



## CHARTING THE EVOLUTION OF LEGISLATIVE PRIVILEGES VIA THE PRISM OF INDIAN CONSTITUTION: EXAMINATION AND EVALUATION

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### Introduction

The "Parliamentary or Legislative Privileges" are a group of constitutional rights, privileges, and immunities enjoyed by legislative bodies and their members worldwide. Therefore, privileges are required to allow members to carry out their duties and responsibilities successfully and efficiently without hindrance.<sup>1</sup> According to Lord Denman, Parliament serves as both a legislative body and a grand inquest of the country.<sup>2</sup> Free conversations, public debate, and the interchange of criticism and arguments are how parliament works.

A legislative body's members may possess specific powers, advantages, and immunities, which are referred to as "parliamentary privileges." These privileges give the legislature the freedom and authority to carry out its duties without interference from the outside. The British Parliament, which is regarded as the origin of parliamentary

institutions worldwide, has a number of powers and rights, including the "power to punish for breach of privilege or contempt," the "right to regulate its own composition," and the "right to prohibit the publication of its proceedings." Additionally, each member of each House of Parliament is entitled to a number of privileges, such as "freedom of speech and discussion in the house" and "freedom from arrest in civil proceedings," among other rights and liberties.

Under Indian democracy, "privileges" unquestionably have the same meaning as they did in Britain. The Hon'ble Court defined "privilege" in the case of *Raja Ram Pal v. Hon'ble Speaker*<sup>3</sup> as "A distinctive privilege, advantage, or benefit conferred on a particular individual." It is a peculiar advantage or favour given to one person as opposed to another to perform certain tasks. In the Indian Constitution, the parliamentary privilege is intended to protect the freedom, sanctity, and dignity of the institution of Parliament and its members while also allowing them to carry out their duties without interference. The members of Parliament are subject to Indian law as citizens, and they cannot be excused from it unless it is in the best interests of Parliament.

### Origin of the Concept of Parliamentary Privileges

The author wants to shed some insight on how Indian parliamentary privileges came to be. It has been claimed that "Parliamentary privileges" were not a novel idea in India;

<sup>1</sup> M.N. Kaul & S.L. Shakhdar, *Practice and Procedure of Parliament* 177 (1978).

<sup>2</sup> V.G. Ramachandran, "Law of Parliamentary Privilege in India", *Journal of Indian Law Institute*, 9, 131-134 (1967).

<sup>3</sup> *Raja Ram Pal v Speaker, Lok Sabha & Ors*, Pg 3 of 113



rather, the Indian legislature had relatively little rights under the Government of India Acts of 1919 and 1935. The need for parliamentary privilege became apparent after India attained independence and the Constituent Assembly chose the system of parliamentary democracy. The Privileges were incorporated into the Indian Constitution after much debate in the Assembly. As a result, the Constitution itself makes special reference of the privileges of the Indian Legislatures.

The privileges of the Parliament and State Legislatures are covered under Articles 105<sup>4</sup> and 194<sup>5</sup> of the Indian Constitution, respectively. The Indian Constitution's authors created separate provisions for the Parliament and State Legislature to prevent future misunderstandings and conflicts. A Member of Parliament has the right to free speech in the House, immunity from civil and criminal prosecution for anything said or done there, and immunity from prosecution for anyone who publishes any reports, votes, papers, or proceedings made by or with the approval of either House of Parliament under clauses (1) and (2) of both of these articles guaranteed by the Indian Constitution.

Members of some legislatures are granted legal immunity known as "parliamentary privilege," which shields them from civil or criminal culpability for actions taken or remarks made in the course of performing their official duties. In nations whose constitutions are founded on the Westminster system, it is typical. Parliamentary immunity is a comparable mechanism.

<sup>4</sup> Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof, Art 105 of Constitution of India.

Members of the House of Lords and the House of Commons are free to express themselves during regular parliamentary procedures in the UK without worrying about facing legal repercussions for slander, contempt of court, or violating the Official Secrets Act. Additionally, it states that MPs may only be detained in connection with proceedings in Parliament and cannot be detained for remarks made or deeds done while acting as an MP on the premises of the Palace of Westminster. There is no protection from being detained on criminal charges.

The influential Committee on Standards and Privileges is in charge of regulating members' rights and privileges. A member of the House may be ejected from the House or suspended for violating the rules. Past violations have included members accepting bribes and providing misleading testimony to a House committee.

### Comparison of nations using the Westminster System

Other nations using the Westminster system, like Canada and Australia, grant similar privileges. Parliamentary privilege based on Westminster is provided in the United States through the Speech or Debate Clause in Article One of the United States Constitution, and many state constitutions have equivalent provisions for their state legislatures.

UK: According to the House of Commons Library Parliament and Constitution Centre, parliamentary privilege in the UK consists of two key elements: a) the right to free speech, which is protected by Article 9 of the Bill of

<sup>5</sup> Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof, Art 194 of Constitution of India.



Rights from 1689, and b) the power of the legislature to control its own affairs, also known as "exclusive cognisance."<sup>6</sup>

AUSTRALIA: According to Section 49 of the Commonwealth of Australia Constitution Act, the powers, privileges, and immunities of the Senate, House of Representatives, and the members and committees of each House shall be those that are declared by the Parliament, and until declared, shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees.

The Commonwealth of Australia Constitution Act's Section 50 declares that the parliament has the power to independently manage its own affairs. As a result, Article 9 of the English Bill of Rights from 1689 serves as the foundation for a substantial portion of Australia's legislative rights.

CANADA: Parliamentary privilege exists in Canada, just like it does in other parliamentary systems based on the Westminster model.<sup>7</sup> The Canadian Parliament was officially granted the

privileges of the British House of Commons at the time of Confederation by the Constitution Act 1867, whose Preamble states, "The Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One

Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom."

The Canadian Parliament is given the power to define its rights by statute under Section 18 of the Constitution Act, provided that those privileges do not go beyond those possessed by the British House of Commons at the time of Confederation. Section 4 of the Parliament of Canada Act 1875 additionally included provisions for parliamentary privileges. As long as the British House of Commons also has certain powers, the Canadian Parliament may also make laws stating additional privileges.

UNITED STATES: According to Article 1 Section 6 of the United States Constitution, Senators and Representatives are not subject to arrest while participating in the sessions of their respective Houses or while travelling to and from those sessions. Additionally, it is forbidden to question them outside of their chambers during any speeches or discussions.

The goal of writing this paper was to critically examine how the Constitution's provisions operate and how the courts have addressed India's law regarding parliamentary and legislative privileges while also conducting a comparative analysis of the legal systems in other nations. to conduct an analytical investigation into the

<sup>6</sup> O. Gay & A. Horne (2009) "*Parliamentary Privilege and Qualified Privilege*", Parliament and Constitution Centre, London, House of Commons Library, p. 2.

<sup>7</sup> For further reading : Canada, House of Commons (1990) *Privilege in the Historical Context*, Table Research Branch, Ottawa, House of Commons; Canada, House of Commons (1990) *Privilege in the Modern Context*, Table Research Branch, Ottawa,

House of Commons; J. Maingot (1997) "*Parliamentary Privilege in Canada*" (2nd Ed.) Ottawa, House of Commons and McGill-Queen's University Press; Marleau & Montpetit (2000) op. cit.; J. G. Bourinot (1916) "*Parliamentary Procedure and Practice in the Dominion of Canada*" (4th Ed.) Toronto, Canada Law Book Company.



authority, privileges, and immunity that the State and Federal legislatures, as well as their members, enjoy. In accordance with Articles 105(3) and 194(3) of the Constitution, it is necessary to submit adequate recommendations for draught legislation codifying the law of parliamentary/legislative privileges.

The House of Commons of the United Kingdom is where the nature and idea of parliamentary privilege in India were first developed. The Indian Constitution's Articles 105 and 194 grant the legislature the same rights, privileges, and immunities as the British House of Commons had at the time the Constitution was adopted.<sup>8</sup> For a legislative body to remain independent and for its members to carry out their responsibilities in an effective and efficient manner, freedom of speech is essential in a functioning democracy. The members of the House must be able to democratically voice their opinions in the house without fear of legal repercussions. The ministers play a crucial role in the legislative process. Members are free to ask the ministers questions during the "Question Hour"<sup>9</sup> in order to learn more about an issue of public importance that is under their particular ministers' purview. Any infringement on a legislator's right to free speech will be considered a "breach of parliamentary

privilege" and will carry a penalty.<sup>10</sup> Progressive legislative amendments have been made in certain nations, including the United Kingdom,<sup>11</sup> Australia,<sup>12</sup> and India,<sup>13</sup> to permit the publication of true and accurate reports of the Houses' proceedings in good faith even when such publications are done without the Houses' consent. The House's authority to hold private meetings or to forbid the publication of the speeches' omitted passages, however, has not been compromised. Article 9 of the Bill of Rights, commonly known as The Act of Rights, 1689,<sup>14</sup> is the foundation for the historical development of the right to free speech in both Houses of Parliament. The freedom of expression, discussion, and parliamentary proceedings "ought not to be impeached or questioned in any Court or Place outside of Parliament,"<sup>15</sup> according to Article 9 of the Bill of Rights.

### Do Judicial Review Powers Extend To Parliamentary Privileges?

Any legislative, executive, or judicial action may be subject to judicial review by the judiciary. The Indian Constitution's Article 13(2) contains the majority of it.<sup>16</sup> According to this Article, the government may not enact any laws that violate basic rights. In accordance with Articles 32 and 226 of the Indian Constitution, the Supreme Court may

<sup>8</sup> See Constitution of India arts. 105, 194.

<sup>9</sup> In the Lok Sabha, the first hour of every sitting (11.00 a.m. to 12.00 noon) is exclusively devoted to asking questions by the members to the concerned ministers. For detailed discussion on 'The Question Hour', See S. G. Deogaonkar, *Parliamentary System in India* (Concept Publishing Company, New Delhi 1997) 77

<sup>10</sup> *Bradlaugh v. Gossett*, 1884 (12) QBD 271

<sup>11</sup> See, Defamation Act, 1996 of U.K. s. 18

<sup>12</sup> Parliamentary Privileges Act, 1987 of Australia s. 10 (1), See Annexure III for the Full Text of the Act.

<sup>13</sup> Article 361A inserted by 44th Constitutional Amendment in 1978, See Annexure I for the Full Text.

<sup>14</sup> The statutes revised edition (London: Eyre & Spottiswoode), Vol.II, pp.10-12.

<sup>15</sup> Article IX of Bills of Rights 1688.

<sup>16</sup> Laws inconsistent with or in derogation of the fundamental rights: (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void



assess the legality of a state's adoption of a law of this kind.

First, the question of what is covered by parliamentary privilege must be addressed. The right to free expression in parliament is rather open-ended. Even if something is offensive or likely to alienate individuals, a member is free to speak it. In a defamation case, nothing he said in the House could be used against him. Additionally, the courts lack the power to review the legitimacy of practices.

The second matter that needs to be addressed is the limitations put on such free expression. One of the limitations on free expression is mentioned in Article 105. Article 105 states that in order for speech to be free, both constitutional requirements and legislative rules must be upheld.

Even more restrictions are mentioned in Article 121 of the Indian Constitution. It declares that the House is not the place for Parliament to discuss the decisions made by Supreme Court and High Court justices.

Another factor to consider is the fundamental right to expression, which is comparable to that stated in Article 105. The exclusions in Article 19(1) do not apply to the members of the House's right to free speech. Members of the House must be immune from all kinds of limits and restrictions in order to properly represent the interests of their people in the business of the House.

Is it feasible to have parliamentary privileges reviewed by a judge? Is the most important

query that requires a response? In the case of *M.S.M. Sharma*,<sup>17</sup> it was argued that privileges would take a back seat to basic rights and that privileges would be important to fundamental rights. It was also asserted that this would have an effect on the Article 21 right to life and liberty. The Supreme Court held that the more specific privileges in Article 194 would take precedence over the general rights in Article 19(1). (a). According to the Supreme Court, judicial review does not apply to the legislative rights outlined in Articles 105 and 194 of the Indian Constitution. The Court did not, however, address the question of whether Article 21 authorized it to trump privileges in this instance.

Later, in the case of *In Re Presidential Reference*,<sup>18</sup> 1964, this problem of judicial control of legislative rights resurfaced. The court determined in this case that the Constitution is supreme in a federal state and that an independent judiciary upholds this supremacy. It was asserted that the extensive legislative privileges afforded to House members are governed by the written Constitution's provisions.

This position was changed in the *Raja Ram Pal case*.<sup>19</sup> In this instance, 11 M.P.s were found to be taking bribes. The Committee on Privileges found all the MPs guilty and disqualified them after hearing the matter. Inquiries were made to the Supreme Court. The Supreme Court has the opportunity to definitively settle the parliamentary privilege dispute. Here are the court's conclusions: In light of the legal precedent set forth in the two cases of Pandit Sharma and the UP

<sup>17</sup> *Pandit M.S.M.Sharma v. S.K.Sinha*, AIR 1954 SC 636.

<sup>18</sup> AIR 1965 SC 745.

<sup>19</sup> *Raja Ram Pal v. The Hon'ble Speaker*, Lok Sabha JT 2007(2) SC 1.



Assembly, we maintain that the broad claim made on behalf of the Union of India that the use of parliamentary privilege cannot be decided in opposition to the standard of fundamental rights or the provisions of the constitution is false. Situation with Pandit Sharma The Bihar Legislative Assembly's use of the privilege was assessed in accordance with "process established by law," which is the standard set forth in Article 21. The fact that the requirements of Article 21 were regarded to be satisfied in their limited sense at the time is another issue. It is crucial to emphasise that the legislative process was put to the test in this situation and that Article 21 was found to be applicable. This position was taken in the case of the UP Assembly, which brought the enforceability of Article 20 up for discussion. The Court determined that privileges may be impacted by fundamental rights on a case-by-case basis and reserved for itself the right to assess parliamentary privileges. The Court also took into account Article 122 and decided that only in instances of procedural irregularity is it entitled to intervene with legislative procedures. A further statement made by the court was that "Article 122(1) must be seen to anticipate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament... A violation of the constitution would result from any attempt to limit Article 122 such that the court's power is limited to examining Parliamentary procedures in matters of constitutionality rather than irregularity.

Thus, the question of whether the Court has the right to examine parliamentary procedures was finally settled.

By taking into account several cases involving judicial review of parliamentary privilege, the scope of parliamentary privilege can be assessed. The *Keshav Singh* decision said that "Freedom under Arts. 105 and 194 is wider than Art. 19(1)." (a). If not, Arts. 105 and 194 do not need to bestow it once more. The freedoms of speech and voting in the House are not applicable to immoral and unprincipled political defections, it was decided in the case of *Kihoto Hollohan v. Zachillu*.<sup>20</sup> We find that the authority of the House to prohibit the publication of debates and other House procedures must take precedence over the press's rights to report on House proceedings. Only authorized publications are permitted to publish, according to the decision. Later, in accordance with Article 361 A, it was agreed that, with the exception of private House sessions, no one would be held liable for reporting any actions of either House in a substantially truthful manner. "Any procedure approved by the House by which a person is deprived of his life and personal liberty must also satisfy the criteria of Art. 21 that it must be equitable, fair, and reasonable," it was decided in the case of *In Re Presidential Reference*. In a similar vein, the House lacks the power to put a judge or lawyer in jail who is handling a parliamentary privilege case. Since "the capacity to punish for contempt does not extend to issuing a warrant to commit a judge who entertains a writ petition for enforcement of a citizen's fundamental rights who challenges the exercise of parliamentary privilege," if this happened, their constitutional rights would be upheld. "The House cannot pass any strictures or fines, in the exercise of contempt jurisdiction, against a lawyer representing a citizen alleging an infringement of

<sup>20</sup> *Kihoto Hollohan v. Zachillu*, 992 SCR (1) 686.



fundamental rights arising out of the exercise of a privilege of the legislative Houses," it was held in the case of Kesav Singh.

### Codification of Parliamentary Privileges

Parliamentary privilege protects members of the House from statutory law and judicial review. It may appear that they are breaking the law at times, but if they are not granted a privilege like parliamentary privilege, it may affect how well they represent their people and the wider public. The parliamentary system of governing occasionally goes against or goes beyond the law. In this context, it is essential to talk about the codification of parliamentary privilege.

When the question of codifying privileges first came up in the 1920s, it was suggested that it be done. The Constituent Assembly discussed codification, but decided against it since it would be impossible to adjust to changing conditions. As a result, the Constitution's Articles 105 and 194 established privileges. Articles 105(3) and 194(3) of the Constitution originally specified that each House's powers, privileges, and immunities would be governed by legislation and that its members would have the same rights as the House of Commons. This was later modified by the Constitution (44th Amendment) Act of 1978, which stated that "In other respects, the powers, privileges and immunities of each House of Parliament and of its members and Committees shall be such as, from time to time\*, be defined by law and until so defined, shall be those of that House of its members and Committees immediately before the foregoing Act."

Even though the Article mentioned codifying parliamentary privileges, no legislation in this area has yet been passed by the legislature.

Coding is necessary by ensuring that the parliamentary privilege is consistent with fundamental rights, the codification will resolve the conflict between parliamentary privileges and fundamental rights. The Indian Constitution's Articles 105 and 194 define the scope of parliamentary privilege and ensure that members of the House have the freedom of speech and participation in all House votes. However, none of the other powers given to members are formalized. Because of this, there are occasional disputes about just how much information is covered by parliamentary privilege. Once codified, the rights and procedures will be described in detail. And any disparities that might arise as a result of defection as well as any inconsistent votes in the House will be put to a stop. Therefore, codification is required to determine the boundaries of legislative privilege.

Judicial scrutiny of legislative privilege—The Indian Constitution is fundamentally based on this idea. It is a cornerstone of Indian law. The judiciary protects the general people from abuses of legislative and administrative power by engaging in judicial review. The laws passed by a parliamentary government are binding and cannot be contested in court. But because the Indian Constitution is written, it is the only valid legal document in the country. Parliamentary privilege is still up for contention as to whether it is subject to judicial review by the courts. Codification will so effectively put an end to it.



### The emergence of new privileges

We occasionally hear about the emergence of new privileges within the family. Other privileges that have emerged as a result of precedent include the House's right to control its own procedure and conduct of business as well as the right that neither Members nor officers of the House may be required to testify in court or produce documents related to House proceedings without the House's permission.

Similar to Rule 228, Rules 230, 232, and 233 of the Lok Sabha's Rules of Procedure and Conduct may also be recognized by law. Therefore, it would be preferable if the state legislature or the federal government stated by law the precise authority, privileges, and immunity they had with regard to contempt as well as the procedure for enforcing them. This is from the Press Commission of India's 1954 suggestion. Such a law would need to be constitutionally solid and might even be challenged if it appears to infringe upon a fundamental right. If that happens, the issue would be resolved by the nation's top court. Despite the fact that Articles 105 and 194 foresee such enactment, the functions and privileges of the House of Commons have only been granted to the Parliament and State legislatures during the interim period.

### Conclusion

One advantage one has over another is called a privilege. Any privilege, power, or immunity granted to a member of the House or to the entire House is known as parliamentary privilege. We were able to understand that every legal system includes "powers," "privileges," and "immunities," in addition to "rights" and "duties" when we

examined the jurisprudential study of privilege. Only two privileges—freedom of speech and immunity from legal action regarding statements made or votes taken in the House or publications made by or with the approval of the House—were granted to the Parliament and State Legislatures and their members by the framers of the Indian Constitution in Articles 105 and 194.

Articles 105 and 194 give Parliament and State Legislatures the authority to codify "additional privileges" even if the Constituent Assembly did not include a list of them in the Constitution. The British House of Commons and its members' privileges applied in India only as a transitory and temporary measure until Parliament and State Legislatures defined other privileges. Legislative privileges have not been codified by the Parliament or state legislatures, which is against the constitution.

Legislators like to decide on privileges without court intervention, thus they do not wish to codify them. There have been numerous judicial interventions as a result of the House of Commons' authority to penalise Indian legislatures for contempt. The House of Commons privileges are subject to constitutional requirements, including fundamental rights and judicial review, in their application to Indian Legislative Bodies.

The legitimacy and limitations of a privilege cannot be determined by the House in the ultimate analysis. Legal and legislative issues have resulted from this.

Analyzing the differences between parliamentary rights in India and the UK, we can get the conclusion that India's



Constitution is written and supreme. Courts, however, lack the authority to review privileges because Parliament in England is the supreme authority. India does not accept the exclusive cognisance principle as a result. The Parliamentary Proceedings Act of 1987 established Australian parliamentary privileges in contrast to those in Australia. Therefore, a part of common law is codified law. However, legislative rights are included in the Indian Constitution.

Parliament or State Legislatures would be. The majority of Indians are in favour of codifying parliamentary and legislative privileges. The only solution to end legal ambiguity and safeguard citizens against the arbitrary use of privilege powers by Indian legislators is through the codification of privileges.

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The existence, extent, and style of parliamentary privilege exercise are examined by the Supreme Court and High Court's Judicial Review of Parliamentary Privilege. However, it's unclear what the Indian parliamentary privilege actually is. Despite the appearance of a settled judgement on the matter, the question of whether parliamentary privilege is subject to judicial scrutiny, as well as its scope and mode of exercise, is still up for debate.

Codification of parliamentary privileges is necessary to address these issues. The House of Commons privileges are applicable in India as a temporary measure until further privileges are codified by the Parliament and State Legislature pursuant to these laws. Because the legislative bodies demand unrestricted rights without judicial monitoring, they have not codified the privileges. They are concerned that enacting privileges into law would violate Article 13 and be open to judicial review. The judiciary holds that the founders of the Constitution did not intend to exclude privilege powers from fundamental rights. The application of House of Commons privileges under the transitory provisions of the Constitution is not subject to fundamental rights, despite the fact that it is difficult to imagine that a law passed by