



Judicial Perspective On Constitutional Challenges To Parliamentary Privileges In India

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Introduction

The separation of powers is a cornerstone of governance, distributing governmental functions among the legislative, executive, and judicial branches. This ensures that each branch holds independent authority, preventing the concentration of power and maintaining democracy through a system of checks and balances. It is generally understood that the three organs of State authority are expected to function within their respective domains, with the ultimate aim of ensuring an effective system of governance for the people. The Parliament and the Judiciary, in particular, are expected to work in harmony so that democracy can evolve to its fullest potential. Although the Indian Constitution assigns both institutions distinct and independent roles, an absolute separation of powers between them is not feasible. Since both Parliament and the Judiciary are creations of the same Constitution, the framers envisioned that they would operate with mutual respect and trust, rather than in essence of one being superior to the other. However, in practice, conflicts do arise between the judiciary and legislature in certain areas. One such area of contention is parliamentary privileges. This article raises important questions: Do parliamentarians enjoy absolute privileges? To what extent are parliamentary privileges subject to Fundamental Rights? And what is the extent and scope of judicial review in these matters within the Indian context?

The Meaning and Definition of Parliamentary Privileges

‘Privilege’ means an exceptional right or freedom or an immunity enjoyed by a particular class of persons or some individuals. According to Webster’s dictionary, privilege means an immunity or exemption conferred by special grant to an individual in derogation of a common right.² According to G.S. Sharma, parliamentary privileges as “*a bundle of rights residing in a legislature and its legislators for fearless*

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². Webster’s new world dictionary (1956) 1160

*functioning in the interest of the country they seek to serve”.*³ According to Sir Thomas Erskine May, parliamentary privilege is a *“Some of the important rights enjoyed by each House collectively as a constituent part of the parliament and by the members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals”.*⁴ The Parliamentary Privileges are highly essential for the effective functioning of the House. Individual Members enjoy them because the House cannot perform its functions without their constant co-operation and by each House collectively for the protection of its Members and the vindication of its own authority and dignity. They are special rights enjoyed by the members in the performance of their duties with honour and dignity. They enjoy this right not because of their exalted position but because these are indispensable for their effective functioning.⁵ In practice, privileges grant members certain powers, immunities, and exemptions. However, this does not mean that members enjoy a legal status different from that of ordinary citizens, except where justified in the interest of Parliament itself. While they are representatives of the people, they remain ordinary citizens in terms of the application of laws. The fundamental principle is that all citizens, including Members of Parliament and State Legislatures, are equal before the law and share the same rights and liberties, except when performing parliamentary duties. Privileges are thus available only when, and to the extent that, members are acting as representatives of the people and discharging their responsibilities within Parliament. Privileges in no way absolve members from their normal obligations to society, which bind them just as much—and perhaps even more—than they bind other citizens.⁶

Privileges and Immunities to the Members of Parliament and State Legislatures

The Important privileges and immunities of Parliament and State legislature are specified in the Constitution, various statutes, and the Rules of Procedure of the respective Houses. the following are the main privileges enjoyed by the members of a Parliament and State Legislature.

1. Privileges Ensured by the Indian Constitution⁷

The Constitution of India grants certain important privileges to the Members of Parliament and State Legislatures, the foremost being the freedom of speech within their respective Houses.⁸ No members of Parliament and State Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by them in Parliament or any committee thereof,⁹ and no person shall be held liable for the publication of any report, paper, votes, or proceedings, if such publication is made by or under the authority of either House of Parliament or a State Legislature.¹⁰ The validity of proceedings in Parliament or State Legislatures cannot be challenged based on any alleged procedural irregularity.¹¹ No officer or

³. Dr.Daya Nand Garg, *Parliamentary Privileges an overview*, Chotanagpur Law Journal, Vol,2 (2009-10)

⁴. May, *Parliamentary Practice, treatise on the Law, Privileges, proceedings and Usage of Parliament*, 17th edition, p,42

⁵. K.S.Padhy and Govinda Behera, *Legislative Privileges and Freedom of Press*, Dominant Publishers and Distributors (P) Ltd, New Delhi, 1st Edition.

⁶. Subhash C. Kashyap, *Our Parliament*, National Book Trust, New Delhi

⁷. M.N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament*, Lok Sabha Secretariat, New Delhi

⁸. Art.105(1)/194(1) of the Constitution of India

⁹. Art.105(2)/194(2) of the Constitution of India

¹⁰. Ibid

¹¹. Art.122(1)/212(1) of the Constitution of India

member of Parliament or a State Legislature, vested with the authority to regulate procedure, conduct business, or maintain order, shall be subject to the jurisdiction of any court in respect of the exercise of those powers..¹² No individual shall be subject to civil or criminal proceedings in any court for publishing in a newspaper a substantially accurate report of the proceedings of either House of Parliament, unless it is proven that the publication was made with malice. The same protection extends to reports or matters broadcast through wireless telegraphy.¹³ However, this immunity does not extend to the publication of proceedings from a secret sitting of the House.¹⁴

In all other matters, the powers, privileges, and immunities of each House of Parliament and the State Legislatures, including their members and committees, shall be as defined by law enacted by Parliament from time to time; and until such definition is made, they shall remain the same as those enjoyed by that House, its members, and committees immediately before the commencement of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.¹⁵ The framers of the Constitution conferred upon the members the same powers and privileges as those enjoyed by the House of Commons at the commencement of the Constitution. The reference to the House of Commons in clause (3) of Article 105 and Article 194(3) was later removed by the Constitution (Forty-fourth Amendment) Act, 1978. However, since Parliament has not yet enacted a law defining these privileges, the position in practice continues to remain the same as it was at the commencement of the Constitution.

2. Privileges specified in Statutes

The Code of Civil Procedure, 1908, provides no person shall be liable to arrest and detention in prison under civil process, If he is a member of either House of Parliament, the Legislative Assembly, Legislative Council of State, or Legislative Assembly of a Union Territory; if he is a member of any committee of either House of Parliament, the Legislative Council of State, Legislative Assembly of a State or Union Territory; during the continuance of any meeting of such House of parliament or the legislative assembly or legislative council or such committee before forty days its commencement and after forty days its conclusion.¹⁶

3. Privileges Mentioned in the Rules of Procedure and Conduct of Business of the House

The Rules of Procedure and Conduct of Business in the Lok Sabha and Rajya Sabha are followed by the House while exercising certain privileges, powers, and immunities.¹⁷ The House has the right to receive immediate information on the arrest, detention, conviction, imprisonment, and release of a member.¹⁸ Immunity of a member from service of legal process and arrest within the limits of the House.¹⁹ Prohibition

¹². Art. 122(2)/212(2) of the Constitution of India

¹³. Art.361 A of the Constitution of India

¹⁴. Art. 361 A(1) Proviso

¹⁵. Art.105(3)/194(3) of the Constitution of India

¹⁶. Code of Civil Procedure, 1908, sec. 135A

¹⁷. Dr. Sonia B. Nagarale, *Legislative Privileges in India*, Media 4U,Pune

¹⁸. Rules 229 and 230

¹⁹. Rules 232 and 233

of exposure of the proceedings or decisions of a top-secret sitting of the House.²⁰ The Speaker may, at any time deemed appropriate, order the withdrawal of strangers from any part of the House²¹

4. Punishments for Breach of Privilege

Parliament and the State Legislatures also hold the important privilege of punishing any individual, whether a member or an outsider, for 'contempt' or 'breach of privilege'.²² A House has the authority to impose punishments such as admonition, reprimand, suspension from the service of the House for the duration of the session, as well as a fine and imprisonment.²³ Recently, the Supreme Court, in *Raja Ram Pal v/s The Hon'ble Speaker Lok Sabha*,²⁴ The action of Parliament in expelling members involved in the cash-for-query scam (an act of contempt of the House) was upheld. The power of the House to punish for contempt or breach of privilege has been aptly described as the "keystone of parliamentary privilege," as it is regarded as essential for enabling the House to perform its functions and protect its authority and privileges.²⁵ This power is akin in nature and owes its origin to the powers possessed by courts of law to punish for contempt. Without such a power, the House "would sink into utter contempt and inefficiency"²⁶. The Speaker, who preserves order in the House, has "all powers necessary for the purpose of enforcing his decisions."²⁷ The disciplinary powers of the Speaker and the House are partly incorporated in the Rules, which authorize the withdrawal or suspension of any member whose conduct is grossly disorderly, who defies the authority of the Chair, or who persistently and wilfully obstructs the business of the House by abusing its rules.²⁸

Judicial Review over Parliamentary Privileges and Immunities in India

The privileges and immunities granted to the members of Parliament and State Legislative assemblies are to ensure they can effectively perform their duties without fear of interference. These privileges, which come from the Constitution, parliamentary rules, and conventions, protect the independence and integrity of the legislature, it is the touchiest zone having the likelihood of clash and conflict between the Legislature and the Judiciary. In fact, it has been an area of conflict in the past also.²⁹ Parliament or the legislature claim for their members, both individually and collectively, certain rights and privileges which are considered necessary for maintain their independence of action and the dignity of their position as constitutional parliamentary bodies. As a principle of parliamentary democracy, the House or Houses of Parliament or Legislature claim to be the guardian of their own privileges as also the sole judge of any matter. Any act that infringes upon such privileges is subject to the authority of the House, which also asserts its right to adjudicate on matters concerning its privileges and to punish anyone found guilty of breach of privilege or contempt. The Supreme Court and the High Courts under Indian Constitution provide

²⁰. Rules 252

²¹. Rules 387

²². Art. 105(3) of the Constitution of India

²³. *Hardwari Lal v. Election Commission of India*, ILR (1977)2 P&H 269

²⁴. (2007) 3 SCC 184.

²⁵. Cushing, Legislative Assemblies, paras 532; see also May. p.90.

²⁶. See the observation of Lord Ellenborough, C.J., in the case of *Burdett v. Abbott* (14 East, 150).

²⁷. Rule 378.

²⁸. Rules 373 and 374.

²⁹. Umeshwar Prasad Varma, *Law Legislature and Judiciary*, Mittal Publications New Delhi

ultimate jurisdiction. Indian Constitution provide every citizen has a right to move the Supreme Court or High Court by appropriate proceedings for the enforcement of the Fundamental Rights.³⁰ The Supreme Court or High Court given power to issues directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition and certiorari whichever may be appropriate. The Supreme Court or the High Courts, as the case may be, can interfere with an order of the House of the Legislature which affects the Fundamental Rights of a person since there is nothing in Art.105(3) or Art.194(3) as amended to exclude the application of Part III of the Constitution to the privileges of the legislature. The view of the court is that according to the principle of harmonious construction all parts of the Constitution have to be read or taken together and so the provisions relating to privileges of the House have to be read or taken together with the Art. 32 and Art. 226 of the Constitution relating to the Fundamental Rights and Arts.20, 21 and 22(1) would be attracted to nullify or invalidate the order of the House of the legislature, for any breach of privilege.³¹ In the below I reference several case law relating to conflict between Legislature and Judiciary in the matter of privileges and judicial interpretation.

The freedom of speech guaranteed to members of Parliament under Article 105(1) and to members of State Legislatures under Article 194(1) is distinct from the fundamental right of free speech enjoyed by citizens under Article 19(1)(a). Unlike the fundamental right, which is subject to reasonable restrictions under Article 19(2), the legislative privilege provides members absolute immunity from civil or criminal proceedings in any court for statements made during debates in Parliament, State Legislatures, or their committees. The freedom of speech under article 19(2) cannot be restricted.³² Article 105(2) and 194(2) confers immunity, inter alia, in respect of anything said in parliament and state legislature, the word 'anything' is of the widest import and is equivalent to 'everything'. What they say is only subject to the disciplines of the rules of parliament, the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.³³

In *G.K.Reddy v. Nafisul Hasan*,³⁴ also known as the Blitz case. In this case, Homi Mistry was arrested at his residence in Bombay pursuant to a warrant issued by the Speaker of the Uttar Pradesh Legislative Assembly for contempt of the House. He was subsequently taken to Lucknow and kept in a hotel under the Speaker's custody. When he applied for a writ of habeas corpus, the Supreme Court ordered his release on the ground that he had not been produced before a magistrate, as required under Article 22(2) of the Constitution. Since no substantial arguments were advanced on the question of privilege and the Attorney-General admitted that the petitioner had not been produced before a magistrate, the Court held that, in view of the admitted facts, it was clear that Article 22(2) had been violated and Mr. Mistry was entitled to be released. This decision created the impression that parliamentary privileges were subject to the fundamental rights guaranteed under Part III of the Constitution. However, this view was dismissed by

³⁰ Articles 32 and 226 of the Indian constitution

³¹ .Ref.Case under Art.143, 1965SC.

³² .P.V.Narasimha Rao v. State, (1998)4 SCC626

³³ .Tej Kiran Jain v. N. Sanjiva Reddy (1970)2 SCC 272

³⁴ .AIR 1954 SC 636.

the Supreme Court in *M.S.M Sharma v. Shri Krishna*,³⁵ commonly known as the Searchlight case. The majority, in this case, refused to recognize the *Blitz* decision as a considered precedent on the question of the supremacy of fundamental rights vis-à-vis parliamentary privileges.³⁶ The major controversy was witnessed in the conflict between the Allahabad High Court and the Uttar Pradesh Assembly. In the case of Keshav Singh,³⁷ while being reprimanded by the Speaker, he conducted himself in an objectionable manner in the House and was consequently sentenced to seven days' imprisonment for committing contempt of the House. Keshav Singh's counsel, Soloman, then filed a habeas corpus petition under Article 226 of the Constitution, upon which a two-judge bench granted interim bail. The Assembly then passed a resolution directing that Keshav Singh, his advocate, and the two judges be summoned before the House for contempt. In response, the judges approached the High Court under Article 226, challenging the resolution as unconstitutional. The High Court issued a stay order against the resolution, leading to a conflict between the High Court and the State Legislature. At this stage, the President of India referred the matter to the Supreme Court for its advisory opinion under Article 143.³⁸ The controversy raised two principal questions: first, whether Members of Parliament and State Legislatures fall within the jurisdiction of the courts; and second, whether the High Court judges committed contempt of the U.P. Legislative Assembly by hearing Keshav Singh's habeas corpus petition under Article 226 and granting him interim bail. By a 6:1 majority, the Supreme Court rejected the sweeping contention that it has no jurisdiction over questions of privilege or that the Legislature and its officers are immune from judicial review. It has been amply emphasised by the court³⁹ that "the sovereignty which can be claimed by parliament in England, cannot be claimed by any Legislature in India in the literal sense", because we have a written federal Constitution which limits the powers of our Legislature, and any legislative action that transgresses these limitations is liable to be struck down by the courts. In the result, "the decision about the construction of Article 105 (3) and 194 (3) must ultimately rest exclusively with the judicature of this country". Hence, whenever a complaint is brought before the superior courts alleging that the exercise of privileges or other powers by a Legislature has infringed the fundamental rights of a petitioner, and the court finds it necessary to entertain the complaint, the Legislature is required to respond to the writ of habeas corpus or any other process issued by the court for adjudicating the matter. The Supreme Court⁴⁰ and High Courts⁴¹ have the jurisdiction to entertain a petition for habeas corpus by way of enforcement of the petitioner's fundamental right under Art.21 of the Constitution. For the same reason, the parliament and state legislature had no power to commit the judges for contempt of having exercised a jurisdiction which they had under the Constitution.⁴² The Parliament has never been a Court and hence lacks that power. Further, in view of fundamental rights and the power of judicial review, the legislative order is not conclusive.⁴³ The House

³⁵ .AIR 1959 SC 395.

³⁶ .K.C. Joshi, *Parliamentary Privileges: A Sword or A Shield*, ILI Journal, Vol.42, 2000.

³⁷ . Report of the Committee of privileges of the U.P. Vidhan Sabha 1965

³⁸ . Ref. under Art.143, AIR 1965 SC 745

³⁹ . Ibid, AIR 1965 SC 745

⁴⁰ . Under Art.32 of the Indian Constitution

⁴¹ . Under. Art.226 of the Indian Constitution

⁴² . Acharya Dr.Durga Das Basu, *Commentary on the constitution of India*, LexisNexis Butterworth's Wadhwa, Nagpur, 4th Vol,(2008)

⁴³ .For criticism, see, P.S. Pachauri, *The Law of Parliamentary privileges in U.K and India*, ch. Xii (1971).

of Parliament has no power to commit a judge for contempt, and a House is not free from all fundamental rights.

In the *Raja Ram Pal v/s Hon'ble Speaker, Lok Sabha*,⁴⁴ the expulsion of eleven parliamentarians accused of taking bribes for performance their parliamentary functions. The members contested the validity of their expulsion, arguing that Parliament lacked such a privilege. The Court ruled, however, that the power to expel is an inherent power of the House, vital for maintaining order and upholding the dignity of the institution. Accordingly, when the House deems expulsion necessary to secure discipline and dignity, it has the unquestionable right to exercise such power.⁴⁵

In *Amarinder Singh v Special Committee, Punjab Vidhan Sabha*,⁴⁶ On September 10, 2008, the Punjab Assembly passed a resolution expelling former Chief Minister and Congress leader Capt. Amarinder Singh, accusing him of corruption and irregularities in exempting 32.10 acres—granted to the Amritsar Improvement Trust, a private promoter—from land acquisition. Capt. Singh challenged the validity of his expulsion. A Constitution Bench comprising Chief Justice K.G. Balakrishnan and Justices R.V. Raveendran, P. Sathasivam, J.M. Panchal, and R.M. Lodha quashed the resolution, restoring his membership for the remainder of the 13th Vidhan Sabha. The Bench held that the Vidhan Sabha had exceeded its powers by expelling the appellant on grounds of breach of privilege when no such breach existed. The alleged irregular land exemption was an executive act attributable to him and did not amount to distortion, obstruction, or threat to the integrity of legislative proceedings. Consequently, the invocation of legislative privilege under Article 194(3) of the Constitution was deemed improper.⁴⁷ In *Lokayukta, Justice Ripusudan Dayal v state of M.P*⁴⁸ The Supreme Court held that officers employed in the Speaker's office are public servants. Except for the Speaker and Deputy Speaker of the Madhya Pradesh Vidhan Sabha, all such officers, for the purposes of the Lokayukt Act, enjoy no greater privilege than that of an ordinary citizen. Parliamentary privileges exist solely to ensure the free and effective functioning of the House and do not extend to activities conducted outside its proceedings.⁴⁹

*Justice (Retd.) Markandey Katju v. The Lok Sabha & Others*⁵⁰ concerned a writ petition filed under Article 32 challenging resolutions passed by the Rajya Sabha (11.03.2015) and Lok Sabha (12.03.2015), which condemned remarks made by Justice Katju in Facebook posts describing Mahatma Gandhi as a “British Agent” and Netaji Subhash Chandra Bose as an “agent of Japanese fascism.” Katju claimed the resolutions were passed without giving him an opportunity to be heard, violating natural justice. The Supreme Court, however, dismissed the petition, holding that Parliament has full liberty to discuss and debate matters of public interest and to pass resolutions expressing collective views, subject to its Rules of Procedure.

⁴⁴. (2007) 3 SCC 184.

⁴⁵. Dr. Pankaj Kakde, *The Supreme Court of India on Legislative Privileges*, White Falcon Publishing, Chandigarh

⁴⁶. 2010 STPL(Web) 556 SC

⁴⁷. <https://www.thehindu.com/news/national/other-stae/assembly-expulsion-of-amarinder-quashed/article>

⁴⁸. (2014)4SCC473

⁴⁹. Read more at: <http://www.livelaw.in/summary-of-constitution-bench-judgment-on-parliamentary-standing-committee-reports-read-judgment>

⁵⁰ 15 December 2016

*Kalpna Mehta and Ors v Union of India and Ors.*⁵¹ the Court ruled that the publication of a Parliamentary Committee's report permits its use in judicial proceedings without constituting a breach of privilege.⁵² In India, judicial review of parliamentary privileges is limited in scope. The courts have asserted their authority to review privileges in cases of conflict with Fundamental Rights, exemplified by the *Keshav Singh* case⁵³, and in instances where privileges are invoked to claim immunity from criminal offences, as seen in the JMM bribery case⁵⁴. Nevertheless, Articles 122 and 212 restrict judicial interference in procedural irregularities within Parliament.

Conclusion

The Members of Parliament and State Legislatures enjoy certain powers and privileges under Articles 105 and 194 of the Indian Constitution, enabling them to discharge their functions without fear. These bodies not only enjoy privileges but also possess the power to punish individuals for interfering with their members or for committing contempt, with their rulings traditionally considered final and beyond the reach of courts. The terms "breach of privilege" and "contempt of the House" cover a wide ambit and are of great significance. Parliament has historically resisted judicial interference in matters relating to its privileges. However, in recent judgments, the judiciary has clarified that Parliament does not have absolute power in this regard and that the exercise of privileges is subject to judicial review. Judicial review, a cornerstone of the Indian Constitution, empowers the Supreme Court and High Courts to examine the constitutionality of legislative enactments and executive actions of both the Centre and the States. If any provision or action is found to violate constitutional provisions, particularly Fundamental Rights, it may be struck down as unconstitutional and void. Thus, when a citizen approaches the Supreme Court under Article 32 or a High Court under Article 226 alleging violation of Fundamental Rights due to the exercise of legislative privileges, the judiciary cannot decline to hear the matter, as it is the guardian of Fundamental Rights. That said, the scope of judicial jurisdiction in matters involving parliamentary privileges remains uncertain. At present, Parliament is not fully secure about the extent of its privileges, and the courts remain cautious in defining the scope of their authority. Therefore, the lasting solution to the conflict between Parliament and the judiciary on this issue lies in harmonizing the relationship between these two pillars of democracy and in codifying parliamentary privileges clearly, so as to avoid ambiguity and conflicting interpretations.

⁵¹. 9 May, 2018

⁵². Read more at: <http://www.livelaw.in/summary-of-constitution-bench-judgment-on-parliamentary-standing-committee-reports-read-judgment/>

⁵³. AIR1965ALL349, 1965CRILJ170

⁵⁴. (Cbi/Spe) on 17 April, 1998