



# Comparative Study of Parliamentary Privileges of India, USA and the United Kingdom: An Interpretive Review

**Author:** - .Ms. Monika, Research Scholar, Department of Law MDU-CPAS, GURUGRAM.

**Co-Author:** - Dr. Virender Sindhu, Associate Professor, Department of Law MDU-CPAS, GURUGRAM

## Abstract

For the good and efficient operation of the Indian Parliament, some unique rights have been given. These benefits enabled the elected members of parliament to do their duties more effectively, self-assuredly, and without needless intervention. In this review study, the researcher will analyse the meaning and genesis of the idea of parliamentary privilege. The researcher will also discuss the ways in which India and a few other countries have used parliamentary privileges. In order to ascertain how legislative privileges in India differ from those in the United Kingdom and the United States, the researcher will employ a comparative method when examining the issue. Since various nations have distinct laws governing parliamentary privileges and immunities, the laws of privilege in nations with continental systems, like France, Britain, and Australia, are pertinent when examining the theory of parliamentary privilege. Furthermore, like South Africa, India is an ancient democracy with a three-tiered structure of governance. The author has used comparative research analysis in this work to assist evaluate and analyse the scope of India's parliamentary privileges and immunities. In this article, the author will go into additional depth regarding Parliamentary Privileges and their constituent parts.

**Keywords;**Parliamentary Privilege, Democracy, Member of Parliament,

## • INTRODUCTION

The prerogatives, immunities, and exclusions that belong to the Houses of Parliament, whether jointly or singularly (particularly the House of Lords), its committees, including their members are collectively referred to as parliamentary privilege. Because of the fundamental tenet of the concept of constitutionality that the legislative branch should be legally free to carry out its duties in unison and without hindrance, legislative action would be difficult without these freedoms. Parliamentary privilege protects parliamentary discourse and procedures from outside influence, which might come from the courts or the executive branch, as well as from legal consequence.

Its foundation is a British legal tradition that has been imported in bulk and modified to fit every type of democratic system, from the US to India. Members of parliament have certain privileges, such as the freedom to express themselves in parliament, protection from criminal or civil lawsuits (such as defamation cases), and the exemption from jury duty and the requirement to testify in court while House is in session.

Lawsuits and legislation have helped to further enhance these advantages. *Ashby v. White*, which addressed lawmakers' freedom to openly address one another during discussion, was a significant early case in the formation of parliamentary privileges. For starters, this case law relied on the "freedom of supply" premise, which states that since congress is where the government's agenda is laid forth, it may be considered a violation of privilege if it is not read and approved.

- **Meaning;**

Parliamentary privilege is a legal immunity provided to members of various legislatures, which protects lawmakers from civil or criminal accountability for acts or words made while performing legislative responsibilities. It is widespread in nations with Westminster-based constitutions.

Members of legislatures across the world are bestowed with parliamentary privileges, which are extraordinary rights or benefits. As a result, parliament and their members have specific advantages that enable them to operate efficiently in the majority of democracies. Despite being a component of the law, privilege is somewhat an exception to the general rule of law. To suggest that privilege is to House what autonomy is to the Crown would not be incorrect. The House of Legislature can exercise advantages without the assistance or interference of the judges, just as the monarch can exercise authority without the support or interference of Parliament or the judges.

- **Origin in India**

When a fourth member was introduced to the governor-general's council in 1833 as a result of the Charter Act of 1833, Parliamentary rights in India began. There was a new kind of legislative apparatus. As a result, the institution was established and eventually developed into a complete legislative body. Official opposition to the assembly's privileges was lessened when the Indian Council Act of 1909 established indirect elections for the legislature. The right to free expression in the legislature was stipulated in the Government of India Act of 1935.

In addition to specific legislation and the House's rules of procedure, the Constitution now specifies certain of the privileges of Parliament, its members, and its committees. Other privileges are still depending on the House of Commons' precedents.

The Indian Constitution's primary articles 105 and 122 address the privileges of Parliament, while articles 194 and 212 address the states' respective rights. According to Article 105 (1) of the Indian Constitution, there will be freedom of expression in the Parliament, subject to the Constitution's provisions as well as the standing orders and regulations governing its operation.

- **Comparative Analysis of Parliamentary Privileges**

Comparative analysis of the parliamentary rights in three nations—India, the United Kingdom, and USA relies on each nation's unique constitutional framework and the many constitutional ideas that apply to each. The Indian Constitution strikes a balance between legislative authority and judicial supremacy. It is impractical to have a complete balance of power among the many branches of a government; instead, one of these branches will ultimately make the final decision. The highest court of America has the authority to declare a law duly enacted by the legislature unconstitutional not only on the grounds that it violates the legislative powers granted to it by the Constitution, but additionally on the basis of general principles like "due process of law." As a result, the strict plan of division between powers as well as the checks and balances included in the US Constitution have failed to function as intended, and the judiciary has taken on a dominant role in interpreting the document. As a third chamber or super-chamber of the legislature, the American judiciary therefore sits over the wisdom of any legislative policy.

The United Kingdom does not have a written constitution. Common law, use, convention, and practice on the topic of constitutional law have all given Parliament unrestricted authority over all subjects and individuals under its purview. Even if a legislation is unfair and goes against government policy, Parliament has no authority over its decisions, and it is up to it to fix any mistakes it makes. Parliament is therefore paramount under the English system. In India, there is a constitutional text and it chooses a midway road amongst the USA's system of judiciary supremacy as well as English system of legislative authority.

- **Parliamentary Privilege's status in Indian**

The Constitution is the highest legislation in India. The COI creates and governs the state's institutions, including the executive, legislature, and judiciary, at the Union and state levels under India's quasi federal polity. The Constitution is the only source of legitimacy and existence for the State's organs. In the legislative areas designated for them by the 7th Schedule to the Constitution, the legislatures—both the Parliament as well as the State legislatures may possess plenary powers. The basic rights in the third part of the Constitution also place restrictions on the authority of Indian legislatures, among other constitutional restrictions.

Therefore, India cannot adopt the British concept of parliamentary authority or parliamentary supremacy. Since they reflect the will of the people, India's legislatures have a place of grandeur & majesty within the country's constitutional framework. The Indian Constitution is the final authority of all legislative privileges. The Indian courts have the authority to decide the extent and nature of legislative privileges, notwithstanding Articles 105 and 194. Superior courts have the authority to consider a challenge to the legislature's use of a privilege. Judicial review applies to any assertion made by the legislator about the existence or scope of a privilege. If a legislature passed a legislation outlining its own privileges, the higher courts would have the authority to evaluate it.

Therefore, the ultimate authority for interpreting the Constitution's provisions, including those that provide legislators express or implicit privileges, rests with the Supreme Court and the High Courts. As a result, our Constitution does not allow for the application of dualism, which was prevalent in the United

Kingdom and in which nor the legislature neither the courts had the last say over the existence, extent, and content of legislative privileges. Furthermore, India has less use for either House's exclusive authority over its own internal processes, as it did in the United Kingdom. Each House of Parliament and each State Legislature has the authority to establish rules to govern its own processes under Articles 118 and 208 of the Indian Constitution, respectively. However, these powers are constrained by other provisions of the Constitution, such as the fundamental rights guaranteed by Part III of the Indian Constitution.

- **Similarities between India's and England's privileges**

- 1. The right to free expression in parliament;**

One of the oldest rights in the UK is the ability to freely express oneself in parliament. According to the 1689 Bill of Rights, no court or location outside of Parliament has the authority to impeach or challenge the freedom of speech, debate, and action in Parliament. MPs are able to discuss issues they feel are best for the nation without fear of retaliation from others or further legal action because to this fundamental freedom.

Article 105 of the Constitution guarantees that all members of both houses of Parliament may be sued for whatever they say and vote on in the House or any of its committees. This also applies to legislative speech in India. This authority comes directly to its British counterpart and is used for the same reasons: to protect members of Parliament; to make sure that vigorous debates are the foundation of our system because they invariably involve the use of strong language by highly emotional people; and to make sure that there is as little discontent as possible with any haste in discussing any issue.

This privilege is an essential component of democracy because, in both nations, it allows legislators to carry out their responsibilities without fear of penalty, which tends to encourage a robust capacity for policymaking and governance.

- 2. Absence of judicial intervention**

Parliamentary privilege in the UK gives leaders of state a very broad shield from judicial interference. It arises from the rigorous separation of powers outlined in the constitution, which has been reaffirmed throughout time, and it is derived from the Bill of Rights as well as common law precedents. Judges are legally prohibited from interfering in Parliamentary proceedings, which is another way of saying that they are not allowed to meddle in internal matters.

The Indian Constitution reflects these ideals. A House of Parliament enjoys legislative autonomy under Article 122 since no individual's vote or argument inside the House may nullify any House decision. In essence, the courts will not look into the actions of a House of Parliament.

- 3. Controlling Internal Affairs**

In addition to having the supreme authority to choose its own agenda, or what topics its members will discuss, it also has the power to choose and govern the organization that handles its operations, including its committees, members, administration, and working methods. This enables parliament to make choices autonomously and honourably and to talk intelligibly.

The Rules of Order & Conduct of Business in the Lok Sabha & its equivalent in the Rajya Sabha govern how members interact with one another in the houses, how business is conducted in parliament, and how disciplinary matters are resolved. The Indian Parliament's internal operations can also be regulated, following the British model.

- **Disparities in Scope and Application**

Although they may have many similarities, such as the parliamentary systems of India and England, the specifics of the rights and advantages that members of parliament in the two nations enjoy differ. A unique collection of legal theories, court decisions, and the separate influences of political culture and historical events in many legal systems are the causes of this difference.

### 1. Legal Structures and Clauses in the Constitution

In England, legislative precedents like the Bill of Rights 1689 and common law serve as the main foundation for the legal system governing parliamentary privilege. Since the UK is a country without a codified constitution, it lacks a single fundamental document that defines its constitution. In the case of parliamentary privilege, this is because there are no explicit basic provisions—only a variety of legislative actions & court interpretations. The responsibility-centered approach to parliamentary business protection that emphasizes parliamentary speech freedom & immunity from prosecution sets English parliamentary privilege apart.

However, the written and codified Constitution of modern-day India went into effect in 1950. The Constitution's Articles 105 (for the Union) & 194 (for the State Legislatures) specifically outline the privileges of Parliament. Compared to a common law system, such precise and well-written codifications provide more structure and organization to the explanation of the specifics of the numerous accountability procedures. India's parliamentary privileges are mostly based on the British model, but they have been made workable by the constitutional framework that specifically aims to balance these advantages against the rights that all people are entitled to.

### 2. Notable Court Rulings

The self-governing power of Parliament to oversee its own processes has historically been upheld by British legal tradition. In *Bradlaugh v. Gossett*, the courts upheld their vow to never interfere with the internal affairs of the House of Commons. They allowed restricted judicial review in *Pepper v. Hart*, when the House published *Hansard* to make its proceedings available to the public.

In a similar vein, Indian courts have expanded the reach of parliamentary rights through the application of common law. The Indian SC has upheld the rights of individuals above the privileges articles in the constitution in several rulings regarding the link between parliamentary privileges and the rights of the people. By holding that parliamentary privileges cannot outweigh people's fundamental rights, the court set a precedent in *P V Narasimha Rao v. State* to limit the extent of such privileges.

### 3. Impact of History and Political Culture

The changing nature of parliamentary privileges in England is mostly due to two sources. First, parliamentary privilege was reinforced by the fundamental idea of parliamentary sovereignty, which is an actuality of the Crown-in-parliament's implicit and used powers to enact and oversee legislation. Most importantly, it provided royal approval for laws that combined centuries' worth of authority and allowed English and then British lawmakers to wield privileges whatever they wished. In a subsequent phase of growth, the parliament evolved into a democratic forum that represented the expansion of democratic principles throughout the nation. This development also brought with it new rewards for members and further extensions of parliaments' involvement authority.

- **Comparison with United States of America**

Members of Congress are granted unconditional freedom of discussion in the House and conditional protection from arrest under the U.S. Constitution. For this reason, the Constitution's Art 1, Section 6 stipulates the following:

When attending the session within their respective Houses as well as traveling to and from them, they (the senators or representatives) will be protected from arrest in all circumstances, except treason, a crime, and breach of peace; they will also not be questioned elsewhere for speaking or debating in either House.<sup>1</sup>

The courts have construed "treason, crime, & breach of the peace" to encompass all offenses that are subject to indictment. Therefore, criminal warrants are covered by the exemption from arrest. All utterances made in the House are protected by privilege, however this does not apply to libellous remarks made by members of Congress that are published outside of the House. Because of this, no one should be able to disparage others while carrying out his official responsibilities.

Both writers of petitions along with other addresses to Congress and the witnesses before its committees are entitled to the rights. There are legal privileges for the members of Congress or congressional committees.

Members can come and testify under a court summons<sup>2</sup> when the House authorizes it by resolution, and they can also forego their constitutional protection from testifying before a grand jury.

The U.S. Constitution seems to grant Congress the authority to punish its own members for contempt. However, the Federal Senate and the House of Representatives have implicitly acknowledged an inherent capacity to protect their honour and to protect themselves from actions that hinder their ability to perform their tasks or that compromise their authority and prestige<sup>3</sup>. In *Kilburn v. Thomson*<sup>4</sup>, the court limited Congress's broad authority to penalize anyone who defied its order for contempt, as stated in the previous *Anderson v. Dunn* decision. In the *Kilburn* case, the Supreme Court ruled that Congress may only penalize a witness for contempt if they refused to testify before either of its Houses when the evidence was necessary for an issue that the House in question had the authority to investigate.

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<sup>1</sup>The Constitution of the U.S.A. Article 1, Section 6

<sup>2</sup>Rama Chandran V. G, THE LAW OF PARLIAMENTARY PRIVILEGES IN INDIA, 1st Edition (1972), P. 41

<sup>3</sup>*Anderson v. Dunn*, Dist. Column. Wheat (U.S) Ed. 242 (1821).

<sup>4</sup>*Kilburn v. Thomson*, 103 U.S. 168 (1881).

Courts have broadly interpreted the freedom of expression protected by Article 1, Section 6 (1) of the US Constitution. Anything a member of the House says or does is thus protected by privilege. Voting, drafting reports, proposing legislation, and all other actions taken during House business are included in this. The immunity exists regardless of the member's wrong motivation or even if they violated the House's rules. America does not adhere to the English principle of the two Houses' common privileges.

Unlike the UK's parliament, the British Parliament is composed of the House of Commons, the House of Lords, & the Sovereign. The privileges granted to Parliament are essential to the appropriate use of its power. According to each House, it was the only arbitrator of its own rights.

- a. That because the courts are subservient to Parliament, they cannot contest a judgment made by either chamber on a privilege basis.
- b. Since the *lexet consuetude Parliamenti* is a separate statute, the courts are not aware of it.
- c. That a resolution establishing privilege in either chamber sets an example that the courts have to abide by.

At the tail end of the 17th century, after a time of acceptance of the "supremacy of Parliament," the Court of Appeal began to make a distinction between the constitutional positions of Parliament and each House of Parliament independently. Additionally, they claimed that congressional immunity was only a part of the national legislation that they had to uphold.

#### • Conclusion

In both India and England, parliamentary privileges are a part of a history of compromise and assertion that has made the legislature essential to the functioning of the state and the constitution. Inspired by their colonial Indian development as well as morphology as well as their medieval English origins, In order to keep parliamentary speech free and open when it is most vulnerable, the privileges from civil and criminal cases that shield lawmakers from having their voting rights suspended as well as the immunities that shield parliamentary speech from the risks of legal liability have preserved the legislative independence of lawmakers without giving them complete discretion. This has allowed parliaments in both countries to remain functional and efficient.

Parliamentary privilege has necessitated a number of legal interpretations and legislative amendments to take into account the growing state power and to make the parliamentary system meet the needs of contemporary democracies and federal governments, as demonstrated by cases before UK and Indian courts as well as UK or Indian statutes. To prevent MPs from using parliamentary privileges to conceal scandalous behaviour or encourage corrupt practices, new investigations concentrate on the extent of protection they offer and the potential for abuse. For example, the Indian cash-for-questions scandal in 2011 and the UK MPs' expenses scandal in 2009. The selection of only the most prominent recent scandals generated a lot of moral outrage and a need for greater accountability, more detailed transparency, and more stringent regulations both before

to and during the representative business. A written list of the privileges, a more stringent need for parliamentarians to be transparent, and an expansion of the scope of parliamentary practice—such as live broadcasting of the proceedings as audio-visual media coverage—are possible future enhancements.

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