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BALANCING ACCOUNTABILITY AND INDEPENDENCE: A STUDY OF PARLIAMENTARY PRIVILEGES IN INDIA

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ABSTRACT

Parliamentary privileges, as detailed in Article 105 of the Indian Constitution, provide legal safeguards for lawmakers, granting them immunity from civil and criminal liabilities during their legislative duties. These privileges uphold free speech and shield members from legal repercussions within Parliament or its committees. Amid ongoing debates about their origin and nature, regular clarification and codification are essential for ensuring consistent interpretation. These exceptional provisions hold precedence in disputes and necessitate formalization to accommodate evolving governance requirements. As India's governance landscape evolves, there's an urgent call for clarity and formalization of these privileges to ensure uniformity. This Article delves into the intricate complexities of parliamentary privilege in India, exploring its ties to Judicial Review and historical underpinnings. It emphasizes the significance of periodic clarification and codification to foster a shared understanding, advocating for their formalization to align with evolving governance demands.

Keywords: Privileges, Parliament, Constitution, Law, Supreme Court

INTRODUCTION

The Indian Constitution, through Articles 105 and 122, enshrines the privileges of Parliament, similar to Articles 194 and 212 which guarantee privileges for state legislatures[5][6][7]. These privileges echo the concept of parliamentary privilege found in other Commonwealth nations, a legacy of the British parliamentary system. This system grants lawmakers immunity, shielding them from civil or criminal repercussions for actions or statements made during their legislative

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duties. While defamation laws exist to prevent misuse, the potential for abuse and the protection of sensitive information remains debated. Legislation defines parliamentary privileges and immunities. Parliament can penalize actions deemed "contempt" or "breach of privilege," ensuring that lawmakers have the freedom and independence to fulfil their constitutional obligations. Precedents from other countries offer valuable insights into the scope of these privileges. Parliamentary privileges occupy a complex space within the fabric of governance. They aim to strike a balance between protecting and empowering legislators. This, however, sparks discussions on accountability and how much independence is too much. This analysis explores the nature and development of parliamentary privileges in India, examining the legal intricacies and public perception. The concept of privilege,[6][7] when juxtaposed with the idea of fair representation, prompts critical inquiry. Are these privileges truly necessary, and do they align with democratic principles? In essence, the Indian Constitution, through Articles 105 and 194,[7] grants Members of Parliament immunity for their actions within the legislative sphere. These privileges are essential for Parliament's autonomy and a crucial component of India's legislative framework. The privileges are claimed only when the person is a member of the house. As soon as he ends up being a member, the privileges are said to be called off.

THE EMERGENCE OF THE PRIVILEGES

The evolution of parliamentary privileges in India traces back to its ancient roots and is closely intertwined with its historical trajectory. While the concept finds its early origins in the legislative systems of ancient India, notably through bodies like the Sabha and Samiti, it gained further prominence with the arrival of the East India Company around 1600, which eventually led to the formulation of legislative acts and charters. The East India Company Act of 1784 [7] marked a pivotal moment, entangling the company in the complexities of governance. Subsequent legislative developments, such as the 1833 Charter Act and the 1853 Charter legislation, underscored the consolidation of legislative powers. Notably, the demand for privileges gained traction with the enactment of the 1853 Charter Act, reflecting a growing need to delineate the authority of legislative councils.[5] This momentum culminated in the Indian Council Act of 1861, which outlined the specific authority of the legislative council. Subsequent reforms, like those seen in the Indian Council Act 1892, further expanded and renewed the rights of members, encompassing crucial aspects such as discussions and resolutions voted by parliament.

The framework for parliamentary privileges was solidified with the Government of India Act 1915,[8] establishing a comprehensive scope of privileges for members. However, the contours of freedom of expression underwent qualification with the Government of India Act of 1919. Further refinement occurred with the inclusion of regulations about the privileges of Indian legislature members in the Government of India Act 1935. Finally, the Indian Independence Act of 1947 marked a significant milestone, granting autonomous legislative authority to India, a provision subsequently enshrined in the Indian Constitution.[5] Thus, the journey of parliamentary privileges in India reflects a continuous evolution, shaped by historical imperatives and legislative reforms, ultimately leading to the establishment of a robust framework within the democratic fabric of the nation.

EXISTING PRIVILEGES AND THEIR TYPES

Articles 105 and 122 of the Indian Constitution delineate the powers of Parliament, whereas Articles 194 and 212 concern the privileges of state governments. Legislators should be able to speak and act freely without worrying about retaliation or negative legal repercussions thanks to parliamentary privileges, which are designed to preserve the independence and integrity of the legislative process.[5]

1. **Article 105:** Speech in the Parliament shall be free. No member of Parliament may be held accountable for statements made or votes cast in the Parliament or any of its committees in any legal proceedings.
2. **Article 122:** No court may contest the legitimacy of any proceedings in Parliament on the grounds of any procedural irregularities.
3. **Article 194:** The State Legislature shall be a free speech environment. Regarding everything he says or votes on in the State Legislature or any committee within, no member of the Legislature shall be subject to legal action in any court.
4. **Article 212:** No court may examine the legitimacy of any proceedings in the State Legislature on the grounds of purported procedural irregularities.

These advantages fall into two categories in India:[5][8]

1. **Collective Privileges:** All members of parliament are entitled to these benefits jointly.
2. **Individual Privileges:** These are rights that members of parliament personally possess. Parliamentary privileges[5] are formed by a variety of variables rather than being specifically stated in one place in most constitutions. First and foremost, precedent and case law are important. The boundaries of some rights have been defined by court rulings over time, which has assisted in defining the extent and constraints of legislative privileges.

Second, legislative privileges are established in part by statutes. Legislation that codifies the rights and protections granted to legislators throughout the legislative process may encompass several privileges.

Thirdly, the development and maintenance of parliamentary privileges are greatly aided by parliamentary norms.[6] These privileges are usually protected and included in the rules and procedures that each house of parliament establishes. These guidelines protect the rights and privileges of legislators while providing a foundation for proper parliamentary behaviour and ensuring the efficient operation of legislative bodies. These components work together to define parliamentary privileges, which specify the rights and obligations of lawmakers inside the democratic system.

COLLECTIVE PRIVILEGES

Parliaments are bestowed with specific powers known as collective parliamentary privileges, which enable them to act collectively and efficiently. Breakdown of major privileges:

1. **Right to publish its reports, debates, and proceedings:** This ensures transparency and public awareness of parliamentary discussions. There might be limitations for sensitive matters discussed in closed sessions.
2. **Right to exclude strangers from its proceedings:** Parliaments can choose to hold closed-door sessions for confidential matters or security reasons.
3. **Right to make rules to regulate its own procedure:** Parliaments set their own rules for debate, voting, and overall conduct within the house.

4. **Right to punish members as well as outsiders for breach of its privileges:** This allows parliaments to maintain order and decorum. Punishments can range from expulsion for members to fines or imprisonment for outsiders.
5. **Courts prohibited inquiring into the proceedings of a House:** This protects freedom of speech within the parliament. Courts generally cannot judge the content of speeches or actions taken during parliamentary proceedings.
6. **No person can be arrested without the permission of the presiding officer:** This ensures members are free to attend sessions and perform their duties without unnecessary hindrance.

INDIVIDUAL PRIVILIGES

The rights and immunities that members of the Indian Parliament and State Legislature enjoy to allow them to carry out their duties without fear of interference or punishment are referred to as individual privileges.

1. **Freedom of Speech:** As protected by Article 105(1) of the Constitution, MPs have the freedom to express themselves in Parliament without fear of repercussions. This right is separate and apart from the citizen's right to free speech (Article 19(1)). Rules and regulations still apply to legislative procedures.
2. **Protection from Arrest:** In civil disputes, MPs are exempt from arrest for a set amount of time (40 days before, following, and during a session). This guarantees they can carry out their responsibilities without interference. It is still feasible to make an arrest in criminal instances or under specific acts (like the NSA). [5][6]
3. **Release from testifying in court:** Members of Parliament enjoy the privilege of not being forced to testify as witnesses in court on official matters. However, this does not exclude them from freely appearing in court.
4. **Power to set operational procedures:** Article 118 grants both the Lok Sabha and Rajya Sabha the ability to adopt regulations controlling their behaviour and operations. The corresponding rulebooks include documentation of these regulations.

POWER AND SIGNIFICANCE OF THE PRIVILEGES

Parliamentary privilege is not a convenience; rather, it is a fundamental requirement entwined with the larger structure of democratic government. These rights give legislators the security they need to carry out their duties without excessive obstruction or fear of retaliation. Parliamentary privileges, which grant protection from arrest and legal proceedings, foster an atmosphere that is favourable to unrestricted and unhindered discussion in legislative assemblies. For legislators to properly discuss, promote, and pass laws on behalf of their constituents, they must have this freedom.[7]

Furthermore, legislative privileges cover essential instruments for information collecting and decision-making in addition to protection from legal actions. For example, the right to secrecy permits legislators to share secret material without worrying about it being discovered, creating a setting that encourages open discussion.[8] In a similar vein, access rights enable parliamentarians to get critical data required for well-informed decision-making, improving the calibre and effectiveness of legislative results.

It is impossible to overestimate the importance of codifying legislative privileges. Although the importance of parliamentary privileges has long been acknowledged, the lack of a defined legislative framework allows for uncertainty and even misuse. Codification guarantees uniform application and interpretation of certain privileges while also making their scope and extent clearer.[6] Past attempts at codification have proven unsuccessful, which highlights how difficult it is to define certain advantages in a legal framework. However, codification continues to be essential as it offers accountability, clarity, and openness when it comes to the use of legislative powers.

In summary, the granting of parliamentary privileges is an essential component of democratic administration and is necessary for the legislative branches to operate efficiently. These privileges are vital defences against improper meddling and intimidation as they are intended to preserve the independence and integrity of legislators. Codification of these rights is an essential step in guaranteeing accountability, uniformity, and clarity in the use of legislative powers—not just a formality.[5]

CONCERNS REGARDING THE PRIVILEGES

Despite being designed to protect the legislature's operations, parliamentary privileges in India confront a number of difficulties:

1. **Range and Boundaries:** The scope of these advantages is not entirely clear. Although preserving legislative independence is essential, it can be difficult to distinguish it from insulating legislators from responsibility. Tensions may arise from this ambiguity.
2. **Conflict with Fundamental Constitutional Principles:** Parliamentary privileges may occasionally run counter to fundamental constitutional tenets such as equality before the law. Legislators' immunity from arrest is perceived as an unfair benefit that isn't extended to regular people.
3. **Abuse of Privileges:** There are cases where legislators misuse their privileges. This might involve exploiting one's right to free speech to propagate false information or make insulting statements, which would erode public confidence in the legislative branch.
4. **Lack of Transparency:** It's common for the procedure for asserting and upholding these advantages to be secretive. The public's trust is further damaged by this lack of openness, which makes it harder to hold legislators responsible for their actions.
5. **Inadequate Oversight:** Parliamentary privileges are not adequately monitored or enforced by strong systems. This makes it difficult to deal with instances in which these advantages are abused, which might result in a broken legislative process.

NEED FOR CODIFICATION OF PARLIAMENTARY PRIVILEGES

In India, codifying parliamentary privileges will increase their conformity with basic rights, bring uniformity and clarity, limit potential judicial overreach, and follow the Press Commission of India's recommendations. The public's confidence in the legislative process would grow as a result of this reform.[6][7][8]

1. **Increased Conformity with Fundamental Rights:** A codified law can guarantee that the use of parliamentary privileges respects the fundamental rights guaranteed by the Indian Constitution. As things are, certain advantages may conflict with fundamental rights due to their ambiguous character.
2. **Clarity and uniformity:** Codification would provide the application of parliamentary privileges with much-needed clarity and uniformity. Articles 105 and 194 only protect some rights at the moment, such as the right to vote and free expression. There are contradictions and

uncertainty since other privileges are yet unclear. Clear criteria for the privileges themselves as well as the processes for applying them would be established by a codified statute. This may put an end to problems like irregularities in the Houses' voting processes and disputes involving defection.

3. Reducing Judicial Overreach: A key feature of the Indian Constitution is judicial review, which protects the people against abuses by the government and legislature. On the other hand, there may be conflict due to the idea of parliamentary sovereignty, which holds that the Parliament is superior. The Indian Constitution is ultimately the final law, even if the courts are not often allowed to challenge laws established by Parliament. Codification would assist in dispelling any remaining uncertainties regarding the scope of judicial review of legislative privileges. A well-defined legal framework would keep judges within reasonable limits.[5]

4. Following the 1954 recommendations of the Press Commission of India: In 1954, the Press Commission of India stressed the necessity of a statute that spelt out precisely the rights, powers, and immunities that legislators have about contempt, as well as the procedures by which such privileges and immunities might be enforced. The Commission contended that this legislation needs to be written in a way that conforms to the Constitution and is vulnerable to judicial challenge if it violates basic rights. In the end, the Supreme Court would resolve any differences. Articles 105 and 194 are recognized by the Press Commission as enabling clauses that provide Parliament the power to pass such legislation. They saw the existing situation—in which the House of Commons bestows privileges—as a stopgap measure.

JUDICIAL REVIEWS

Here are a few milestone cases that changed the view of the Indian Judicial system from time to time.[1]

P.V. NARASIMHA RAO V. STATE (CBI/SPE) (1998)

In the continuing debate in India on how to strike a balance between parliamentary privilege and judicial scrutiny, the P.V. Narasimha Rao v. State case continues to be a key precedent. The 1998 ruling was recently overturned, which points to a shift in India's democracy toward a stronger system of checks and balances.

1. Facts of the Case:

- (a) P.V. Narasimha Rao led a minority administration as India's Prime Minister in 1991. In 1993, there was a motion of no confidence in the government.
- (b) There were claims that Rao and other individuals paid bribes to certain MPs to get their support against the proposal.
- (c) Rao and others were charged by the Central Bureau of Investigation (CBI) with bribery and criminal conspiracy.
- (d) Rao contested the accusations, arguing that parliamentary privileges would shield him from punishment.

2. Review:

- (a) The case was considered by a five-judge Supreme Court panel. The court decided in favour of Rao, 3-2, and granted him protection from prosecution.
- (b) According to the majority ruling,
- (c) The Constitution's Articles 105 (about Lok Sabha MPs) and 194 (about Rajya Sabha MPs) granted immunity from prosecution for activities taken in the course of performing their legislative responsibilities.
- (d) This protection extended to taking or offering bribes to sway votes.
- (e) The judges who dissented contended that: Criminal activity was not intended to be protected by legislative privilege. [2]
- (f) Bribery damaged the legislative process's credibility.

3. Effect on Parliamentary Privileges:

- (a) A discussion about the extent of parliamentary privileges was initiated by the Narasimha Rao case. Opponents said that the ruling hindered accountability and gave MPs excessive authority.
- (b) The conflict between judicial review and parliamentary privilege was brought to light by this case.
- (c) In a wider bench decision in 2024, the Supreme Court reversed the Narasimha Rao decision.[2]
- (d) The new judgment declared that bribery by Members of Parliament is not protected by parliamentary privilege and may result in criminal prosecution.

- (e) A narrower understanding of parliamentary privileges and a trend towards more responsibility for MPs are reflected in this recent ruling.

SITA SOREN VS UNION OF INDIA (2024)

The decision underscores the importance of upholding probity in public life and ensuring effective legislative functions. It emphasizes that bribery is not protected by parliamentary privilege.[4]

1. Facts of the Case:

- (a) Jharkhand Police detained Sita Soren, a member of the Legislative Assembly (MLA) of Jharkhand,[4] on suspicion of providing support to Maoists.
- (b) She claims that the cops beat her during her arrest, causing injuries.
- (c) Sita Soren challenged her arrest and the alleged assault in a case filed with the Jharkhand High Court.

2. Review:

- (a) A seven-judge Supreme Court Constitution Bench unanimously ruled on March 4, 2024, that members of Legislative Assemblies (MLAs) and Parliament (MPs) are not immune from bribery lawsuits under Articles 105(2) and 194(2) of the Constitution.[4]
- (b) On behalf of the Bench, Chief Justice D.Y. Chandrachud penned the 135-page ruling.

3. Effect on Parliamentary Privileges:

- (a) The ruling made it clear that "anything said or any vote given" is protected by Article 105(2) immunity, treating a member of Parliament's vote as an extension of their right to free expression. Immunity is meant to support democratic participation and open debate in the parliament.
- (b) In conclusion, the Sita Soren case terminated the immunity granted to legislators accused of bribery, highlighting the significance of parliamentary involvement and discussion. For further information, please see the complete ruling by clicking this link.

IN RE KESHAV SINGH CASE (1964)

The historic case of In Re Keshav Singh (1965) brought the conflict between the legislature's authority and individual rights to a head. A significant balance in India's judicial system was formed by this case. Let's examine the specifics of the case, the function of judicial review, and how it affected parliamentary rights.

1. Facts of the Case:

- (a) Uttar Pradesh resident Keshav Singh criticized a Legislative Assembly member in a leaflet he produced.
- (b) Singh was called before the Assembly to answer charges, but he was unable to show up because of financial difficulties.
- (c) He was then given a seven-day jail term after the Assembly deemed him guilty of contempt.
- (d) Singh filed a habeas corpus case with the Allahabad High Court to contest his imprisonment.

2. Review:

- (a) The extent of judicial review of parliamentary privileges was set by the Supreme Court in a seminal decision.
- (b) It concluded that although legislators can be penalised for contempt, they do not have ultimate authority to do so.
- (c) The Court has the authority to examine how this power is used to make sure it doesn't go beyond constitutional bounds or infringe on basic rights.
- (d) The ruling made it clear that the precise facts about the alleged crime must be included in a warrant for contempt.

3. Effect on Parliamentary Privileges:

- (a) The ruling restrained lawmakers' arbitrary use of their contempt powers.
- (b) It made sure there was more accountability and stopped lawmakers from suppressing dissent with contempt.
- (c) But legislators still have the authority to penalize for true disobedience that interferes with their ability to do their jobs.

CONCLUSION & ANALYSIS

In conclusion, India's parliamentary privileges provide an intriguing conundrum. They serve as crucial fortifications, preventing intimidation of lawmakers and guaranteeing spirited discussion. Within the corridors of Parliament, this freedom of expression encourages openness and accountability. However, the same barrier that keeps uncensored speech out can also contain careless remarks, which could jeopardize impartial verdicts or reputations. Any free society must have this underlying tension. Although we might work to improve the limits of these rights, there is no denying their fundamental importance. When a parliament loses its privileges, it also loses its voice, becoming nothing more than an echo chamber. The essential function they serve in a functioning democracy must be overshadowed by the potential for abuse. These privileges are always changing as a result of changing social norms and legal interpretations. However, one thing will always be true: parliamentary privileges will always be a part of Indian administration in some way as long as the country hopes to be a thriving democracy.

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