



An Analytical Study of Parliamentary Privileges in India with Light On Judicial Review

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Abstract

The concept of parliamentary privileges refers to the legal protections that are afforded to certain members of a nation's parliamentary body. These rights grant immunity from civil and criminal crimes. These activities include words and actions taken by these lawmakers while performing legislative obligations. Article 105 of the Constitution of India provides a definition for them as well. The functions, rights, and immunities of the Houses of Parliament in India are laid out in detail in Article 105 of the Indian Constitution. This Article protects parliamentarian's free speech. It also offers these members protection from legal actions for everything they say or vote on in Parliament or its committees. Can courts evaluate these privileges? This Article introduces the complicated concept of parliamentary privilege with a light on Judicial Review. It analyses the nature and origins of parliamentary privilege, some of the debates and tensions that have surrounding it, and how privilege is perceived and expressed in India via major texts. The law should periodically clarify these authorities, privileges, and immunities so that everyone is on the same page. These rights are regarded as exceptional provisions, and as such, they take precedence over other considerations in the event of a disagreement. The Article thus also covers in detail, the need for codification of these privileges and few important cases attached hereto.

Keywords: Parliamentary Privileges, Fundamental Rights, Constitution, Parliamentarian, Codification.

1. Introduction

India inherited the British style of parliamentary governance, and its Constitution and use of parliamentary privilege are similar to those of other Commonwealth nations. Parliamentary privilege, sometimes known as full privilege, is a form of legal immunity that is held by members of numerous legislatures across the world. This privilege shields legislators from being held civilly or criminally liable for actions they do or statements they make while performing legislative duties.¹

Defamation rules would normally prohibit a member from using privilege to make harmful charges without first evaluating whether such allegations have a good foundation. Because of the possibility of misconduct, the privilege of the parliament is a contentious issue. The disclosure of sensitive military and diplomatic information by a member presents yet another significant risk to the global defence and/or the safety of an ongoing military or covert operation. This risk might be generated by the member's desire to gain personal gain.

Legislation that governs Parliament's privileges and immunities is known as 'parliamentary privilege' and it includes the ability to penalise for "contempt" or "breach of privilege." Parliament's privileges, whether granted to the institution as a whole or individual members, are designed to provide lawmakers the freedom and independence they need to carry out their constitutional duties of legislation, debate, and investigation.² As a result of these constitutional requirements, it would be proper to examine the subject from the perspective of the Indian Constitution. When it comes to figuring out the scope and bounds of the law of privileges, other nations' precedents might be a valuable resource for information and inspiration.³

1.1 Emergence of Privileges

The genesis of parliamentary privileges is intricately linked to the institution's history in England. The executive arm of government was split from the legislature, and the House of Representatives struggled to secure its position in the legislature in order to defend itself from the influence and authority of the monarch and the House of Lords. Thus, the privileges were created around the end of the 16th century.

¹ Laxmikanth, M. (2016). Indian Polity (McGraw Hill Education (India) Pvt Ltd, Chennai, 5th edn., 2016).

² Shankar, B.L. and Valerian, R. (2011). The Indian Parliament: A Democracy at work. Oxford University Press, Delhi.

³ Spray, C. (2014). Disrupting Rituals of Debate in the Indian Parliament. Journal of Legislative Studies, 16(3) 338-351.

Parliamentary privileges have their origins in ancient India. In Vedic times, there were two legislatures called Sabha and Samiti that kept an eye on the king's every move. The East India Company arrived in India for commerce around 1600. The East India Company Act of 1784 entangled them in the problem. The 1833 Charter Act emphasised legislative consolidation. The 1853 Charter legislation called for an enlargement of India's parliamentary council statute. The desire for privileges may be found in the demand of the legislative councilor under the 1853 Charter Act. As a result, the authority of the legislative council was specified by the Indian Council Act of 1861. The rights accessible to members and members of the newly constituted legislative council of state, the Indian Council Act 1892, were renewed and enlarged, which included the discussion, any resolution voted by parliament, and so on. The complete position of parliament privilege secured was solidified by the Government of India Act 1915. Members' freedom of expression was qualified in the Government of India Act of 1919. The regulations relating to the privileges of members of the Indian legislature were included in the Government of India Act 1935. The Indian Independence Act of 1947 granted the Indian realm autonomous legislative authority and later on, this went to be added in the Indian Constitution.⁴

2. Privileges Available

The privileges of the Indian parliament are laid forth in Article 105 of the Indian Constitution. Parliamentarians are exempt from any civil or criminal liability for any statements made or actions taken in the course of fulfilling their duty. The only time a person is eligible to claim the privileges is when they are a member of the house. It is mentioned that the rights would be revoked as soon as he is no longer a member of the organisation. In order for members to fulfil their constitutional obligations, they need the privileges that they are allowed. These privileges are required in order for the processes and functions to be conducted in a systematic and uninterrupted way.⁵ These privileges in India are divided into two:

- a. Collective Privileges: Entitlements relished commonly by all Parliamentarians;
- b. Individual Privileges: Entitlements relished by members at an independent level;

2.1 Collective Privileges

a. Right to prevent proceedings from being published

Article 105(2) of the Constitution states that no one may be held accountable for publishing a member's reports, debates, etc. Because the proceedings are of national significance, the public must be informed. Malicious or incomplete publications are not protected. Only actual house procedures are protected. Misrepresenting or misreporting purged proceedings is a violation of privilege and contempt of the house.

b. Right to keep out strangers

Those who are not affiliated with the house have no business taking part in the proceedings, since it is within the members of the house's power to prevent them from doing so and it is their right to do so. This right is very important for ensuring that there will be open and honest debate in the house. In the event that a violation is discovered, the offender may be subject to admonishment, censure, or even jail as a form of punishment.

c. Keystone of Parliamentary privilege

Whether a member of the Indian Parliament or a foreigner, the Indian Parliament has the authority to penalise anybody who breaches the house's rules. When a resident of the house commits a rule violation, they are immediately expelled from the community.

This right, which has been referred to as the "keystone of parliamentary privilege," has been given that moniker because, in the absence of it, the House of Representatives would be vulnerable to acts of contempt and violation, and possessing it is necessary for the House to keep its authority and carry out its responsibilities. This power has been upheld by the majority of the courts in the cases that have been brought before them. If a member of the public is found to be in contempt of the House of Representatives, that person might be held in custody for the remainder of the legislative session.

d. The power to manage the house's internal affairs

Each house may manage its own processes. Both house has its own jurisdiction, and neither may regulate the other's internal operations. Under Article 118 of the Constitution, the house may regulate its own procedures and cannot be challenged in the courts for not following the norms. The Supreme Court ruled that this is a broad clause and the norm is not obligatory. They may deviate or amend the rule.

2.2 Individual Privileges⁶

a. Freedom of Speech

Members of parliament now have the freedom to speak their minds and express themselves without interference. Because a culture of open and fearless discussion serves as the essential underpinning of our parliamentary democracy, the viewpoints and concepts articulated by our elected representatives are exempt from the possibility of facing legal penalties. Article 19(2) of the Constitution ensures that citizens have the right to freedom of speech and expression, which is distinct

⁴ Jain, M.P. (2014). *Outlines of Indian Legal and Constitutional History*. Lexis Nexis, Delhi.

⁵ Sharma, B.K. (2012). *Introduction to the Constitution of India*. Eastern Economy Edition, 10th edn.

⁶ Singh, D. (1965). *Parliamentary Privileges in India*. *Indian Journal of Political Science*, 26(1),75-85

from the right that is provided to members of parliament. It is guaranteed under the Indian constitution, specifically Article 105(1). The actions of the parliament, on the other hand, are subject to a predetermined set of norms and guidelines.⁷

b. Protection from Arrest

Members are free from arrest in civil cases 40 days before, after, and during session. No member may be detained inside parliament without authorisation from his/her house, so they can execute their responsibilities.

If a member of parliament is arrested, the chairman or speaker should be notified. Under the Preventive Detention Act, the Essential Services Maintenance Act (ESMA), or the National Security Act (NSA), a family member might be held outside the house on criminal charges.

c. Absolution from the need to testify in court

There are a variety of privileges that are exclusive to members of parliament, such as immunity from having to testify in court on matters pertaining to official business. They are not prevented in any way from attending the residence or carrying out their responsibilities there, and the court does not interfere with their ability to do so.

d. The authority to establish operating procedures

Article 118 of the Constitution gives each House of Parliament the right to adopt rules and regulations controlling the manner it conducts itself as well as the activity it accomplishes. These rules and regulations regulate both the conduct of the House itself and the activity it engages in. Their separate rulebooks, known as the 'Rule Book' in the Lok Sabha and 'Rule Book' in the Council of States, were passed by both Houses.

3. Power granted to the privileges

Parliamentary privilege shields members of the House of Representatives from the normal legal and judicial scrutiny.⁸

At first glance, it looks that they are breaking the law, but if they don't have a right like parliamentary privilege, it might have a negative impact on their ability to serve their constituents and their people. Rule of law is in some ways at odds with parliamentary procedure. A discussion of codification of legislative privilege is critical in this case.

In the 1920s, the question of whether or not privileges should be written down first arose, and codification was proposed as a potential answer. In the Constituent Assembly, efforts to codify the law were unsuccessful because the new conditions that arose could not be accommodated in the legislation. Because of this, including Articles 105 and 194 in the Constitution was an absolute must. According to Article 105(3) and 194(3), the legislative process is responsible for determining the powers, privileges, and immunities enjoyed by each House, and members of each House enjoy the same rights as members of Parliament. This was changed in 1978 by the Forty-fourth Amendment Act to read as follows:

"Other than that, each House of Parliament, as well as its members and committees, shall have such powers, privileges, and immunities as may from time to time* be defined by law, and until such time as they are defined, shall have the same rights as they did prior to the Constitution (44th Amendment) Act of 1978."

Despite the fact that the Article indicated that parliamentary privileges were to be defined, the general assembly has not yet passed a bill that codifies them.

3.1 Requirement for Codification

1. Parliamentary privileges will be compatible with basic rights after codification.
2. Articles 105 and 194 of the Indian Constitution provide members of the House the right to speak and vote. Other member powers aren't codified. Discrepancies exist about parliamentary privilege. Once formalised, privileges and procedure will be clear. Contradictions in House vote and defection-related disparities may be resolved. The scope of parliamentary privilege must be codified for better governance.⁹
3. Indian Constitution includes judicial scrutiny. It's fundamental to Indian law. Judicial review protects the public against legislative and administrative abuses. Parliament is paramount under parliamentary sovereignty, and the court cannot examine legislative legislation. In India, however, the Constitution is supreme. Doubts remain about whether the courts may evaluate legislative privilege. Codification will stop it.
4. A summary of the statements that were made by the Press Commission of India in the year 1954:

"Therefore, it would be important for either Parliament or a state legislature to clarify, through law, the specific power, privileges, and immunities that they hold in relation to contempt, as well as the process for enforcing them. A legislation of this kind would need to be in accordance with our constitution, and it would likely be susceptible to legal challenge if it appeared to be in contradiction with any of our fundamental rights. In that scenario, the situation would be brought to the highest court in the land for interpretation. Articles 105 and 194 provide provision for an act to be passed, and it was

⁷ Saari, M. and Hasan, W (2020). The Extent of the Right to Freedom of Speech and Expression for the Parliamentary Immunity and Privilege. Brill, 205-224

⁸ Singh, A. (2020). Parliamentary Privilege and Fundamental Rights. Manupatra Articles.

⁹ Chandran, R. (2021). Parliamentary Privilege: An Analysis and Extent of Privilege. International Journal of Law Management & Humanities, 4(2) ,1464.

only during the interim time that the House of Commons' rights and privileges were transferred to Parliament and state legislatures.”

4. Judicial Reviews and its scope on Privileges

The Indian judiciary has been charged with ensuring the preservation of basic rights. The members of Parliament insist that they retain ultimate control over their authority and, in any case, they do not want the court to become involved. However, the court is recognised as the defender of our Constitution, and it cannot remain silent when a citizen's basic right is infringed owing to privileges or when there is an escape from criminal culpability.¹⁰

Judicial review refers to the judiciary's authority to interpret the Constitution and declare any state statute or order unconstitutional if the court believes it is so. Parliamentary privileges and judicial review pit the legislature against the judiciary. On the one hand, the Parliament claims ultimate authority over its privileges, while the Judiciary refuses to recognise any limitations on its judicial review power.¹¹ This has resulted in frequent confrontations between the State's two highest organs. Some of the cases in this regard includes:

(a) *Mohanraj v Tamil Nadu Legislative Assembly*¹²

On February 19, 2015, members of the Tamil Nadu Legislative Assembly were suspended for disorderly behaviour. In addition, a privilege committee was constituted to investigate the members' actions and additional processes connected to violation of privilege. It was identified, and it was urged to take necessary action for the privilege breach committed by six members.

A ruling on March 31, 2015 placed the members under suspension for the upcoming session for a period of ten days each. It was also extended to cutbacks in salary and other benefits until the duration of the suspension period had passed. In accordance with Article 32 of the Constitution, members of the Supreme Court have submitted a writ petition.

The petitioners contended that the resolution infringed their basic rights under Articles 19(1)(a), 19(1)(g), 14, and 21 of the Constitution.

The petitioners' argument that the resolution violated Articles 19(1)(a) and 19(1)(b) (g) was thrown out of court by the judge presiding over the case. In addition, it found merit in the argument that the rights guaranteed by Article 14 of the Constitution had been violated. The court took note of the fact that the petitioners were not provided with the video footage of the acts taken by the members of the group that led to the breach. If it had been made available to them, they would have had the chance to make an explanation for their conduct. In addition to this, the court mandated that the petitioner's wages and any other benefits be reinstated.

(b) *Ansumali Majumdar v State of West Bengal*¹³

The speaker of the Assembly gave two communist MLAs temporary permission to remain inside Assembly borders to avoid arrest under the Prevention Detention Act. According to the court's view, members cannot be granted universal immunity from arrest.

The Courts were the custodian of the Constitution and the basic rights of the citizen, tasked with deciding matters even though they were intertwined with the Parliament's powers, privileges, and immunities and concerned with its internal procedures.

(c) *Keshav Singh v Speaker, Legislative Assembly*¹⁴

The Supreme Court held in *Keshav Singh v. Speaker, Legislative Assembly* that the privileges placed on members are subject to basic rights and that in the event of a conflict, fundamental rights must predominate.

The Supreme Court went on to say that the harmonic process should be used to settle any conflicts that may arise between fundamental rights and privileges. The judicial branch is well aware that it does not have jurisdiction over legislative issues; yet, the judicial body should have the ability to decide, for the interest of society, that any offence should be resolved by the court as it sees fit, even if the judiciary is well aware that it does not have jurisdiction over legislative matters.

5. Conclusion

Members are afforded privileges to keep the legislative system functioning smoothly. Representatives of the people have some privileges, but they must always be in line with the basic right. The fundamental goal of democracy, which is to protect citizen rights, would be compromised if privileges did not align with basic rights. Parliamentary bodies have the duty to safeguard all other rights guaranteed by the constitution. All privileges are to be used in a responsible manner, and members should not abuse them. They should always keep in mind that just because they have special powers does not

¹⁰ Jain, D.C. (1967). *Judicial Review of Parliamentary Privileges: Functional Relationship of Courts and Legislatures in India*. JILI, 9(2) 205-222.

¹¹ Macreadie, R. & Gardiner, G. (2010). *An Introduction to Parliamentary Privilege*. Dept. of Parliamentary Services 2(7).

¹² *Mohanraj v Tamil Nadu Legislative Assembly*, 2016 SCC OnLine SC 134, SC.

¹³ *Ansumali Majumdar v State of West Bengal*, AIR 1962 Calcutta 632 (HC, Calcutta).

¹⁴ *Keshav Singh v Speaker, Legislative Assembly*, AIR 1965 All 349 : 1965 Cri LJ 170.

make them dishonourable. The Indian Parliament should only embrace the rights that are appropriate for the Indian democratic system, rather than adopting all of the privileges that are already in existence in the British House of Commons.

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