

Parliamentary Privileges and Immunities in the light of various Judicial Decisions

Assignment of Constitutional Law

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Index

1) Introduction	3
2) Parliamentary Privilege	4
3) Article 105	5
4) Article 122 & Article 361-A	8
5) Rules of Procedure of Lok Sabha	10
6) Section 135A of Civil Procedure Code	12
7) Conclusion	13

Introduction:

The executive in India, both at the Centre and in the States, is based on the Cabinet system of government and is responsible to the parliament. The President of India is the most important executive officer in the Constitution. He is the head of the State, but not of the Executive. He represents the state but does not rule it. He is the symbol of the nation. His place in the administration is that of a ceremonial seal by which the nations decisions are made. Article 52 provides that there shall be President of India.

Article 79 provides that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known as respectively as the Council of States and House of People. Prime Minister is the head of Council of Ministers. The duty of Council of Ministers is to aid and advise the President in the exercise of his functions.

Parliamentary privilege (also **absolute privilege**) is a legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties.

Parliamentary privilege is controversial because of its potential for abuse; a member can use privilege to make damaging allegations that would ordinarily be discouraged by defamation laws, without first determining whether those allegations have a strong foundation. A member could, even more seriously, undermine national security and/or the safety of an ongoing military or covert operation or undermine relations with a foreign state by releasing sensitive military or diplomatic information.

The term "parliamentary privilege" is essentially used to describe the law relating to the privileges or immunities of Parliament and includes its powers to punish for "contempt" or breach of privilege. The privileges, whether of Parliament itself as a collective body or of the individual members, are intended to enable them to carry out their constitutional functions of legislating, debate and enquiry effectively, independently and without interference or obstruction from any quarter. Since, India has these privileges enshrined in its Constitution, it would be appropriate to approach the topic with reference to the relevant constitutional provisions. The law on the subject in other countries is an important aid for understanding the limits and extent of the law of privileges.

Parliamentary Privilege:

Parliament in India is one of the most important pillars standing with an aim to achieve the goals of national reconstruction and nurturing the values of freedom, secularism and democracy. There are three main organs of Indian Government namely Legislative, Executive and Judiciary. As a microcosm of the nation it has consistently reflected the feeling, hopes and aspiration and even weakness and frustrations of the people. It has been considered as the most vital political institution on whose working depends nation's success. But all this is possible only if its members devote themselves whole-heartedly to meet the rising expectations of the teeming millions. A proper exercise of their duties and responsibility want certain liberties and immunities on their part so as to enable them to carry out their obligations unhindered by external force and internal pressure what we call them parliamentary privileges.

The term privilege does not mean any special benefits or entitlements enjoyed by Members of Parliament or state legislators but the immunity from ordinary law that, together with the potential exercise of parliamentary powers, enables the Houses of Parliament (and state legislatures) to carry out their primary functions of legislating, debating and inquiring more effectively, efficiently and independently.

Parliament is entrusted with important function of law making. Besides this, by means of resolutions, motions for adjournment, discussions and questions addressed by members to ministers, the parliament also exercises control over the administration of the country and safeguard people's liberties. To perform the task of such a great importance it is necessary that the august House and its members must be free. Then only unhindered and uninterrupted outcome is possible.

Privilege is a special right, benefit or advantage given to a person.

In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance"¹.

The fundamental principle is that all citizens, including members of Parliament, have to be treated equally in the eye of the law. Unless so specified in the Constitution or in any law, a member of Parliament cannot claim any privileges higher than those enjoyed by any ordinary citizen in the matter of the application of law².

The classic definition of parliamentary privilege is found in Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament: Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each

¹ Report of committee of Privilege in Captain Ramsay case H.C 164 (1939-1940)

² Report of Committee of Privileges in Deshpande Case.

House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law

Powers, Privileges and Immunities of the Houses of Parliament and of the members and committees thereof: Article 105

- 1) 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 the Parliament.
- 2) 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 the parliament or any committee thereof, and no person shall be liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- 3) In other respect, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each house, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the constitution (Forty-Fourth Amendment) Act, 1978.
- 4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have right to speak in, and otherwise to take part in the proceeding of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Prior to Forty-second Amendment, 1976, it was provided by Art. 105(3) that in other respects, the power, privileges and immunities of each House of Parliament may be defined by Parliament, and till then, shall be the same as those of the House of Commons of United Kingdom at the commencement of the Constitution. The privileges and immunities of House of Commons were as follows:

- a) Members of the house have freedom from arrest for a period which begins with forty days before the sessions of the Parliament, and extends upto forty days after such sessions. Arrest on a criminal charge or under a law relating to preventive detention is allowed, but such arrest or detention, with reasons thereof, must be communicated to the House.
- b) A member of the House has freedom of speech, debate and proceedings.
- c) The English Bills of Rights provides that “the freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any court.

- d) The House has the privilege of excluding strangers from the House, and of prohibiting publication of its debate and proceedings. This privilege is incidental to the freedom of speech and debate.
- e) The House has power to enforce its privileges, and to protect itself from insult, indignity or obstruction. This itself is a privilege, and it consists in the power to commit a person to imprisonment for a contempt of the House.

Freedom of Speech:

The Freedom of speech in the Parliament under this clause is absolute and is independent of Art.19³. The stage has been set for fearless participation in the debates in the House. A member cannot also claim immunity for any speech that he may make outside the House even if it is a verbatim reproduction of what he has said inside the House.

The freedom of speech available to the members on the floor of the House is different from that available to the citizens under article 19(2). A law made under this article providing for reasonable restrictions on the freedom of speech of the citizens would not circumscribe the freedom of speech of the members within the walls of the House.

In order to claim the immunity, what needs to be shown is only that Parliament was sitting and that its business was being transacted.

“The Article confers immunity inter alia in respect of ‘anything said ... in Parliament’. The word ‘anything’ is of the widest import and is equivalent to ‘everything’. The only limitation arises from the words ‘in Parliament’ which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of government that people’s representatives should be free to express themselves without fear of legal circumstances. What they say is only subject to the discipline 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 be none”⁴

Members enjoy complete protection even though the words uttered by them in the House are malicious and false to their knowledge⁵. Courts have no jurisdiction to take

³ P. V. Narasimha Rao v. State (1998) 4 SCC (para 100 and 101): AIR 1998 SC 2120.

⁴ Tejkiran Jain v. N Sanjeeva Reddy (1970 (2) SCC 272)

⁵ Suresh Chandra Banerji v. Punit Goala, AIR 1970, SC 1573

action against a member for his speech made in the House even if it amounts to contempt of the court⁶.

The privilege Freedom of Speech can only be secured if, members do not abuse it. The freedom of speech that is available to Members of Parliament under Article 105(1) is wider in amplitude than the right to freedom of speech and expression guaranteed under Article 19(1)(a) since the freedom of speech under Article 105(1) is not subject to the limitations contained in Article 19(2)⁷.

Immunity from liability to “any proceedings in any court in respect of anything said or any vote given y him in Parliament:

In *P. V. Narasimha Rao v. State*; there was a charge of criminal conspiracy against the M.P.s of entering into an agreement to exercise their right to speak or vote in a particular manner in the House(in this case not to vote against the no confidence motion against the Govt. By receiving illegal gratification offered by certain others M.P.s), it was held that the alleged bribe takers who had cast their votes were entitled to immunity, as the alleged conspiracy and acceptance of bribe was “in respect of” or had nexus with the vote against no confidence motion. The M.P. who despite having received the bribe pursuant to the conspiracy, had abstained from voting, was not entitled to immunity and was liable to be prosecuted, since the protection under Art.105 (2) must relate to the vote actually given or speech actually made in the Parliament and hence the bribe givers were liable pt be prosecuted for the charge of criminal conspiracy with the M.P. who abstained from voting. However, both the bribe givers and bribe takers could be proceeded against by the Parliament for the breach of privilege and contempt.

Section 73-A of the Crimes Act, 1914 in Australia and Section 108 of the Criminal Code in Canada are statutory provisions that make the acceptance of a bribe by parliamentarians, an offence.

The National Commission for review of the Constitution in its report¹² submitted in 2002 has in fact recommended that Article 105(2) ought to be amended. The Commission recommends that Article 105(2) may be amended to clarify that the immunity enjoyed by the Members of Parliament under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Corrupt acts would include accepting money or any other valuable consideration to speak and/or vote in a particular manner. For such acts they would be liable for action under the ordinary law of the land. It may be further provided that no court will take cognizance of any offence arising out of a member's action in the House without prior sanction of the Speaker or the Chairman, as the case may be.

⁶ Surendra Mohanty v. Nabakrishna Choudhury, AIR 1958, Orissa, 168.

⁷ M. S. N. Sharma v. Shri Krishna Sinha, AIR 1959 SC 395

Communication and consultation by the Speaker with the Leader of the House and Leader of the Opposition is in discharge of constitutional duties which, if disclosed, may cause breach of **parliamentary privilege** and hence would be exempted under section 8 (1) (c) of the RTI Act, 2005⁸.

Power of Parliament to expel a member is a part of the powers, **privileges** and immunities conferred on the Parliament, under Article 105(3), and it is distinct and different from 'disqualifications' contemplated under Article⁹.

Salaries and allowances of members: Article 106

Members of either House of Parliament shall be entitled to receive such salaries and allowances as may be from time to time be determined by the Parliament by law and, provisions in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of member of the Constituent Assembly of the Dominion of India.

Courts not to inquire into proceedings of Parliament: Article 122

- 1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
- 2) No officer or Member of Parliament in whom power has been vested by or under this constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Rules of procedure: Article 118

Each House of Parliament may make rules for regulating subject to the provisions of this Constitution, its procedure and the conduct of its business

Protection of publication of proceedings of Parliament and State Legislatures: Article 361A

⁸ Mr. Subhash Chandra Agarwal v. Lok Sabha Secretariat.

⁹ Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha.

- 1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the State Assembly, or, as the case may be, either House of Legislature, of a State, unless the publication is proved to have been made with malice: provided that nothing in this clause shall apply to the publication of any report of the proceedings of a sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.
- 2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper

Conditions for application of Article 361A:

In order to claim immunity from legal proceedings under this Article, the following conditions must be fulfilled;

1. The report must be a report of the proceedings of a House of Union or a State Legislature. Hence, it must be relevant to a motion or other business before the House,¹⁰ and must not have been expunged¹¹.
2. It must be report as distinguished from an article or comment.
3. Such report must be substantially true. Hence, an extract or a garbled or perverted report would not be protected.
4. The reporting must not be actuated by malice.

Arrest for Criminal offences or under Preventive Detention laws:

The Madras High Court has held that the privilege of freedom from arrest "cannot extend or be contended to operate, where a Member of Parliament is charged with an indictable offence"¹². The privilege of freedom from arrest thus ceases to operate where a Member of Parliament has been charged with a criminal or indictable offence, primarily on the ground that the House should not protect a member from the process of criminal law. He cannot, therefore, pray for a writ of *mandamus* directing the State to enable him to attend the session of the Legislature. In fact, there is no statutory provision granting such privilege or immunity¹³.

¹⁰ Cf. Tej Kiran Jain v. Sanjiva Reddy AIR 1970 SC 1573

¹¹ M.S.M. Sharma v. Sri Krishna Sinha, AIR 1959 SC 395

¹² In the matter of Venkateswarlu, AIR 1951, Madras, 269.

¹³ Kunjan Nadar v. The State, AIR 1955, Travancore-Cochin, 154

The petitioner has Constitutional right to participate in parliamentary proceedings and also has right to vote. the constitutional obligation and duty to attend the sittings in the Parliament and if the permission is not granted, the privilege conferred on a Member of Parliament under Article 105 of the Constitution would be defeated; that though a Member of Parliament can be arrested and taken into custody for criminal offences, yet he has been exempted from arrest under Section 135A of Code of Civil Procedure and the same would go a long way to show how the Legislature has granted certain privileges to Parliamentarians; that in case the appellant is not allowed to attend the parliamentary session, there is a possibility of forfeiture of his membership of the Lok Sabha; and that in fitness of things, it is requisite that the appellant should be extended the benefit subject to imposition of certain reasonable conditions. The learned Single Judge appreciated the factual matrix in entirety, referred to certain decisions in the field, adverted to the basic concept of democracy and eventually came to hold that the petitioner had no right in law to attend the Parliament and further there was no justification to grant him the permission¹⁴

It has been held in *K. Anandan Kumar v. Chief Secretary, Government of Madras*, that matters of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention.

Detained member's right to attend session:

If a member is arrested under Preventive Detention Act and is lawfully Detained even without actual trial, he cannot claim that his detention should be Subordinated to his right to attend the session of Parliament. Members of Parliament can claim no special status higher than that of an ordinary citizen, in so far as a valid order of detention is concerned and are as much liable to be arrested and detained under it as any other citizen.

Rules of Procedure of Lok Sabha:

So far Parliament has not been able to do much with regard to the codification of the powers, privileges and immunities of its members, Committees and the Houses. What has been done is included in the Rules of Procedure.

Consent of Speaker: Rule 222

¹⁴ Suresh Kalmadi v. Union Of India and Others.

A member may, with the consent of the Speaker, raise a question involving a breach of privilege either of a member or of the House or of a Committee thereof.

Intimation regarding arrest, detention etc. of member: Rule 229

When a member is arrested on a criminal charge or for a criminal offence or is sentenced to imprisonment by a court or is detained under an executive order, the committing judge, magistrate or executive authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member in the appropriate form set out in the Third Schedule.

Arrest within precincts of House: Rule 232

No arrest shall be made within the precincts of the House without obtaining the permission of the Speaker.

Service of legal process: Rule 233

A legal process, civil or criminal, shall not be served within the precincts of the House without obtaining the permission of Speaker¹⁵.

Procedure for dealing with questions of privilege

Prior consent of the Chairman:

A member may, with the consent of the Chairman, raise a question involving a breach of privilege either of a member or of the House or of a Committee thereof. A member who wishes to raise a question of privilege is required to give notice in writing to the Secretary-General, before the commencement of the sitting on the day the question is proposed to be raised. If the question of privilege is based on a document, the notice must be accompanied by that document. On receipt of the notice, the matter is considered by the Chairman who may either give or withhold his consent to the raising of the question of privilege in the House. The question whether a matter complained of is actually a breach of privilege or contempt of the House is entirely for the House to decide. The Chairman in giving his consent to the raising of a matter in the

¹⁵ Rules of Procedure and Conduct of Business in Lok Sabha(internet)

House as a question of privilege considers only whether the matter is fit for further inquiry and whether it should be brought before the House. The right to raise a question of privilege is governed by two conditions, namely, (i) the question shall be restricted to a specific matter of recent occurrence and (ii) the matter requires the intervention of the House. Before deciding whether the matter proposed to be raised as a question of privilege requires the intervention of the House and whether consent to raise the same in the House be given, the Chairman may give an opportunity to the person incriminated to explain his case to the Chairman. The Chairman may, if he thinks fit, also hear views of members before deciding upon the admissibility of the question of privilege.

Exemption of members of legislative bodies from arrest and detention under civil process: Section 135A of Civil Procedure Code

[(1) No person shall be liable to arrest or detention in prison under civil process-

(a) if he is a member of-

(i) either House of Parliament, or

(ii) the Legislative Assembly or Legislative Council of a State, or

(iii) a Legislative Assembly of a Union territory,

during the continuance of any meeting of such House of Parliament or, as the case may be, of the Legislative Assembly or the Legislative Council;

(b) if he is a, member of any, committee of-

(i) either House of Parliament, or

(ii) the Legislative Assembly of a State or Union territory, or

(iii) the Legislative Council of a State,

during the continuance of any meeting of such committee;

(c) if he is a member of-

(i) either House of Parliament, or

(ii) a Legislative Assembly or Legislative Council of a State having both such Houses,

during the continuance of a joint sitting, meeting, conference or joint committee of the Houses of Parliament or Houses of the State Legislature, as the case may be,

and during the forty days before and after such meeting, sitting or conference.]

(2) A person released from detention under sub-section (1) shall, subject to the provisions, of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1).]

Breaches of Privilege and Contempt

A breach of Privilege includes any disrespect of, or assault on, the privileges, immunities and powers of the House and its Members, either by an outsider or by a Member of the House. Contempt is not always a breach of Privilege while a breach of Privilege is always contempt. This is because a breach of Privilege is a clear violation of the privileges, immunities or powers included in Parliamentary Privilege. However, contempt is a more general concept that applies to anything that causes an inability to carry out Members' duties. A breach of Privilege is more common and tends to warrant minor punishment, such as an apology.

Each House is the guardian of its own privileges: it is not only the sole judge of any matter that may arise which in any way infringes upon those privileges but can, if it deems it advisable, punish, either by imprisonment or reprimand, any person whom it considers to be guilty of contempt. The penal-jurisdiction of the House is not confined to its own members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls

Conclusion:

It is provided that the privileges of the parliamentarians may be codified. However, on one hand there is a pressing demand made by the media persons to make a law, providing for the privileges, on the other hand, Members of Parliament and most of the Presiding Officers have opposed the move to codify them on the ground that as the judicial interpretation of the law is the responsibility of none else but the judiciary. If privileges are codified, the matters would be taken to the courts and the Members of Parliament and the Presiding Officers would be asked to subject themselves to the jurisdiction of the judiciary and that would affect the equality between three wings of the Government and ultimately affect the privileges of the parliamentarians to express their views without fear

or favour. Therefore, while the courts should be excluded from judicially reviewing the freedom of speech in a legislature, the members have a commensurate duty to exercise self-restraint even in difficult moments. They must always keep in mind their special position and the position of the august legislative body. They must at the same time not forget their representative character. They are elected by the people to mitigate their grievances and not to claim superiority over their ultimate masters. The rules of procedure and conduct of business in Parliament and the legislatures provide for parliamentary decorum and decency and it is the onerous duty of the Presiding Officers to see that the freedom is used properly."

To my mind the powers and privileges of the House and its members exist so as to maintain the dignity and independence of the House and its members and enhance their performance. But today the respect for parliament is awfully lacking

Privilege to some extent have exemption from ordinary law of land.

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