



JUDICIAL REVIEW OF PARLIAMENTARY PRIVILEGE AND FREEDOM OF SPEECH AND EXPRESSION

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ABSTRACT

The two important pillars of Indian democracy are legislature and judiciary. The constituent assembly put them side by side in the structural framework of our constitution. , but, it appears that on several issues they stand ‘diagonally opposite to each other. The issue of Parliamentary privileges is one such issue. Indian legislature claims that they should have exclusivity in parliamentary works. Whereas, Supreme Court has a duty of protecting the fundamental right of citizens and the press. And the Freedom of speech given to the Parliament is also important for the members of Parliament so, that they can represent us freely without having the fear of getting arrested or sued.

Keywords

Judicial review, Parliamentary privilege, Constitution of India, Power of review, Freedom of Speech.

INTRODUCTION

The two highest organs of the democracy, the Parliament and the Judiciary are expected to work in cooperation with each other so that the democracy functioning under them can flourish to the fullest possible extent. The Indian Constitution, though has

accorded these two august institutions independent roles to perform, absolute separation of power between them is not possible. The Judiciary and the Parliament while performing their respective roles, so many times and on different issues, hold different perspectives. The issue of Parliamentary privileges is also one such issue, where on one hand Parliament claims absolute sovereignty in the matters of its privileges, while on the other hand, the Judiciary as a custodian of Indian Constitution do not admit any restraint on its power of judicial review.

The reason why parliamentary privilege especially talking about freedom of speech and expression given, to able the MPs to debate freely about what they think without the fear of defaming someone and to vote freely during motion without the fear of arrest.

Article 105¹ of The Indian Constitution, where on one hand guarantees the necessary liberties to the Parliament and its Members, its exercise by the Parliament on other hand puts the fundamental rights of the Citizens and the Press in peril.

The Judiciary never denied the claim of the Parliament to be supreme as to its internal affairs. It also seems to be vigilant enough not to override the principle of separation of power which demands non-interference of Judiciary into the functioning of the Parliament. But when the question is of violation of fundamental rights by the Privilege notices and actions by the Parliament, the Judiciary has to step in. The Judiciary shoulders the primary responsibility of protecting the fundamental rights of the citizens in India, and if any

¹The Constitution Of India, 1950, §, 105



citizen comes to it claiming violation of the same, the Judiciary has to entertain his petition, even though it might be related to Parliamentary privileges.

For the smooth functioning of Indian democracy the need to define whether and to what extent the court should interfere in parliamentary privilege.

Freedom of speech

The essence of Parliamentary democracy is a free, frank, and fearless discussion in Parliament. For a deliberative body like a House of Parliament, freedom of speech within the House is of utmost significance. To enable members to express themselves freely in the House, it is essential to immunize them from any fear, that they can be penalized for anything said by them within the House.

Freedom of speech and expression of parliament is guarded by article 105(1) and (2).

Article 105 (1) says that - "Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament."

Article 105 (2) says that - " No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of

any report, paper, votes or proceedings." Here the word proceeding means any proceeding either criminal or civil. Nothing said in the house is actionable or justiciable.² The immunity is not only limited to spoken words it extended to votes as well as in the clause (2) it is specified that " any vote given by him in parliament or any committee thereof". It is not stated anywhere in the article but freedom of speech also extends to other things which are related to the proceedings of parliament such as – "for notices of motions, questions, reports of the committee, or the resolutions."³

"The Indian Judiciary in general and Supreme Court in particular, have expounded the law on privilege of freedom of speech of Parliament as provided in Article 105 of the Indian Constitution in many cases".⁴

Judicial interpretation

Judicial review is the process by which the Courts determine whether or not an administrative decision-maker has acted within the power conferred upon him or her by Parliament. That places the question of statutory construction at the heart of the enquiry. The Supreme Court enjoys a position which entrusts it with the power of reviewing the legislative enactments both of Parliament and the State Legislatures. This grants the court a powerful instrument of judicial review under the constitution. Research reveals that the Supreme Court has taken in hand the task of rewriting the Constitution, which is an important aspect in present scenario.

² M.P.Jain, Indian Constitutional Law, p.86.

³ Tej Kiran Jain v. M. Sanjiva Reddy, (1970) 2 SCC 272

⁴ A.K.Subbiah v. Karnataka Legislative Council AIR 1979 Kant.24, Dr. Jatish Chandra Ghosh v. Hari

Sadhan Mukerjee AIR 1961 SC 613, M.S.M.Sharma v. Sri Krishna Sinha, AIR 1959 SC395, P.V. Narsimha Rao v. State 1998(4) SCC 626, Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007) 3 SCC 184.



Judiciary seems to be favoring the parliament avoiding the interference into the domain of parliament. But it commented many times over the misuse of parliamentary privileges and its derogatory consequences on the constitutional doctrines and principles.

The court in all its judgments on the privilege of freedom of speech of Parliament approved the importance of this privilege for the effective discharge of the Parliamentary functions. It has been held by the Court in all its judgments that freedom of speech is a sine qua non for the proper functioning of the Parliament. The fact is emphasized that without having the right to express himself without any fear of being prosecuted in any court for whatever said inside the Parliament, the Member of Parliament is unable to truly represent the people of his constituency. The earlier trend of the judgments delivered on the subject suggests that the Court was reluctant to indulge in the question of deciding the scope and ambit of the freedom of speech. It denied and rejected all the plea against the privileges, sometimes even at the threshold (as in the case of *Tej Kishan Jain v. Sanjeeva Reddy*⁵). The *P.V.Narasimha Rao*'s⁶ case proved to be the turning point, where though the court has not denied or even curtailed the privileges of freedom of speech, but vehemently pointed out that the privilege does not give unrestricted and unfettered power to the Parliament. The Court very rightly pointed out that the Legislators do enjoy immunity from the judicial scrutiny of the speeches made in the Parliament or vote given in the Parliament, but that do not give them the power of claiming supremacy over the law. The Rule of Law and healthy

functioning of the Parliamentary democracy are the basic structure of the Indian Constitution and the court is bound to interpret Constitutional provisions in a manner that strengthens the foundational features and the basic structure of the Indian Constitution.

There is thus no element of doubt that the implication of privilege of freedom of speech of members of Parliament has come a long way from what it was in *M.S.M Sharma*'s⁷ case. It is the Parliament who is the sole judge in the matters of Parliamentary privilege and hence it is responsibility of the Members of Parliament, Speaker and Committee thereof to check the unmindful and unprecedented use of this privilege by the Parliament.

Difference between Freedom of speech under article 19 (1) (a) and 105 (1).

The freedom of speech guaranteed under Article 105 (1) is different from what is guaranteed in article 19 (1) (a). freedom of speech and expression guaranteed in fundamental right has also some restrictions to it under article 19 (2)." The term freedom of speech as used in this article means that no member of the parliament shall be liable to any proceeding, civil or criminal, in any court for the statements made in debates in parliament or any committee thereof. The freedom of speech conferred under this article cannot, therefore, be restricted under Article 19(2)."⁸

"Clauses (1) and (2) of the article 105 protect what is said within the house and not what a Member of Parliament may say outside. Accordingly, if a member publishes his

⁵ AIR SC 1970 SC1573

⁶ 1998(4) SCC 626

⁷ AIR 1959 SC395

⁸ *P.V Narasimha Rao v. State*, (1998) 4 SCC 626: AIR 1998 SC 2120.



speech outside Parliament, He will be held liable if the speech is defamatory."⁹ Besides "the freedom of speech, to which article 105 (1) and (2) refer, would be available to the member of parliament when he attends the session of parliament. If the order of detention validly prevents him from attending a session of parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right is invalidly invaded."¹⁰

CONCLUSION

For any democratic constitution to work co-ordination between Judiciary and Legislature must work. All three institutions of state have their specified job whose ultimate motive is of the smooth functioning of democracy and which benefits the whole society.

"A democratic legislature and an independent Judiciary are two pillars of a democratic system. Both have to function in co-operative spirit to further the cause of rule of law in the country."¹¹

The Constitutional provision for the Parliamentary privileges is vague. In these circumstances the Indian Courts has expounded the law of Parliamentary privileges on various occasions to accord some concreteness to the issue. Sometimes this resulted into deadlock between the Legislature and Judiciary, but somehow, Judiciary managed to maintain balance between its Constitutional function of expounding the Constitutional provision and

the supremacy of Legislature in the matters of its own privileges. The court in all its judgments on the privilege of freedom of speech of Parliament approved the importance of this privilege for the effective discharge of the Parliamentary functions.

The solution of the conflict between the Parliament and the judiciary on the issue of Parliamentary privileges lies in harmonizing the relationship between the two highest organs of the democracy and proper codifying of the Privileges to remove vague interpretations.

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¹⁰ K. Ananda Nambiar & R. Umanath v. Govt. of Madras, AIR 1966 SC 657.

¹¹ Former Speaker of Lok Sabha Somnath Chatterjee in his foreword written to the book entitled Supreme Court Versus the Constitution- A Challenge to Federalism, Pg- 110.