the proceedings of the House etc., in Courts of Law. The recommendations of the Committee pertain to – (i) documents relating to proceedings of the House or any Committee of the House ; (ii) documents in the custody of Secretary General; (iii) documents which involve any question of privilege or especially the privilege of a witness.

25. The Committee before giving their recommendations in the matter also examined and considered the practice and procedure

being followed in the House of Commons, United Kingdom, House of Representatives, USA, House of Representatives, Australia, House of Assembly, Union of South Africa, House of Representatives, New Zealand and the Dail Eireann, in this regard.

26. The relevant recommendations made by the Committee of Privileges in the said Report are as follows :-

“When the House is not in session, the Speaker may in emergent cases allow the production of the relevant documents in Courts of Law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it reassembles. In case, however, the matter involves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, he may decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.

The Committee recommend that whenever any document relating to the proceedings of the House or any Committee thereof is required to be produced in a Court of Law, the Court or the parties to the legal proceedings should request the House stating precisely the documents required, the purpose for which they are required and the date by which they are required. It should also be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before a Court of Law.

When a request is received during session for producing in a Court of Law, a document connected with the proceedings of the House or Committees or which is in the custody of the Secretary of the House, the case may be referred by the Speaker to the Committee of Privileges. On a report from the Committee, a motion may be moved in the

House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

The Committee, however, feel that normally certified copies of the documents, required to be produced in Courts of Law, should be considered sufficient evidence in Courts of Law. If necessary, the relevant provisions of the Indian Evidence Act, 1872, may be amended accordingly.”

27. **During Fifth Lok Sabha**, the issue as to whether ‘admitted writings’ of a former member in connection with the investigation of a case against him could be made available to the Central Bureau of Investigation, first came up for consideration before the Committee of Privileges. The Deputy Inspector General of Police(Inv-I), CBI, New Delhi in his letter addressed to the Secretary General, Lok Sabha, had requested to make available to them the admitted writings of a member in connection with the investigation of the Baroda Dynamite Seizure Case(R.C. No. 2/76-CIU(A)). The Deputy Inspector General of Police(Inv-I), CBI was then asked by the Secretariat to clarify the term “admitted writings”, who in his reply clarified the term.

28. The Committee in their Eighteenth Report, which was laid on the Table on 16 August, 1976 and adopted by the House on 20 August, 1976 felt that although the Deputy Inspector General of Police(Inv-I), Central Bureau of Investigation had requested for the writings of the member for the purpose of investigation and not for production in a Court of Law, it was quite possible that these documents might ultimately be produced in a Court of Law. *The*

Committee, therefore, recommended that the two notices purported to bear the signatures may, with the permission of the House, be made available to the Deputy Inspector General of Police, Special Police Establishment, Central Bureau of Investigation”.

29. **During Eighth Lok Sabha**, the Committee of Privileges in their First Report, which was laid on the Table on 5 May, 1988 and adopted by the House on 6 May, 1988, taking a different view, dealt with the request received from the Deputy Inspector General of Police, Central Bureau of Investigation, Special Investigation Cell-II, New Delhi, for handing over of original letters and telegrams addressed to the Speaker, Lok Sabha by Shri Thangaraju , MP, Lok Sabha and Miss J. Jayalalitha, MP, Rajya Sabha. The Committee recommended the following procedure for dealing with the requests received from investigating agencies for handing over original documents :-

“... The Committee find that there is no indication in the request received from the Deputy Inspector General of Police, Central Bureau of Investigation that the documents in question are required to be produced in a Court of Law. The procedure laid down in the First Report of the Committee of Privileges (Second Lok Sabha) relates to the documents required to be produced in a Court of Law.

The Committee, therefore, recommend that instead of handing over the required documents, in original, the Deputy Inspector General of Police, Central Bureau of Investigation, Special Investigation Cell-II, New Delhi, may be asked to come and inspect the relevant

documents as also to take photo copies thereof, if he so desires. If at a later stage, the original documents are required for production in a Court of Law, a proper request may be made in accordance with the procedure laid down in the First Report of the Committee of Privileges (Second Lok Sabha)."

30. **During Eighth Lok Sabha again**, the Committee dealt with the following requests:

- (i) request received from Deputy Inspector General of Police, Central Bureau of Investigation, Special Investigation Cell-II, New Delhi for handing over of original letter dated 24 February, 1988 addressed to the Speaker by Shri S. Thangaraju, M.P.; and
- (ii) request from the Superintendent of Police, CBI, Special Investigation Cell-II, New Delhi that –
 - (a) letter dated 24 February, 1988, addressed to the Speaker, Lok Sabha by Dr. S. Jagathrakshakan, MP, informing him that on 24 February, 1988, Sarvashri P.Kolandaivelu, M.Mahalingam and R.T.Gopalan, MPs, belonging to Jayalalitha faction of AIADMK came along with 15 hirelings and compelled Shri S. Thangaraju to go with them, be handed over to them in original;
 - (b) TA bills along with Air Journey tickets of Shri S. Thangaraju from 22 February to 20th March, 1988 and TA Bills along with Air Journey tickets of Sarvashri S. Jagathrakshakan, K.R. Natarajan, A.C. Shanmugam, P. Selvendran and N. Soundararajan, MPs from 22nd February to 9th March, 1988 be handed over to them;

- (c) File relating to the alleged abduction, wrongful confinement and extortion of Shri S. Thangaraju at the hands of the accused which was being maintained in the Lok Sabha Secretariat, be handed over to them;
- (d) a document notifying the names of the office bearers of AIADMK Legislature Party(Janaki), be handed over to them; and
- (e) they might be permitted to examine one or two officers of the Lok Sabha Secretariat on the point of receipt of several documents related to the case and action taken thereon.

31. **The Committee of Privileges in their Second Report**, which was laid on the Table on 1 September,1988 and adopted by the House on 5 September,1988 recommended on the following lines:

“The Committee note that there is still no indication in the requests received from the Central Bureau of Investigation that the documents referred to are required to be produced in a court of law. The Committee, have therefore, no reason to change the view expressed by them in their First Report,(of Eighth Lok Sabha) reiterating the recommendation made by the Committee of Privileges (Second Lok Sabha) in their First Report namely that the original documents may not be handed over unless the same were required to be produced in a court of law.

As regards the request[at para 29(i), above], received from the DIG, CBI, New Delhi, for original letters dated 24 February, 1988 addressed to the Speaker by Shri S. Thangaraju, MP, the Committee wish to emphasis that it is not the intention of the Committee to hinder or

stop any investigation; the facility of inspection and examination of the original documents-which has already been extended to and availed of by an officer of the Central Bureau of Investigation on the basis of recommendation contained in the First Report of the Committee-is still available to the investigating agency and they can depute one of their officers to come and inspect and examine the original letter dated 24 February, 1988. If at a later stage the original letter is required for production in a Court of Law and a proper request is made in accordance with the procedure laid down in the First Report of the Committee of Privileges(Second Lok Sabha), the Committee would consider the same.”

As regards request [at para 29(ii)(a) above], the Committee had note that no such letter was received in the Lok Sabha Secretariat. With regard to request [at para 29(ii)(b)above], the Committee recommended that a statement showing the details of journeys undertaken by Shri S. Thangaraju and by Sarvashri S. Jagathrakshakan, K.R. Natarajan, A.C. Shanmugam, P. Selvendran and N. Soundararajan, MPs may be supplied to the investigating agencies.

As regards request [at para 29(ii)(c) above], the Committee note that though it is usual office procedure that for every letter/communication received in Lok Sabha Secretariat, a file is opened and maintained in the Secretariat, no file as such “relating to alleged abduction, wrongful confinement and extortion of Shri S. Thangaraju is being maintained in Lok Sabha Secretariat. The Committee are of the view that any other files relating to Shri S. Thangaraju’s case which are being maintained in the Secretariat may not be shown to the Central Bureau of Investigation.

As regards the request [at para 29(ii)(d) above], the Committee recommend that a copy of the same may be supplied to the Central Bureau of Investigation.

Lastly as regards the request [at para 29(ii)(c) above], the Committee are of the opinion that the permission might not be granted.”

32. In the Third Report of Committee of Privileges during Tenth Lok Sabha, the Committee took up the matter in respect of a request received from the Station House Officer(SHO), Tughlak Road Police Station, New Delhi for handing over of original documents in connection with a complaint lodged in the Police Station by Shri Hari Kewal Prasad, MP. The Committee recommended the following procedure to deal with request:

“The Committee see no reason to make a departure from the procedure laid down by the Committee of Privileges(Second Lok Sabha)in their First Report and the Committee of Privileges (Eighth Lok Sabha) in the First and Second Reports.

The Committee are of the opinion that the original documents may not be handed over to the Police unless the same are required to be produced in a Court of Law.

The Committee, therefore, recommend that an officer, not below the rank of Deputy Commissioner of Police may still come and inspect the documents in question, namely, the application submitted to the Speaker by Shri Ajit Singh and 19 other MPs on 7 August, 1992 and the report of Central Forensic Science Laboratory once again and take photocopies thereof, if he so desires. If at a later stage the original documents are required for production in a Court of Law, a proper request may be made in accordance with the procedure laid down in the First Report of the Committee of Privileges(Second Lok Sabha).”

33. **During Fourteenth Lok Sabha**, the Committee of Privileges in their First Report, which was laid on the Table on 25 August, 2005 and adopted by the House on 29 August, 2005, dealt with the request received from Superintendent of Police, Central Bureau of Investigation for making available to them the original documents containing “admitted signatures” of a former member Shri Gangaram Koli, for investigation of a criminal case.

“The Committee recommend that the originals of nomination form and declaration form containing ‘admitted signatures’ of Shri Gangaram Koli, available with the Lok Sabha Secretariat, may, with the leave of the House, be made available to Superintendent of Police, Central Bureau of Investigation. The Committee also recommend that Deputy Superintendent of Police, Central Bureau of Investigation concerned with the investigation of the case may personally receive those documents from the Lok Sabha Secretariat and return the same to the Lok Sabha Secretariat immediately after the necessary comparison of signatures is carried out.”

34. This **Committee in their Tenth Report (Fourteenth Lok Sabha)** which was laid on the Table on 27 February, 2008 and adopted by the House on 28 February, 2008, dealt with the request from the Delhi Police for originals of certain documents pertaining to five members of Lok Sabha in connection with the investigation of a criminal case. *The Committee, agreeing with the suggestion made by the concerned police officer during his evidence before the Committee, recommended that concerned forensic and handwriting experts as engaged by the Delhi Police may be permitted to take photographs of the original documents (letters, application forms, permission etc.) submitted by Shri Babubhai K. Katara, Shri Mitrasen Yadav, Shri Mohd. Tahir Khan, Shri Ashok Kumar Rawat and Shri*

Ramswaroop Koli, MPs to the Lok Sabha Secretariat in respect of their foreign visits since 2000 for the purpose of investigation of FIR, filed against them under various sections of IPC and Indian Passport Act, within the precincts of Lok Sabha Secretariat, in the presence of the Deputy Superintendent of Police, Crime & Railways, Delhi or any other designated police officers and concerned officers of Lok Sabha Secretariat.

VI. RIGHT TO INFORMATION ACT, 2005

35. The Committee before proceeding further consider it appropriate to dwell upon the genesis and legislative intent behind the Right to Information Act, 2005, and its provisions having a bearing upon the subject under consideration of the Committee and related matters.

36. In 2002, the Freedom of Information Act, 2002 was enacted with a view to ensuring that every citizen has a right to freedom of information and to enable the citizens to have an access to information on a statutory basis.

37. In 2004, the Government took a view that the Freedom of Information Act, 2002 needs to be made more progressive, participatory and meaningful in order to ensure greater and more effective access to the information. The National Advisory Council deliberated on the issue and suggested certain important changes for incorporation in the said Act with a view to ensuring smoother and greater access to information. After examination of these proposals, the Government decided to make a number of changes in the law. Keeping in view significant changes proposed to be made in the law, the Government decided to repeal the Freedom of Information Act, 2002 and bring forward a comprehensive legislative measure in this regard.

38. Accordingly, the Right to Information Act, 2005, was enacted.

The Preamble to the Act states that the Bill seeks:

“to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority; the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

And WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

39. The Committee would now like to take into account the various core provisions of the Act – having a bearing on the subject under deliberation which are detailed as under:-

At the outset it has been provided that all citizens shall have the right to information.

Section 2(f) of the Act defines **Information** as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any private body which can be accessed by a public authority under any other law for the time being in force.

As per Section 2(h) **Public Authority** has been defined as any authority or body or institution of self-government established or constituted

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any-

- (i) body owned, controlled or substantially financed;
 - (ii) non-Government organization substantially financed;
- directly or indirectly by funds provided by appropriate Government

Under Section 2 (j), Right to Information has been defined as right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Obligations of public authorities

40. Under the provisions of Section 4 of the Act, it has been made incumbent upon every public authority to maintain various records and publish the same within a stipulated time.

Request for obtaining information

41. **Section 6(1) of the Act provides that a person desirous of obtaining any information under the Act has to make a written request or through electronic means together with prescribed fee to the designated Public Information Officer/officials of the concerned public authority. It has also been provided that the fee prescribed for obtaining information should be reasonable and no fee should be charged from persons who are below poverty line.**

As per Section 6(2) an applicant making request for information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

Procedure for disposal of request

42. As per Section 7 of the Act on receipt of a request, the Central Public Information Officer/State Public Information Officers, within

thirty days of receipt of such request, are required either to provide the information on payment of prescribed fee or reject the request for any reason as specified in relevant Sections of the Act, which provide for exemption from disclosure of information and grounds for rejection to access in certain cases respectively.

Exemption from disclosure of information

43. The public authorities are exempted from disclosure of certain categories of information as per Section 8 of the Act.

Under the provisions of Section 8(1)(c) of the Act there shall be no obligation to give any citizen-

information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

44. During the discussion on the Right to Information Bill, 2005 members from all sections of the House welcomed the Bill and hailed it as an epoch making measure which sought to codify the citizens' fundamental right to information. Members felt that the Bill will herald

an era of transparency and accountability in the governance and would empower people by providing easy access to information.

45. The Bill was passed by Lok Sabha on 11 May, 2005 and by Rajya Sabha on 12 May, 2005 and assented to by the President on 15 June, 2005. Consequently, the Freedom of Information Act, 2002 was repealed.

46. The impact of the provisions of the Right to Information Act, 2005 *vis a vis* the procedure laid down for dealing with requests received from courts of law and investigating agencies for documents relating to proceeding of the House, its Committees, members etc. have been dealt with in detail in the next part of the Report.

VII. OBSERVATIONS

47. Before formulating their views on the desirability, or otherwise, of suggesting any changes in the existing procedure and practice to deal with requests received from courts/investigating agencies for production of documents relating to the proceedings of the House or

its Committees or in the custody of the Secretary-General, the Committee would like to briefly dwell upon the rationale behind the existing procedure in this regard.

48. A question naturally comes to mind: *“why such an elaborate procedure involving reference to the Committee of Privileges followed by approval of the House?” for simply producing certain documents in court, etc.*

49. The genesis of this procedure, as a matter of fact, can be traced to section 9 **of the Bill of Rights, 1689 of U.K.** which provides as follows:-

“That the freedom of speech and debates or proceedings ought not to be impeached or questioned in any court or place out of Parliament.”

50. The Committee note that the position existing in this regard in the Parliament of United Kingdom, has been stated in **Erskine May’s Parliamentary Practice** as follows*:

“...the usage of Parliament according to which no Member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by leave of the House of

* This position was taken note of by the Committee of Privileges (Second Lok Sabha) in their First Report.

which he is a Member has been held to apply also to officers and officials of either House.

The rights of the House are even further safeguarded by the resolution of session 1818 which directs that no clerk or officer of the House, or shorthand writer employed to take minutes of evidence before the House, or any committee thereof, shall give evidence elsewhere, in respect of any proceedings or examination had at the bar, or before any committee of the House, without the special leave of the House. Parties to a suit who desire to produce such evidence, or any other document in the custody of officers of the House, must accordingly petition the House, praying that the proper officer may attend and produce it; and the term 'proper officer' includes an official shorthand writer. The motion for leave may be moved without previous notice. During the recess, however, it has been the practice for the Speaker, in order to prevent delays in the administration of justice, to allow the production of the minutes of evidence and other documents, on the application of the parties to a private suit. But should the suit involve any question of privilege, especially the privilege of a witness, or should the production of the document appear on other grounds, to be subject for the discretion of the House itself, he will decline to grant the required authority. During a dissolution the Clerk of the House sanctions the production of documents following the principle adopted by the Speaker."

51. **Article 105(2) of the Constitution of India**, which seeks to serve more or less the same purpose as section 9 of the Bill of Rights states as follows:-

"No member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any Committee thereof..."

52. Further, **article 122(1) of the Constitution of India** provides that-

“The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.”

53. In addition, **article 105(3) of the Constitution** provides as follows:-

“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 coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.”

54. Before section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 came into force with effect from 20 June, 1979, the powers, privileges and immunities of the two Houses of Parliament and their members and Committees were equated with those available to the House of Commons of Parliament of U.K., its members and Committees on the date our Constitution came into force. Since no law has so far been enacted by Parliament codifying its privileges, in actual practice the privileges of Parliament, in other respects,

continue to be governed by precedents and conventions of the House of Commons, U.K.

55. The cumulative effect of the above-mentioned provisions of the Constitution is that the proceedings of Parliament or its Committees cannot be called in question in any court and that the Parliament has exclusive jurisdiction over its proceedings.

56. Seen in this light, it becomes very clear that the procedure for dealing with requests received from courts for production of documents pertaining to proceedings of the House/Committees or in the custody of the Secretary-General as recommended by the predecessor Committee of Privileges of Second Lok Sabha in their First Report was based on sound and time-tested conventions of the House of Commons and in consonance with the Constitutional provisions cited above. The cardinal principle underlying this procedure is to ensure that the proceedings of the House/Committee are not called in question in any court or place out of Parliament.

57. Another question that may arise in this context is : “what is meant by calling in question the proceedings of the House or its Committees?”

58. Making a reference to proceedings of the House/Committee in a court in order to establish that a member participated in the proceedings or voted on a Bill/motion, etc. may not amount to calling the proceedings in question; to do so in order to establish motive or intention of a member for participating in the proceedings or voting in a particular manner would definitely amount to calling the proceedings in question.

59. The procedure recommended by the Committee of Privileges of the Second Lok Sabha is primarily aimed at ensuring that the House may give permission for production of a document only after the Committee of Privileges have examined the request and have come to the conclusion that there is no potential in the request of calling the proceedings of the House/Committee into question.

60. ***What needs to be appreciated is: that is the reason why in all cases of requests for documents relating to proceedings of the House/its Committees, members etc., be they be from courts of law or investigating agencies, it has been made incumbent upon them to state specifically the purpose for which the documents in question are required.***

61. The Committee have carefully examined the pattern of requests received so far for production of documents. Barring the singular instance during the Second Lok Sabha when request was received from court for production of documents (1st Report of Committee of Privileges, 2nd Lok Sabha), all other requests have been from investigating agencies like police and Central Bureau of Investigation.

62. The Committee observe that there has been a lack of uniformity of approach in dealing with requests received from investigating agencies for production of documents. While during the fifth Lok Sabha original documents were handed over to the Central Bureau of Investigation, during the Eighth Lok Sabha, similar requests from Central Bureau of Investigation for original documents were declined

twice. During the current Lok Sabha, original documents have been handed over once to the Central Bureau of Investigation and on another occasion the concerned investigating authorities have been asked to come to the Lok Sabha Secretariat and take photographs of the required documents.

63. The Committee, therefore, feel that procedure for dealing with requests for documents needs to be streamlined for which purpose the Committee would first like to categorise the documents that may be required by courts or investigating agencies.

64. The Committee are of the view that though it may not be possible to give an exhaustive list of categories of documents that might be required for production in future, yet a broad categorization may be attempted as follows:-

- (i) *Documents relating to proceedings of the House,*
- (ii) *Documents relating to proceedings of a Committee,*
- (iii) *Documents the disclosure of which may involve privilege of the House/Committee/member/witness,*

(iv) Documents in the custody of Secretary-General pertaining to information relating to members, like the number of days a member attended sittings of the House/Committees; TA/DA drawn by a member during a specified time; specimen signatures/handwriting of a member; documents submitted by a member; information submitted by a member regarding his assets and liabilities; the names and addresses of PAs, etc. employed by member and so on.

65. The Committee are of the considered view that requests for the category of documents mentioned against (i), (ii) and (iii) above, whether by courts or investigating agencies, must continue to be dealt with in consonance with the procedure laid down by the Committee of Privileges, Second Lok Sabha in their First Report, for the simple reason that the House must be aware before granting permission for production of the requisite documents whether or not the production of documents will involve calling into question the proceedings of the House or a Committee of the House.

66. The Committee note that the crux of the said procedure is that the courts or the parties to the legal proceedings making requests for documents relating to proceedings of the House or Committees are specifically required to state *inter alia* the purpose for which the documents in question are required. **Furthermore, such documents could be made available to the courts only with the leave of the House or in emergent cases by the Speaker when the House is not in session.**

On parliamentary sovereignty, **A.V. Dicey observed that** “ *This doctrine of legislative supremacy of Parliament is the very keystone of the law of the constitution. But it is, we must admit, a dogma which does not always find ready acceptance, and it is well worth while to note and examine the difficulties which impede the admission of its truth.*”

67. As regards requests for the category of documents mentioned against (iv) above, the Committee feel that disclosure of information contained in such documents does not involve calling in question the proceedings of Parliament or its Committees. The Committee are, therefore, of the view that in the interests of transparency in

governance such documents may be made available with the permission of the Speaker.

68. Speaking of transparency in governance, efforts have recently been made by the Government to bring about transparency by enacting the Right to Information Act, 2005.

69. With the coming into force of the Right to Information Act, 2005, the situation has materially changed. Under the provisions of the Act, any citizen of India can make a request to the designated Information Officer of any public authority/office seeking information by making a written application with the prescribed fee. Speaker, Lok Sabha is a public authority within the meaning of 2(h) of the Act. In terms of sub section (2) of Section 6 of the Act, "An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him." Section 2 (f) of the Act says 'information' means any material in any form, including records, documents, reports, papers, data material etc.

70. Under the circumstances a piquant situation has emerged. While the courts of law and investigating agencies would be required to state the purpose for which request for documents relating to the proceedings of the House, its Committees, members etc., are required there is no such stipulation with regard to requests received for such documents by a citizen of the country under the Right to Information Act, 2005.

71. The Committee would like to drive home this point through an illustration. There could be a situation where a member has been arrested or investigation is being carried out against him for a penal offence. The investigating agencies investigating the case require some documents relating to proceedings of the House or relating to the member, which are in the custody of Secretary-General, Lok Sabha. As per the procedure they would first have to state the purpose for which the documents are required. Thereafter, their request would be processed. The matter could also be referred to the Committee of Privileges for examination and report. The documents sought for could be made available to such investigating agencies, only if it so recommended by the Committee Privileges in their

Report, and the same is agreed to by the House. All this process would certainly entail some time.

On the other hand, if such documents are sought for by a citizen under the RTI Act, in the first place such a person under the provisions of section 6 (2) of the Act would not at all be required to state the purpose for which the documents are sought. Besides, in terms of provisions of Section 7 (1) of the Act, such documents would have to be furnished to the applicant as expeditiously as possible and in any case within thirty days of the receipt of the request.

This indeed is a strange situation

72. As already observed by the Committee, legislative intent behind enactment of RTI Act is indeed commendable and augurs well for the endeavours towards ensuring a more transparent governance. In this era of information explosion, information is certainly power. The RTI Act, therefore, provides to every citizen unfettered access to information. The Act, at the same time, exempts the public authorities, under Section 8, to disclose certain categories of

information. As far as Parliament is concerned, it can decline to provide information the disclosure of which would cause a breach of privilege. Notwithstanding this provision, the Committee feel, particularly in the light of situations visualized in para 70 above, that the Parliament certainly has a right to know the reason for which a citizen of the country requires documents/information relating to the proceedings of the House, its Committees, Members etc. so that it can decide for itself whether the request has any potential of calling the proceedings of the House/Committee into question in any court or place out of Parliament. Consequently, therefore, the Parliament needs to have the discretionary power to decide whether to part with the document/information sought for, a right which is ordained by the Bill of Rights of United Kingdom, which is *Magna Carta* of sorts so far as laws governing parliamentary conventions in this regard is concerned, and secured to the Parliament by Constitutional provision referred to above.

73. The right to information has a special significance for Parliament inasmuch as it has a tendency to infringe upon the domain of Parliamentary privileges. As already noted, *Section 8 (1)(c) of the Act provides that notwithstanding anything contained in the Act,*

there shall be no obligation to give any citizen information, the disclosure of which would constitute a breach of privilege of Parliament or the State Legislature. The Committee would like to emphasize that it is quite difficult to lay down and visualise all the situations wherein the disclosure of information pertaining to Parliament would cause a breach of privilege of the Parliament. As of now the information, the disclosure of which would constitute a breach of privilege could arise in situations like disclosure of proceedings of secret sittings of the House held in terms of provisions of Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha, disclosure of proceedings (including evidence) or Report of a Parliamentary Committee before such proceedings or evidence or documents or Report have been reported to the House.

74. At this juncture, the Committee find it pertinent to digress a bit with regard to confidentiality of proceedings of Parliamentary Committees. Needless to say, confidentiality is *sine qua non* for effective functioning of the Committee System. The free and fair deliberations by members of the Committee, cutting across party lines; and frank depositions by witnesses, who feel secure under the

protective layer of parliamentary immunity with respect of their depositions before the Committee, make the Committee's deliberations truly effective.

75. As a matter of fact, in case of many Committee Reports either the entire portion of evidence and in some cases the entire evidence given before a Committee is not appended to the Report when the same is presented to or laid on the Table of the House. In such a situation, after the Report of a Committee has been laid on the Table of the House, even though the evidence tendered before it has not been appended with the Report, a request could be made under the RTI Act for information pertaining to or for copies of such proceedings comprising of evidence tendered before Parliamentary Committees. A plea could very well be taken that since the Report has been made public, parting with the evidence tendered before the Committee would no longer involve breach of privilege of the Committee and the House.

76. If the proceedings which also comprise of depositions given in confidence were to be made available to a citizen at any point of time

after laying of the Report of the Committee on the Table of the House, the witnesses who gave depositions would be put to grave risk *vis-à-vis* retributive action against them for having come out frankly with facts before the Committee by the affected parties.

77. On quite a few occasions matters pending before a Parliamentary Committee lapse due to dissolution of the House without the Report of the Committee being presented to the House or the Speaker. *In such situations the question that comes up is, can the proceedings of Committee (evidence and deliberations) be made available to a citizen under the Right to Information Act?*

78. There could also be situations where parting with an information sought for under RTI may not, strictly speaking, amount to a breach of privilege of the House, but the information nevertheless comes under the category of confidential information with regard to documents in the custody of Secretary-General, Lok Sabha. For instance, Rule 334 A of the Rules of Procedure and Conduct of Business in Lok Sabha precludes premature disclosure of notices given by members. It may be worthwhile to note that breaches of

rules do not constitute breach of privilege and contempt of the House. A citizen may, therefore, insist that since the premature disclosure of the notice does not amount to a breach of privilege, he has a right to have copies of such notices. Similarly, there could be another situation where a request could be made under the RTI Act for the comments given by a person against whom a notice of question of privilege has been given before a decision is taken in the matter by the Speaker, Lok Sabha. These instances are only illustrative; there could be many more.

79. The Committee wish to take this opportunity to assert that Lok Sabha has adopted very proactive initiatives with regard to right to information. Towards this end, Speaker, Lok Sabha has framed “The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004” which came into force with effect from 4 August, 2004. Under the Rules, a duty has been cast upon the members to furnish information pertaining to their assets and liabilities and that of their spouses and dependent children, which are kept under the custody of the Speaker, Lok Sabha. **As and when such information has been sought under the Right to Information Act, the same has been**

invariably provided to the applicant with the permission of the Speaker, Lok Sabha.

80. The Committee note with interest some responses to the question with regard to conflict between provisions of Laws/Constitutional provisions providing Right to Information and the practice governing requests from Courts etc.

As per **House of Commons**, Canada, unless an Act specifically restricts parliamentary privilege, it cannot apply so as to interfere with parliamentary privilege. These privileges are constitutional in nature and a statute cannot abrogate a constitutional provision.

In **Australia**, the Freedom of Information Act confers such rights on citizens, but it applies to the records held by executive department and agencies and does not apply to records held by MPs or Parliamentary Departments.

Section 46 of Freedom of Information Act of **Australia** lays down what are exempt documents. The Department of House of Representatives, along with other parliamentary departments, has been excluded from the operation of the Act.

In **UK**, the Clerk of Parliament as the authorized officer of the House may refuse to disclose information on the ground of either parliamentary privilege (Section 34) or prejudice to the effective conduct of public affairs (Section 36). A dissatisfied applicant has no right of appeal to the information commissioner. Section 34 of the Freedom of Information Act provides that: (1) Information is exempt information if exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament; (2) The duty to confirm or deny does not apply if, or to the extent that, exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament; and (3) A certificate signed by the appropriate authority certifying that exemption is or at any time was required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.

The Speaker's certificate has never been challenged.

81. The Committee note that in Foreign countries there are in a manner of speaking some checks and balances with regard to

information pertaining to proceedings and papers of Legislatures etc. sought for under Right to Information Act or like statutes.

82. It isn't the Committee's remit to dwell up on or suggest any action in situations as envisaged at paras 70 to 77. The point which the Committee wish to emphasize is that given the sensitivity and confidentiality of the information as discussed above, Parliament certainly needs to know the reasons for which such information is sought. It's quite possible that the information/documents sought for under the RTI might be utilized for questioning the proceedings of the House or Committees thereof. In situations where proceedings of the House or its Committees are likely to be questioned, even if the requests are received from courts of law or investigating agencies the same would not be acceded to. As per the existing provisions under Section 2(f) of the RTI Act, there is no need for a person seeking an information under the Act to state the reason for which he needs such information.

83. The Committee wish to reassert that as per the premise laid down in Section 9 of the Bill of Rights, 1689, U.K., which was duly incorporated in clause (2) of Article 105 of the Constitution of India, the proceedings of Parliament or its Committees cannot be called in question in any court and that the Parliament has exclusive jurisdiction over its proceedings. *Hence, the procedure for dealing with requests from courts of law and investigating agencies for documents relating to proceedings of House, its Committees etc., laid down by Committees of Privileges in their various Reports flow from the Constitutional provisions or in other words have the sanction of Constitutional provisions.* Notwithstanding the overriding effect with regard to applicability of the Right to Information Act, 2005 vis a vis other laws for the time being in force, under section 22 of the Act, **the Right to Information accruing to a citizen under the RTI Act cannot abrogate privileges conferred under Constitutional provisions.**

84. The Committee concede the fact that individuals making requests under the RTI Act for information to the Secretariats of Parliament and Legislatures may not even know that some of the

documents sought for by them may pertain to the proceedings of the House, its Committees or members etc. Hence, it is the considered view of the Committee that irrespective of the fact as to what the citizens ask for under RTI Act vis a vis matters under the jurisdiction of Parliament, it should be made mandatory for them to state the reasons for which the information/documents are being sought, so that the Speaker of the concerned House can take a decision in the matter. If the Speaker, in his wisdom, is of the view that the document sought for has the potential to call in question proceedings of the House, its Committees etc., he may refer the matter to the Committee of Privileges of the House for examination and report. In that case the time limit of furnishing the information sought for under the RTI within 30 days of request being so made be dispensed with and the documents sought for may be furnished to the applicant if so recommended by the Committee and agreed to by the House. It may also be open for the Committee/House to decline furnishing of documents sought for if the Committee/House hold the view that furnishing the same would result in calling in question proceedings of the House or its Committees.

85. The Committee are, therefore, of the view that the Right to Information Act, 2005, needs to be suitably amended on the said lines.

86. At this juncture, the Committee find it appropriate to note that the issue of documents relating to proceedings of the House, its Committee etc. being sought for production in Courts of law or investigating agencies and subsequently in courts of law, does in a way touch upon the Legislature-Judiciary relationships. The Committee wish to take up this opportunity to dwell briefly on this sensitive issue. Functional distribution of powers among various organs of the state namely, the Executive, the Legislature and the Judiciary, is a characteristic feature of modern democracies. The Committee feel it apt to cite the following observations of the 18th Century French philosopher Montesquieu:

“If the legislative power is united with the executive power in the hands of one person or of one body of officials, there can be no liberty. Nor can there be any liberty if the power to Judge is not separated from the legislative and executive powers. Further there would be an end of everything were the same men or the same body, whether of nobles or of the people, to exercise those three powers, that of enacting, laws, that of

executing the public resolutions and of trying the cases of individuals”.

87. To state in a nutshell, if the three organs of State were to be in same hands, there would 'an end of everything' Hence the principle of separation of powers. According to the scheme of Indian Constitution, the three main organs of State viz the Legislature, the Executive and the Judiciary function independently within their own spheres, free from interference by the other two. Separation of Powers of the different Constitutional organs is a basic feature of our Constitution, giving sustenance to Parliamentary Democracy. Parliament In India, has been made the Supreme legislative body of the State and, therefore, accorded the pre-eminent position in the country's Constitutional and political setup. Parliament is supreme in its allotted sphere and must not be interfered with by the courts of law in its functioning. The Constitution does not give any unbridled power to any of the organs of the State.

88. Democracy does not contemplate any single/public functionary which will have absolute power. In the words of former Chief Justice of India, Shri J.S. Verma, all the three principal organs are expected

to work in harmony “in a joint and participatory role... instead of an exclusive primacy of any one in the process.” Each organ of the State is sovereign within their respective domains. If absolute supremacy is not there for Parliament, certainly the Judiciary is also not supreme. It is seen from the debates of the Constituent Assembly relating to Parliament, the predominant view that emerged was that no Supreme Court or Judiciary can stand in judgement over the will of the Parliament, representing the sovereign will of the people. Notwithstanding these constitutional as well as procedural arrangements, there have been fissures on some occasions in the relationships between the Legislature and the Judiciary. Differences of opinion have occasionally cropped up between the Legislature and Judiciary in the past.

89. In this context Committee do not find it out of place to refer to recent instance, without going into details, where a court of law sought from the Speaker a report of a Standing Committee even before it was tabled in Parliament. Needless to state, as is well established, any disclosure of contents of a report of a Committee of the House before it is laid on the Table of the House amounts to a

breach of privilege and contempt of the House. The fact, that notwithstanding this well laid down premise, the court thought of calling for a report which has not been laid on the Table of the House. This incident certainly had all the portents of a Legislature-Judiciary confrontation. Mercifully the matter got resolved after the court back tracked on their initial request for the copy of said report. The Committee appreciate this gesture of the court. The Committee have cited this instance to illustrate the point as to how conciliatory gestures by both the vital organs of the State and mutual respect for each other could facilitate maintenance of the delicate Constitutional balance which is so essential for the harmonious co-existence between the different organs of the State and for the sustenance of the democracy in this country.

90. The Committee would now like to sum up their observations on this sensitive issue by quoting the following observations of Justice V.R. Krishna Iyer.

“the House in a large measure has a representative character and the court can never act as a third chamber of the House, even though it has the power to strike down

an unconstitutional legislation and pronounce upon excesses outside the legislative chamber... The glory of our Constitution desires mutual reverence between the legislature and the judiciary in such a manner that comity and camaraderie become the majestic *modus vivendi*.

VIII. CONCLUSIONS

91. The Committee in the light of their observations in Part VII of the Report, have arrived at the following conclusions:-

(i) The cumulative effect of provisions of Section 9 of the Bill of Rights, U.K. and articles 105(2), (3) and 122(1) of the Constitution is that ***the proceedings of Parliament or its Committees cannot be called in question in any court and that the Parliament has exclusive jurisdiction over its proceedings.***

(ii) The procedure for dealing with requests received from courts for production of documents pertaining to proceedings of the House/Committees or in the custody of the Secretary-General, Lok Sabha as recommended by the Committee of the Privileges (Second Lok Sabha) in their first Report is based on

sound and time tested conventions of the House of Commons and in consonance with the said Constitutional provisions in India. ***The cardinal principle underlying this procedure is to ensure that the proceedings of the House/Committees are not called in question in any court or place out of Parliament.***

(iii) It is for this reason that in all cases of requests for documents relating to proceedings of the House/its Committees, members etc. be they be from courts of law or investigating agencies, it has been incumbent upon them to specifically state the purpose for which the documents, in question are required.

(iv) As there has been lack of uniformity of approach in dealing with requests received from investigating agencies for production of documents, there is a need to streamline the procedure for dealing with such requests.

(v) Requests for documents relating to proceedings of the House, proceedings of the Committees or the disclosure of which may involve privilege of the House/Committee/member/witness, may continue to be dealt

with in consonance with procedure laid down by the Committee of Privileges, Second Lok Sabha in their First Report.

(vi) The Right to Information Act, 2005, needs to be suitably amended requiring an applicant under the Act, for information/documents relating to matters coming under the jurisdiction of Parliament to state the reasons for which the same are required; empowering the Presiding Officer to refer such a request to the Committee of Privileges of the House for examination and report. Amendment may also be made to the effect that in the event of reference of such a request to Committee of Privileges, the time limit for furnishing information/document sought for may be dispensed with and on such reference, the procedure as laid down in First Report of Committee of Privileges (Second Lok Sabha) might be followed. Besides in emergent cases when the House is not in session Speaker of the House may be empowered to take a decision in the matter and decision taken by the House/Speaker may not be questioned by the Chief Information Commissioner.

IX. RECOMMENDATIONS

92. The Committee recommend as follows:
- (I) **Procedure for making requests for documents relating to the proceedings of the House or of any Committee of the House**
- A. If request for documents relating to proceedings of the House or of any Committee of the House is made by a court or by the parties to a legal proceedings before a court, the court or the parties to the proceedings as the case may be, shall specify the documents required, the purpose for which they are required and the date by which they are required. It should also be specifically stated in each case whether only certified copies or photocopies of the documents should be sent or an officer of the House should produce it before the court.
- B. If the request for documents relating to proceedings of the House or of any Committee thereof is made by investigating agencies like the police, Central Bureau of Investigation, etc, they shall specify the documents required, the purpose for which they are required and the date by which they are required.
- (II) **Procedure for dealing with requests for documents relating to proceedings of the House or any Committee of the House**

- A. (i) If the request has been made by a court or by the parties to the proceedings before a court and the House is not in session, the Speaker may in emergent cases allow the production of the relevant documents in court in order to prevent delays in administration of justice and inform the House accordingly of the fact when it meets.
- (ii) If such a request, however, appears to the Speaker to involve any question of privilege, especially the privilege of the House, any Committee of the House, any member or a witness or, in case the production of the document appears to him to be a subject for the discretion of the House itself, he may, notwithstanding the fact that House is not in session, decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.
- (iii) If such a request has been made when the House is in session, the request may be referred by the Speaker to the Committee of Privileges.
- (iv) If the request requires appearance of a member or officer of the House in court, with or without documents for deposition, in relation to proceedings

of the House or any Committee of the House, the Speaker may refer the matter to the Committee of Privileges, whether the House is in session or not.

- B. (i) If the request has been made by investigating agencies like the police, the Central Bureau of Investigation, etc., the Speaker may permit them to take photocopies or photographs of the required documents without parting with the original documents.
- (ii) In case, however, such a request appears to the Speaker to involve any question of privilege, especially the privilege of the House, any Committee of the House, any member, or a witness, or in case the production of the document appears to him to be a subject for discretion of the House itself, or the investigating agency insists on having the original documents for reasons to be specified in writing or they desire to record evidence of any member or officer of the House, he may refer the matter to the Committee of Privileges for examination and report.
- (III) Procedure for dealing with requests from courts or investigating agencies for documents other than those relating to the proceedings of the House or any Committee**

of the House, which are in the custody of the Secretary-General

A. If requests are received from a court or an investigating agency like the police or the Central Bureau of Investigation, etc. for documents, other than those relating to the proceedings of the House or any Committee of the House, which are in the custody of Secretary-General, copies of such documents may be made available, with the permission of the Speaker.

Explanation: Documents in the custody of the Secretary-General, other than those relating to the proceedings of the House or any Committee of the House, shall mean and include (but it shall not be treated as an exhaustive list of such documents), those relating to general information pertaining to the sittings of the House, any Committee of the House, any member of the House or duration of sessions of the House, like dates on which the House sat; the number and/or dates of sittings of a Committee of the House; the number of days a member attended the sittings of the House or any Committee of the House; TA/DA drawn by a member during a specified time; specimen signatures/handwriting

of a member; documents submitted by a member; information submitted by a member regarding his assets and liabilities; the names and addresses of PAs etc. employed by a member; and so on.

- (IV) The question whether a document relates to the proceedings of the House or any Committee of the House shall be decided by the Speaker and his decision shall be final.**
- (V) Documents relating to the proceedings of the House or any Committee of the House which are public documents should be taken judicial notice of and requests for certified copies thereof may not be ordinarily made unless there are sufficient reasons for making such requests.**
- (VI) Procedure after the Report of the Committee of Privileges has been presented or laid on the Table of the House**

After the Report of the Committee of Privileges has been presented to or laid on the Table of the House, the Chairman or any member of the Committee may move a motion in the House to the effect that the House agrees with the Report and further action will be taken in accordance with the decision of the House.

(VII) The Government may bring forward an amendment to the Right to Information Act, 2005 on the following lines:

(a) It may be made incumbent upon an applicant requesting for information/document which come under the jurisdiction of the House to state the reasons for which the information/documents are required;

(b) If, in the opinion of the Speaker, the information/documents sought for have the potential to call in question the proceedings of the House or of any Committee of the House, in any court he may be empowered to refer such a request to the Committee of Privileges for examination and report.

(c) In the event of such a reference being made to the Committee of Privileges, the time limit prescribed in the Act for furnishing information/documents may not be applicable. On such a reference being made, the information/documents sought for may be furnished only if so recommended by the Committee of Privileges and agreed to by the House.

(d) Decision taken by the House/Speaker may not be open to review by the Chief Information Commissioner.

93. The Committee further recommend that their observations made at paras 70 to 78, 82 to 85 and conclusions drawn at para

91(vi) of the Report may be conveyed to Ministries of Parliamentary Affairs and Information and Broadcasting.

NEW DELHI
28 April, 2008

V. KISHORE CHANDRA S. DEO
Chairman,
Committee of Privileges