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## Privileges Of Member Of Parliament In India: A Comparative Study With UK, Australia, New Zealand And Canada.

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### Abstract

In India Parliamentary Privileges have become the “*Democles swords*” which hang over those whose business it is to write on proceedings of the legislatures. The Non codification of privileges causes confusion and violates the freedom of speech and expression. There are several instances after independence of India, It has been seen that parliamentary privileges has been misused for example: In 2017, two senior scribes of Kannada tabloids were jailed for the breach of privileges of the state assembly. Other instances is *The Blitz case* (1951) *The search light case* (1959), *Kesav singh case* and *the hindu case* (2003) etc. The concept of parliamentary privileges has been taken from UK but it is quite incumbent to know that the situation of UK is very different. Firstly in UK Parliament is Sovereign but in India Sovereignty lies in the people of India, In Britain Law can be enacted through simple majority only and there is no as such judicial review but In India Judicial review is the basic structure of the constitution and there are certain laws enacted through special majority and special majority with ratification. Through this research paper Researcher is going to analyse the concept of Parliamentary Privileges of India, UK, Australia and New Zealand.

## **Introduction**

Parliamentary privileges in India refers to certain immunities and privileges enjoyed by houses of parliament and their members in the performance of their duties. Here privileges means special or exceptional right or an immunity enjoyed by particular class of persons or individuals which is not available to the rest of the people. These privileges are essential for the functioning of parliamentary system and it include: Almost Absolute freedom of speech and expression, Immunity from proceedings in court, freedom from arrest and power to punish for contempt of the house.

In India, the concept of parliamentary privileges is mentioned under Article 105 and 194 for the Parliament and State Assembly respectively, but the idea of parliamentary privileges originated in United Kingdom during the struggle between power of parliament and monarch. The problem lies regarding misuse of Parliamentary Privileges and power of judiciary and its scope. As Article 122 and 212 restricts the court to interfere in the proceedings of Parliament. As far as codification is concerned once G. V Mavalankar said you will have to rely on wisdom and maturity of member of Parliament but contrary view is equally important which has been expressed by N.A. Palkhivala that “To trust the constitutional limitation is good but to have the constitutional limitation is better”. In order to solve this calamity I am going to critically analyse the case laws, statutes of other country like UK, Australia, New Zealand and Canada to find out that how the laws relating to parliamentary privileges of these countries are different from India.

## **Origin of The Parliamentary Privileges in India**

In India, the concept of parliamentary privileges is mentioned under Article 105 and 194 of the constitution for the Parliament and State Assembly respectively, but the idea of parliamentary privileges originated in United Kingdom during the struggle between power of parliament and monarch. However In India there is no as such monarch like Britain.

## **Criticism of Parliamentary Privileges in India**

The codification is necessary due to clash with the fundamental rights specially Article 19 moreover the Parliament and State Legislature asserts the absolute jurisdiction to determine the existence and extent of Privileges powers, free of judicial control. This leaves a vast scope for the arbitrary exercise of Privileges by the legislators which may result into violation of basic rights of the members and non-members. Therefore, the powers, Privileges and immunities of Parliament and state legislatures and of their members must be clearly defined precisely by a legislation. Such law must satisfy the requirement of Article 21 by giving just fair and reasonable procedures and also incorporating the principle of natural justice. Moreover, a law codifying the Privileges can be scrutinized by the courts on the touchstone of fundamental rights.

## Comparative Analysis of Parliamentary Privileges of India with other countries

### 1. United Kingdom

The United Kingdom provides one of the oldest and most influential models of parliamentary privileges, relying heavily on unwritten conventions and centuries of legal precedent. These privileges, which form part of the British constitutional framework, have evolved organically through historical struggles, particularly the power struggle between the monarchy and Parliament. The Bill of Rights of 1689, a cornerstone of parliamentary sovereignty, laid the foundation for many privileges, explicitly declaring that “the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.” Unlike India, the UK has chosen not to codify its parliamentary privileges, arguing that flexibility is essential for adapting to new circumstances. This reliance on conventions has allowed the British Parliament to maintain a degree of elasticity in its functioning, enabling privileges to evolve with changing political and societal contexts<sup>1</sup> However, the unwritten nature of these conventions is supported by a robust legal and political culture, ensuring that privileges are not arbitrarily exercised.

One key privilege in the UK is the freedom of speech enjoyed by Members of Parliament (MPs). This privilege is absolute, allowing MPs to speak freely in parliamentary debates without fear of legal consequences. It has been pivotal in enabling open discussions on matters of public interest, even when such discussions involve allegations against individuals or organizations. However, this privilege is balanced by established conventions and a strong ethical framework, which discourages its misuse. Another significant aspect of parliamentary privilege in the UK is the power to regulate its own proceedings. Each House of Parliament—the House of Commons and the House of Lords—has the authority to manage its internal affairs, including the power to discipline its members and enforce rules of conduct. For instance, MPs who breach parliamentary decorum or engage in unethical behavior can face sanctions, including suspension or expulsion<sup>2</sup> These powers are exercised with a high degree of accountability, supported by centuries of legal precedent and political norms. Judicial non-interference is another hallmark of the UK’s approach to parliamentary privileges. Courts in the UK are generally reluctant to intervene in matters of privilege, adhering to the principle of parliamentary sovereignty. This principle, rooted in the UK’s constitutional framework, ensures that Parliament remains the supreme law-making authority, free from judicial or executive encroachment. However, this deference by the judiciary is not absolute. In exceptional cases, courts have clarified the limits of parliamentary privileges, ensuring they do not undermine fundamental legal principles or individual rights. One notable example of this judicial approach is the case of *R v. Chaytor and Others* (2010)<sup>3</sup> which involved MPs accused of submitting false expense claims. The defendants argued that their actions were protected under parliamentary privilege.

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1 Anirudh Prasad, *Parliamentary Privileges and Their Codification: An Indian Perspective*, 14 J. Indian L. Inst. 241-245 (1972).

2 Sir William Blackstone, *Commentaries on the Laws of England*, Vol. 1, 156-158 (Oxford Univ. Press 1765).

3 *R v. Chaytor*, [2010] UKSC 52, [2011] 1 AC 684 (UK).

The UK Supreme Court rejected this claim, ruling that privilege did not extend to criminal conduct, even if it occurred in the course of parliamentary duties. This case underscores the judiciary's role in safeguarding the rule of law while respecting parliamentary sovereignty. The UK's model has both strengths and limitations. Its reliance on conventions and precedents allows for flexibility and adaptability, enabling privileges to evolve with changing societal needs. However, the absence of codification can also lead to ambiguities and inconsistencies, particularly in cases where conventions are unclear or contested<sup>4</sup> Critics argue that codifying certain aspects of parliamentary privileges could enhance transparency and accountability without compromising legislative independence.

India's approach to parliamentary privileges draws heavily from the UK model, particularly in its reliance on unwritten conventions. However, the Indian context differs significantly, as the socio-political environment and constitutional framework demand a higher degree of legal clarity. Unlike the UK, where privileges are supported by a strong tradition of political accountability and ethical norms, India has faced challenges of misuse and ambiguity. This difference underscores the need for India to consider codifying its parliamentary privileges to address these issues while learning from the strengths and limitations of the UK model. The UK's experience also highlights the importance of fostering a culture of respect for parliamentary norms and conventions. In India, where parliamentary privileges have often been used as tools for partisan purposes, adopting a similar culture of accountability could strengthen the legitimacy of legislative institutions<sup>5</sup> By balancing the flexibility of unwritten conventions with the clarity of codified norms, India can create a framework that upholds the principles of parliamentary sovereignty while ensuring transparency and accountability. The UK's reliance on unwritten conventions offers valuable insights into the evolution and application of parliamentary privileges. While its model may not be directly replicable in the Indian context, it provides important lessons on the interplay between flexibility, accountability, and judicial oversight. India's approach to parliamentary privileges must be informed by these lessons, adapted to its unique constitutional and societal context, and guided by the principles of transparency and the rule of law.

## 2. Australia

Australia provides an instructive example of a parliamentary democracy that has embraced codification to address the ambiguities surrounding parliamentary privileges while preserving legislative independence. Unlike the United Kingdom, where parliamentary privileges remain uncodified and rely heavily on conventions, Australia has adopted a partially codified framework, most notably through the *Parliamentary Privileges Act 1987*. It contains 17 sections. This Act represents a deliberate effort to clarify the scope and application of parliamentary privileges, ensuring transparency, consistency, and accountability. Australia's move toward codification was driven by a recognition of the challenges posed by relying on unwritten

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4 V.D. Mahajan, *Constitutional Law of India*, 7th ed. 496-499 (Eastern Book Co. 2019).

5 Supreme Court of India, *Annual Judicial Review Report: Parliamentary Privileges and Fundamental Rights*, 3-6 (2020).

conventions in a modern democratic system<sup>6</sup> Before 1987, Australia followed the British model, with parliamentary privileges based on the inherited practices of the UK Parliament. However, the lack of clarity often led to confusion and disputes over the scope of these privileges, particularly in cases involving potential conflicts with the judiciary or executive. The *Parliamentary Privileges Act 1987* was enacted to address these issues, providing a comprehensive legal framework for privileges while maintaining the principles of legislative sovereignty. One of the key features of the Act is its explicit definition of privileges. It codifies fundamental rights such as freedom of speech in parliamentary debates, immunity from legal proceedings for parliamentary activities, and the power to regulate internal proceedings<sup>7</sup> By providing clear definitions, the Act ensures that privileges are not subject to arbitrary interpretation, reducing the scope for misuse. It also establishes safeguards to prevent privileges from being used as tools to suppress dissent or evade accountability. The Act also delineates the limits of parliamentary privileges, striking a balance between legislative autonomy and the rule of law. For instance, it specifies that parliamentary privilege does not extend to acts of corruption, fraud, or other criminal conduct. This provision ensures that members of Parliament cannot misuse privileges as a shield against legitimate legal proceedings. The Act further clarifies that courts have the authority to review privilege-related disputes in cases where fundamental legal principles are at stake, thereby fostering a collaborative relationship between the legislature and the judiciary. A significant case that highlights the application of the *Parliamentary Privileges Act 1987* is *Egan v. Willis* (1998)<sup>8</sup> This case involved a dispute between the executive and the legislature in the New South Wales Parliament. The court upheld the principle that parliamentary privileges are essential for the independence of the legislature but must be exercised within the framework of the law. The judgment reaffirmed the role of the judiciary in interpreting the boundaries of privileges, ensuring that they do not undermine constitutional principles.

Another important aspect of Australia's approach is its emphasis on transparency and public accountability. The codification of privileges has helped demystify parliamentary processes, making them more accessible to the public. This transparency has contributed to greater public trust in legislative institutions, reinforcing their legitimacy in the democratic system. The Act also includes provisions for reporting and oversight, ensuring that privileges are exercised responsibly and in the public interest. The Australian model demonstrates that codification does not necessarily undermine legislative independence. Instead, it can enhance the effectiveness and credibility of parliamentary institutions by providing a clear and consistent legal framework<sup>9</sup> This approach has been particularly beneficial in addressing the challenges of modern governance, including issues related to media scrutiny, digital communication, and public accountability. For India, Australia's experience offers valuable lessons on the benefits of codification. While India has so far relied on the British model of

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<sup>6</sup> Rosemary Owens, *Parliamentary Privilege in Australia: The Road to Codification*, 12 Melb. L. Rev. 34-39 (1994).

<sup>7</sup> Rajeev Dhavan, *The Judicial Role in Resolving Parliamentary Privilege Disputes in India*, 21 JILI 321-326 (1979).

<sup>8</sup> *Egan v. Willis*, (1998) HCA 71, 195 CLR 424 (Austl.).

<sup>9</sup> James Madison, *The Federalist Papers No. 48: Separation of Powers and Legislative Immunity*, 1788.

unwritten conventions, the Australian example shows that codification can provide clarity and resolve ambiguities without compromising parliamentary sovereignty. By adopting a similar approach, India can address the challenges posed by the lack of a codified framework, including the misuse of privileges and conflicts with other branches of government<sup>10</sup>

Moreover, the Australian model highlights the importance of balancing legislative autonomy with judicial oversight. The *Parliamentary Privileges Act 1987* ensures that privileges are not absolute but are exercised within the bounds of constitutional principles. This balance is particularly relevant in the Indian context, where parliamentary privileges have often come into conflict with fundamental rights and the jurisdiction of the judiciary. Codification could help reconcile these conflicts, providing a structured framework for resolving disputes and ensuring that privileges serve their intended purpose of protecting legislative independence<sup>11</sup>. Australia's partially codified approach to parliamentary privileges offers a pragmatic model for India to consider. By clearly defining the scope and limits of privileges, Australia has demonstrated that codification can enhance transparency, accountability, and public trust in parliamentary institutions. For India, adopting a similar framework would represent a significant step toward strengthening its democratic institutions and aligning parliamentary privileges with the principles of constitutionalism and the rule of law.

### 3. New Zealand

Parliamentary Privileges in New Zealand is codified in 2014 comprises 5 parts and 38 sections. This Act provides a set of rights and immunities granted to the House of Representatives, its committees, and its members to enable them to effectively carry out their functions of making laws and scrutinizing the Executive. These privileges are considered fundamental to the operation of a democratic Parliament, ensuring that parliamentarians can perform their duties without fear of external interference.

Key Aspects of Parliamentary Privilege in New Zealand:

- Freedom of Speech
- Exclusive Cognisance
- Power to Punish for Contempt
- Proceedings in Parliament

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10 Pratap Bhanu Mehta, *The Uncertain Role of Parliamentary Privileges in Indian Democracy*, 35 EPW 4512-4515 (2000).

11 Paul Kildea, *Legislative Sovereignty and the Rule of Law: Lessons from the Commonwealth*, 18 Int'l J. Const. L. 128-133 (2020)

## **The Privileges Committee:**

The House of Representatives has a Privileges Committee, a specialist committee responsible for considering and reporting on matters of parliamentary privilege that are referred to it. This committee investigates allegations of improper conduct by members or instances where parliamentary privilege may have been breached. It can call for evidence, hear from individuals involved, and make recommendations to the House, which may include disciplinary actions against members found to have acted improperly.

In recent news, in April 2025, three Te Pāti Māori MPs refused to appear before the Privileges Committee, alleging breaches of natural justice and discrimination. This situation highlights the ongoing relevance and occasional controversy surrounding the application and interpretation of parliamentary privilege in New Zealand. The MPs were summoned for performing a haka in Parliament during a debate on a controversial bill, which was deemed disruptive. Their refusal to appear underscores the tensions that can arise between parliamentary privilege, cultural expression, and perceptions of fairness within the political system.

## **Balancing Privilege and Accountability:**

While parliamentary privilege is essential for the effective functioning of Parliament, it is not absolute and must be balanced with the principles of accountability and transparency. There are mechanisms in place to prevent abuse of privilege. For instance, Standing Orders require members to withdraw defamatory statements unless they believe them to be true and relevant to the matter before the House. The Speaker also has a role in maintaining order and can intervene if privilege is being misused. Furthermore, statutory exceptions exist, such as laws against bribery and perjury, which apply to members within the parliamentary context.

## **4. Canada**

Canada provides another compelling example of how a parliamentary democracy can balance legislative autonomy with transparency and accountability through a partially codified framework for parliamentary privileges. The Canadian approach combines elements of inherited British parliamentary traditions with adaptations to suit its unique federal structure and constitutional framework. This model has ensured that parliamentary privileges are exercised responsibly while maintaining the principles of legislative independence and constitutional supremacy. Canada's parliamentary privileges are derived from Section 18 of the Constitution Act, 1867, which grants the federal Parliament the authority to define its privileges by statute. However, like the UK, the Canadian Parliament initially relied on unwritten conventions and British precedents to guide its understanding and application of privileges. Over time, as Canada's political and legal systems evolved, it became evident that certain aspects of parliamentary privileges needed to be clarified and codified to address ambiguities and conflicts with other constitutional principles. One significant legislative milestone

in this regard is the *Parliament of Canada Act*<sup>12</sup> This statute defines the powers and privileges of both Houses of Parliament and their members, ensuring that they align with Canada's constitutional framework. The Act codifies key privileges, such as freedom of speech, immunity from legal proceedings for parliamentary debates, and the authority to discipline members. By codifying these privileges, the Act provides a clear legal framework, reducing the scope for arbitrary interpretation and misuse. Freedom of speech within Parliament is one of the most significant privileges codified in Canada. This privilege enables members to debate matters of public importance without fear of legal repercussions. However, unlike in the UK, where this privilege is governed by conventions, Canada has codified it to ensure consistency and accountability. The codification also includes safeguards to prevent the misuse of freedom of speech, such as mechanisms for addressing defamatory statements or unethical behavior by members.

Judicial review plays an essential role in the Canadian system, ensuring that parliamentary privileges are exercised within the limits of constitutional principles. Canadian courts have consistently upheld the principle that privileges are not absolute and must conform to the Constitution, particularly the Canadian Charter of Rights and Freedoms. In cases where parliamentary privileges conflict with fundamental rights, the courts have intervened to balance legislative autonomy with individual freedoms. A landmark case in this context is *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)* (1993)<sup>13</sup> This case involved a conflict between parliamentary privilege and freedom of the press. A television broadcaster challenged the Nova Scotia Legislature's decision to prohibit video recording of its proceedings, arguing that it violated the freedom of the press guaranteed under the Charter 62. The Supreme Court of Canada ruled that parliamentary privileges are an inherent part of the Constitution and enjoy immunity from Charter scrutiny. However, the Court emphasized that privileges must be exercised in good faith and in a manner consistent with the broader constitutional framework.

Another significant case is *Canada (House of Commons) v. Vaid* (2005)<sup>14</sup> which dealt with the wrongful dismissal of an employee by the Speaker of the House of Commons. The employee argued that the dismissal violated his rights under Canadian labor laws. The Supreme Court ruled that while parliamentary privileges protect the internal autonomy of the legislature, they do not extend to employment matters unrelated to legislative functions. This case underscored the judiciary's role in ensuring that privileges are not invoked to shield actions beyond their intended scope. Canada's experience also highlights the importance of adapting parliamentary privileges to contemporary challenges. For example, the rise of digital communication and social media has created new opportunities for public engagement but also raised questions about the limits of parliamentary privileges. Canadian legislatures have responded by updating their rules and practices to address

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12 Parliament of Canada Act, R.S.C., 1985, c. P-1 (Can.).

13 *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319 (Can.).

14 *Canada (House of Commons) v. Vaid*, [2005] 1 SCR 667 (Can.).

these issues, ensuring that privileges remain relevant in the modern context. The Canadian approach to parliamentary privileges provides valuable lessons for India, particularly in balancing legislative independence with constitutional accountability. While Canada has retained certain British conventions, it has also recognized the need for codification to address ambiguities and conflicts. This approach ensures that privileges are exercised transparently and consistently, reducing the scope for misuse and enhancing public trust in parliamentary institutions.

For India, the Canadian model underscores the benefits of codifying parliamentary privileges while preserving the flexibility needed to adapt to changing circumstances. Codification could provide clear guidelines on the scope and application of privileges, ensuring that they align with India's constitutional principles and democratic values. At the same time, India could draw from Canada's experience in maintaining judicial oversight to prevent the misuse of privileges and protect fundamental rights. Canada's partially codified framework for parliamentary privileges offers a pragmatic and balanced approach that India can emulate. By clearly defining the scope and limits of privileges, Canada has demonstrated that codification can strengthen democratic institutions, enhance public accountability, and ensure that privileges serve their intended purpose of protecting legislative independence without undermining constitutional principles. For India, adopting a similar approach could address the challenges posed by the lack of codification and reinforce the integrity of its parliamentary democracy

## **Conclusion**

Parliamentary Privileges is Shield not a Sword therefore one will have to agree that "To trust the Constitutional Institution is good but to have Constitutional Limitation is better." As codification of law provides certainty, clarity, stability and uniformity of law moreover It also provides the recognition of natural law. It is agreed that freedom of speech of MP is necessary in a similar fashion media person and citizen also, so that they can express without any fear subject to Article 19(2) of constitution of India. Moreover legislators should also behave within the bounds of public trust placed in them carry out their function. In England, British parliament is supreme, there is no as such concept of judicial review over there according to which parliament can do everything with simple majority only. but In India it is not like that. Here constitution of India is supreme. Apart from that we need to apprehend that our situation is different from United Kingdom. as India follows a system where there is written constitution and it is considered as grund norm, while in England there is unwritten constitution so it is quite incumbent to get over from the colonial hangover, while borrowing from Britain the Philosophy of Privileges. As it has been observed in these 75 year that Indian parliament became infected with the disease of distorting and disrupting the constitutional scheme.

What I believe that with the sufficient experience of more than 75 year of constitution and the examples of Australian parliamentary Privileges Act 1987 and Parliamentary Privileges Act 2014 of New Zealand Which

provides the balance between power of legislature, judiciary and other organ of democracy like press etc. the regime of Parliamentary privileges in India should not be allowed to remain in nebulous and uncertain state taking in to consideration all the previous aspects and ramifications of this vexed question. The time is now ripe for liberalizing the rigid attitude of parliament. The ice has to be cut and it cannot be postponed indefinitely on the ground of complexity of the subject for the sake of Protection of Parliamentary democracy.

