

PARLIAMENTARY PRIVILEGES IN INDIA: A COMPREHENSIVE STUDY

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Introduction

Parliament of India is the *Gangotri* of our democracy. It represents the will and the aspirations of one billion plus people and is the link between the people and the government. If *Gangotri* gets polluted, neither Ganga nor any of its tributaries can stay unpolluted. Parliament, like other organs of the government is not sovereign and owes its origin and authority to the Constitution. Parliamentarians must maintain highest standards of democracy. Parliament functions through debate, discussion and not through disruption.¹

There are certain privileges which are enjoyed by each House of the Legislature collectively and by the members thereof individually. These privileges have been given to the legislature and its members with the object to enable them to discharge their duties as representative of the people independently without obstruction with dignity.

Definition of parliamentary privileges

The most universally used and accepted definition of parliamentary privilege is found in Erskine May, which defines parliamentary privilege as: “the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.”²

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¹ Pranab Mukherjee, President of India and a former seasoned politician. K.C. Joshi, THE CONSTITUTIONAL LAW OF INDIA (3rd ed. 2016).

² Sir Thomas Erskine May who was also Clerk of the House of Commons of England (1871-1886) is the famous author of the standard work on parliamentary practice-*Treatise on the Law, Privileges, Proceedings and Usage of Parliament*.

Black's Law Dictionary defines privilege as, “a special legal right, exemption or immunity granted to a person or a class of persons, an exception to a duty”.

Another definition was offered in 1966 by Enid Campbell who defined parliamentary privilege as “...those rights, powers and immunities which in law belong to the individual members and officers of a Parliament and the Houses of Parliament acting in a collective capacity”.³

Griffith and Ryle state: “Parliamentary privilege, even though seldom mentioned in debates, underpins the status and authority of all members of Parliament. Without this protection, individual members would be severely handicapped in performing their parliamentary functions and the authority of the House itself, in confronting the Executive and as a forum for expressing the anxieties of the citizen, would be correspondingly diminished”.⁴

Thus parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.⁵

Privileges conferred by the Constitution

The powers, privileges and immunities of either House of the Indian Parliament and of its members and committees are laid down in Article 105 of the Constitution of India, 1950. Article 194 deals with the powers, privileges and immunities of the State Legislatures, their members and their committees.

THOMAS ERSKINE MAY, TREATISE ON THE LAW, PRIVILEGES, PROCEEDINGS AND USAGE OF PARLIAMENT 75 (U.K.: LexisNexis 23rd ed. 2004).

³ E. CAMPBELL, PARLIAMENTARY PRIVILEGE IN AUSTRALIA 1 (Melbourne: Melbourne University Press 1966).

⁴ R. BLACKBURN, A. KENNON with SIR M. WHEELER-BOOTH, PARLIAMENT: FUNCTIONS, PRACTICE AND PROCEDURES 123 (London: Sweet and Maxwell 2nd ed. 2003).

The United Kingdom Joint Committee Report on Parliamentary Privilege also use Griffith and Ryle's definition. See United Kingdom, Joint Committee on Parliamentary Privilege (1999) *Parliamentary Privilege—First Report*, JOINT COMMITTEE REPORTS, Session 1998-99, April 9, 1999, HC 214-I, ¶ 3.

⁵ Dr. Baljit Kaushik, Associate Professor, Hindu College, Sonapat, Haryana, India, *Parliamentary Privileges in India: An Overview*.

Freedom of speech

The essence of parliamentary democracy is a free 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 member 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.⁶

The rule of freedom of speech and debate in parliament was established in Britain in 17th century in the famous case of *Sir Johan Eliot*.⁷ Eliot was convicted by the Court of King's Bench for seditious speech made in the House of Commons. The House of Lords reversed this decision on the ground that the words spoken in Parliament should only be judged therein. Finally the Bill of Rights 1688, laid down that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament. A member may thus say whatever he thinks proper within the House and no action can be brought against him in any court for this.

The same principle is adopted under Indian Constitution under Article 105(1) which provides 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.

Freedom of publication

Article 105(2) contains two parts. Part one 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. Part two provides that no person shall be liable in respect of the publication by or under the authority of House of Parliament or any report, paper, vote or proceedings. This Article is examined by the Supreme Court in *Tej Kiran Jain v. N. Sanjeeva Reddy*⁸; it was held that whatever is said in Parliament is immune from the jurisdiction of the courts. In view of this interpretation, the notices of motions, questions, resolutions or reports of the committees are covered by the proceedings. Therefore once it is proved that the Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings

⁶ M.P. JAIN, INDIAN CONSTITUTIONAL LAW (6th ed. reprint 2012).

⁷ 3 States Trials, 294.

⁸ A.I.R. 1970 S.C. 1573.

in any court. This immunity from the jurisdiction of the courts is complete, because it is the essence of parliamentary democracy that peoples representatives should be free to express themselves without fear of legal consequences.⁹

Very essential issues relating to parliamentary privileges have been decided by the apex court in *P.V. Narsimha Rao v. State*¹⁰, the majority decision gave an extensive interpretation and held that ordinary law does not apply to acceptance of bribe by a member of Parliament in relation to proceedings in Parliament. According to Bharucha, J.:

“A member of Parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. If a member of Parliament has, by speech or vote in Parliament, committed an offence, he enjoys by reason of Article 105(2) immunity from prosecution therefore. Those who have conspired with the member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it.”

The majority held that the members of Parliament who took bribe and voted upon no confidence motion are entitled to the immunity conferred by Article 105(2) and are not answerable in a court of law for the alleged conspiracy and agreement. A member of Parliament who took bribe but did not vote is not entitled to the protection of Article 105 (2) of the Constitution. He must be prosecuted. Similarly, the bribe givers who are also member of Parliament or State Legislatures are not protected by Article 105 (2). Their acts have no nexus to their speech or vote in Parliament. They can, therefore also be prosecuted.

The minority view of Agrawal, J. holding *inter alia*, that granting or conceding immunity for an offence of bribery to members of Parliament would be repugnant to healthy functioning of parliamentary democracy has come true. The Parliament has expelled eleven members on December 23, 2005 for accepting money for putting question in the respective House.

Other privileges

Article 105(3) provided that, the privileges of the House of Parliament and its members were to be those which were enjoyed by the member of the House of the Commons in England on

⁹ K.C. JOSHI, THE CONSTITUTIONAL LAW OF INDIA (Central Law Publications 3rd ed. 2016).

¹⁰ (1998) 4 S.C.C. 626, A.I.R. 1998 S.C. 2120.

January 26, 1950 until defined by Parliament by law. In India, some legislative privileges are expressly mentioned in the Constitution while the others are recognized in the Rules of Procedure and Conduct of Business in Lok Sabha framed under its rule-making power:¹¹

1. Freedom from arrest: A member of Parliament cannot be arrested or imprisoned on civil proceeding within a period of 40 days before and 40 days after the session of Parliament. If a member of a house commits a crime he will be arrested like an ordinary person. It has been held that the privilege does not extend arrest or imprisonment on a criminal charge or for detention under Preventive Detention Act.¹²
2. Right to exclude strangers from its proceeding and hold secret sessions: This right has been used by the House of Parliament in England to go into secret session to discuss some important matters. The House of Parliament in India enjoys a similar power. However, in modern times secret sessions are held only on exceptional occasions because the voters must be kept informed of what their representative are doing in the Parliament.¹³
3. Right to prohibit to publication of its reports and proceedings: The House of Constitution has the right to prohibit the publication of its reports, debates or other proceedings. On the other hand according to Article 361-A no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication of either House of Parliament or the Legislative Assembly or either House of the State Legislature, unless the publication is proved to have been made with malice.
4. Right to regulate internal proceeding: Each House of Parliament may make rules for regulating its procedure and the conduct of its business subject to the provision of the constitution.¹⁴ Article 122 makes it clear that the validity of any proceedings in Parliament cannot be called in question on the ground of any alleged irregularity of procedure and no officer or member of Parliament in whom powers are vested by or under this constitution for regulating

¹¹ K. Madhusudhan Rao, *Codification of Parliamentary Privileges in India: Some Suggestions* (2007) 7 SCC (jour) 21.

¹² Smt. Indira Gandhi v. Raj Narayan, A.I.R. 1975 S.C. 2299.

¹³ J.N. PANDEY, *CONSTITUTIONAL LAW OF INDIA* (Central Law Agency 53rd ed. 2016).

¹⁴ INDIA CONST. art. 118.

procedure or the conduct of jurisdiction of any court in respect of the exercise by him of those powers.¹⁵

5. Right to punish members or outsiders for breach of privileges and contempt of the House: It is the right of every House of Legislature to punish its members or non-members for contempt or breach of privilege of the House. It has been established in India that a House may punish not only for the present contempt but also for the past contempt.¹⁶ Recently, a five judge Constitutional Bench of the Supreme Court however, ruled that the legislature could not exercise judicial power and hold a member guilty of criminal charges, which function the Court said that vested with the trial judge.¹⁷

Conclusion

Article 105 clause (3) and Article 194 clause (4) of the Constitution of India, 1950 are enabling provisions for defining the powers, privileges and immunities of each House of the Legislature as well as its members and committees. So far, no Legislature has invoked these provisions. The uncodified and define penal powers of legislative bodies in India lead to legal polemics between legislatures, court and citizen in India. As rightly put by Justice Iyer “Parliament of India is not and can never be a court and we have separate judiciary”.



¹⁵ See Articles 208 and 212 make similar provisions with respect to the state legislature.

¹⁶ NARENDER KUMAR, CONSTITUTIONAL LAW OF INDIA (Allahabad Law Agency reprint 2014).

¹⁷ *Capt. Amrander Singh v. Punjab Legislative Assembly*, THE HINDU (April 27, 2010).