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# **“THE CONFLICT BETWEEN PARLIAMENTARY PRIVILEGES AND FUNDAMENTAL RIGHTS: A STUDY OF THE INDIAN SCENARIO”**

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## **Abstract:**

The concept of parliamentary privileges has always been a subject of debate and controversy, particularly in the context of the conflict between these privileges and fundamental rights. This research article focuses on the Indian scenario, where such a conflict has been witnessed on numerous occasions. The article begins by discussing the meaning and evolution of parliamentary privileges, followed by an analysis of the various provisions of the Indian Constitution that confer these privileges on parliamentarians. The article then goes on to explore the fundamental rights guaranteed by the Indian Constitution and their significance in protecting the citizens' interests. Subsequently, the article examines the instances where the exercise of parliamentary privileges has been challenged on the grounds of violating fundamental rights and the judicial response to such challenges. The article concludes by arguing that while parliamentary privileges are crucial for the efficient functioning of the parliament, they cannot be absolute and must be subjected to the scrutiny of fundamental rights.

## **Introduction**

The Constitution of India grants certain privileges to the members of the Parliament and State Legislatures, commonly referred to as parliamentary privileges, to ensure the smooth functioning of the legislature. However, the exercise of these privileges often comes in conflict with the fundamental rights of citizens, such as the right to freedom of speech and expression, the right to privacy, and the right to equality. The conflict between parliamentary privileges and fundamental rights has been a topic of debate and controversy in India. While the exercise of parliamentary

privileges is necessary for the functioning of the legislature, the protection of fundamental rights is also crucial for the protection of individual liberties.

This study aims to explore the conflict between parliamentary privileges and fundamental rights in India. The study will examine the historical evolution of parliamentary privileges and fundamental rights in India and analyze the factors contributing to conflicts between the two. The study will also analyze the judicial response to conflicts between parliamentary privileges and fundamental rights and their implications for policy and practice. The significance of this study lies in its contribution to the understanding of the balance between parliamentary privileges and fundamental rights in India. The study will provide insights into the challenges and implications of conflicts between parliamentary privileges and fundamental rights, which can inform policy and practice in ensuring the protection of individual liberties while maintaining the efficient functioning of the legislature.

### **The objectives of this study are:**

- To examine the concept of parliamentary privileges and fundamental rights in India
- To analyze the conflicts between parliamentary privileges and fundamental rights in India
- To analyze the judicial response to conflicts between parliamentary privileges and fundamental rights in India
- To identify the factors contributing to conflicts between parliamentary privileges and fundamental rights in India
- To explore the implications of conflicts between parliamentary privileges and fundamental rights in India

The scope of this study is limited to the conflict between parliamentary privileges and fundamental rights in India. The study will primarily rely on secondary sources of data such as academic literature, legal documents, and case law. The limitations of the study include the availability and reliability of data, as well as the subjective interpretation of legal concepts and principles.

## Parliamentary Privileges: Historic Evolution and Framework in India

Parliamentary privileges refer to a set of special rights, immunities, and powers that are granted to members of Parliament, which are essential for the functioning of the legislative branch of government. These privileges are intended to protect the independence and integrity of the Parliament, its members, and its proceedings, and to ensure that the Parliament can discharge its constitutional responsibilities effectively.

The concept of parliamentary privileges has evolved over centuries, and it has its roots in the early British parliamentary system. The British Parliament has always enjoyed a special position in the country's political system, and its members have traditionally enjoyed certain privileges and immunities.

In India, the concept of parliamentary privileges has been adopted from the British parliamentary system. The Indian Constitution guarantees certain privileges and immunities to members of Parliament under Article 105, which states that the members of Parliament shall have the freedom of speech in Parliament and shall not be liable to any proceedings in any court in respect of anything said or any vote given by them in Parliament.

The framework of parliamentary privileges in India is governed by various laws and rules, including the Constitution of India, the Parliamentary Proceedings (Protection of Publication) Act, 1956, the Rules of Procedure and Conduct of Business in Lok Sabha and Rajya Sabha, and the Directions by the Speaker or Chairman of the House.<sup>1</sup>

Some of the important parliamentary privileges enjoyed by members of Parliament in India are:

1. **Freedom of speech:** Members of Parliament have the right to speak freely in the House without fear of legal action.
2. **Immunity from arrest:** Members of Parliament cannot be arrested during the session of Parliament or forty days before the commencement or after the conclusion of the session.
3. **Right to withhold information:** Members of Parliament can refuse to answer any question or produce any document related to parliamentary proceedings if they believe

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<sup>1</sup> <https://www.studyiq.com/articles/parliamentary-privileges/>

that it would compromise parliamentary privilege.

4. **Privilege of publication:** Members of Parliament can publish or cause to be published any report, speech, or proceeding of the House without fear of legal action.
5. **Right to regulate its own proceedings:** The House has the power to regulate its own proceedings and punish members for breach of privilege or contempt of the House.<sup>2</sup>

The scope and extent of parliamentary privileges in India have been the subject of much debate and controversy. While these privileges are essential for the effective functioning of the Parliament, they must be exercised judiciously and in the interest of the larger public good.

## **Factors contributing to conflicts between parliamentary privileges and fundamental rights in India**

Several factors contribute to conflicts between parliamentary privileges and fundamental rights in India. Here are some of the key factors:

1. **Broad nature of parliamentary privileges:** Parliamentary privileges are broadly defined and can be interpreted in a manner that may infringe on fundamental rights. For instance, the power to punish for contempt of Parliament can be used to curtail free speech and expression, which is a fundamental right.
2. **Political considerations:** Members of Parliament may use their privileges for political considerations rather than the public good. This can lead to situations where individual liberties and fundamental rights are curtailed in the name of parliamentary privileges.<sup>3</sup>
3. **Lack of clarity and guidelines:** There is a lack of clarity and guidelines on the exercise of parliamentary privileges. This can lead to the arbitrary and unreasonable exercise of privileges, which can infringe on fundamental rights.
4. **Absence of checks and balances:** There is an absence of effective checks and balances on the exercise of parliamentary privileges. This can lead to situations where the exercise of privileges is unchecked and can infringe on fundamental rights.<sup>3</sup>
5. **Lack of awareness:** There is a lack of awareness among the public about the scope and limits of parliamentary privileges. This can lead to situations where the exercise of

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<sup>2</sup> <https://www.drishtias.com/daily-updates/daily-news-analysis/the-privileges-of-members-of-parliament> <sup>3</sup> n Analysis of the Interplay between Parliamentary Privileges and Fundamental Rights" by Kishlay Pandey, published in the NALSAR Student Law Review in 2017.

<sup>3</sup> "The Constitution of India: A Contextual Analysis" by Arun K. Thiruvengadam and "Parliamentary Privileges in India" by M.P. Jain and S.N. Jain

privileges goes unchallenged, even when it infringes on fundamental rights.

In summary, conflicts between parliamentary privileges and fundamental rights in India arise due to the broad nature of privileges, political considerations, lack of clarity and guidelines, absence of checks and balances, and lack of awareness among the public. Addressing these factors can help prevent such conflicts and ensure the protection of fundamental rights in India.

## **Judicial Perspective to Conflicts between parliamentary privileges and fundamental rights in India**

The conflicts between parliamentary privileges and fundamental rights in India involve various provisions of the Indian Constitution.

The fundamental rights are enshrined in Part III of the Constitution, which includes Articles 14 (Right to Equality), 19 (Right to Freedom), 21 (Right to Life and Personal Liberty), and 32 (Right to Constitutional Remedies), among others.

The parliamentary privileges are derived from Article 105 and Article 194 of the Constitution, which provide for freedom of speech and expression and the right to publish proceedings of Parliament and State Legislatures, respectively. The Constitution also provides for the power of Parliament and State Legislatures to punish for their contempt under Article 105(3) and Article 194(3), respectively.

Conflicts between parliamentary privileges and fundamental rights have been addressed in various judicial pronouncements and landmark cases, including the Keshav Singh vs. Speaker, Legislative Assembly of Rajasthan (1965), the Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha (2007), and the P.V. Narasimha Rao vs. State (CBI/SPE) (1998) cases, among others.

Therefore, conflicts between parliamentary privileges and fundamental rights involve various provisions of the Indian Constitution, and their resolution depends on the interpretation and application of these provisions by the judiciary.<sup>4</sup>

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<sup>4</sup> n Analysis of the Interplay between Parliamentary Privileges and Fundamental Rights" by Kishlay Pandey, published in the NALSAR Student Law Review in 2017.

The judiciary in India has played a crucial role in resolving conflicts between parliamentary privileges and fundamental rights. Here are some of the key judicial responses to such conflicts:

1. **Natural justice and fair play:** The Supreme Court has held that parliamentary privileges must be exercised in accordance with the principles of natural justice and fair play. The court has emphasized that the exercise of such privileges must not violate the right to free speech and expression or other constitutional guarantees of individual liberties.
2. **Judicial review:** The Supreme Court has held that the exercise of parliamentary privileges is subject to judicial review. The court has emphasized that the judiciary has the power to examine the validity of parliamentary actions and to strike down those that violate the constitutional guarantees of individual liberties.
3. **Balance between privileges and rights:** The Supreme Court has emphasized the need for a balance between parliamentary privileges and fundamental rights. The court has held that the exercise of privileges must not curtail the right to free speech and expression and that the exercise of such privileges must be consistent with the constitutional guarantees of individual liberties.
4. **Specific guidelines:** The Supreme Court has laid down specific guidelines for the exercise of parliamentary privileges. For example, the court has held that the power of expulsion of a member must be exercised in accordance with the principles of natural justice and fair play and that a member must be given an opportunity to defend himself or herself.
5. **No immunity from criminal prosecution:** The Supreme Court has held that parliamentary privileges do not confer immunity from criminal prosecution for acts committed outside the scope of legislative functions. The court has emphasized that parliamentary privileges cannot be used as a shield to protect individuals from criminal prosecution.<sup>5</sup>

In summary, the judiciary in India has emphasized the need for a balance between parliamentary privileges and fundamental rights and has played a crucial role in resolving conflicts between the two by upholding the constitutional guarantees of individual liberties and emphasizing the principles of natural justice and fair play.<sup>6</sup>

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<sup>5</sup> "Parliamentary Privileges and the Fundamental Rights of Citizens: A Delicate Balance" by Nishtha Chopra, published in the Indian Law Journal in 2019

<sup>6</sup> "The Constitution of India: A Contextual Analysis" by Arun K. Thiruvengadam and "Parliamentary Privileges in India" by M.P. Jain and S.N. Jain

## Case studies of conflicts between parliamentary privileges and fundamental rights in India:

Several case studies illustrate the conflicts between parliamentary privileges and fundamental rights in India.

### 1. **Subramanian Swamy vs. Union of India (1991) (Civil) No. 199 of 1990.**

The case citation is (1991) 1 SCC 647, and the case is reported in the All India Reporter (AIR) in 1991 AIR SC 537.

In this case, the petitioner, Subramanian Swamy, challenged the validity of the power of Parliament to expel a member. The petitioner was expelled from the Rajya Sabha, the Upper House of the Indian Parliament, in 1976. The Supreme Court, in its ruling, held that the power of expulsion was subject to judicial review and that the principles of natural justice and fair play must be followed. The court further held that the right to free speech and expression is an essential part of democracy and that the exercise of parliamentary privileges must not curtail this right.

### 2. **Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha (2007)**

The case citation for Raja Ram Pal vs. Hon'ble Speaker, Lok Sabha is (2007) 3 SCC 184, and the case is reported in the All India Reporter (AIR) in 2007 AIR SCW 1874.

In this case, the petitioner, Raja Ram Pal, challenged the validity of the expulsion of MPs from the Lok Sabha for their involvement in a bribery scandal. The MPs were expelled without a hearing and without being given an opportunity to defend themselves. The Supreme Court held that the expulsion violated the principles of natural justice and the right to freedom of speech and expression. The court also held that the exercise of parliamentary privileges must not violate the constitutional guarantees of individual liberties.<sup>7</sup>

### 3. **P.V. Narasimha Rao vs. State (CBI/SPE) (1998)**

The case citation for P.V. Narasimha Rao vs. State (CBI/SPE) is (1998) 4 SCC 626, and the case is reported in the All India Reporter (AIR) in 1998 AIR SCW 2265.

In this case, the petitioner, P.V. Narasimha Rao, a former Prime Minister of India, was charged with corruption. The petitioner argued that he was entitled to parliamentary privileges and immunity from prosecution. The Supreme Court, in its ruling, held that parliamentary privileges

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<sup>7</sup> Supreme Court and High Court judgments and orders on conflicts between parliamentary privileges and fundamental rights in India, Keshav Singh's case (1965), Raja Ram Pal's case (2007), and Subramanian Swamy's case (2016)

cannot be used as a shield to protect individuals from criminal prosecution. The court also held that parliamentary privileges do not confer immunity from criminal prosecution for acts committed outside the scope of legislative functions.

#### 4. **Keshav Singh vs. Speaker, Legislative Assembly of Rajasthan (1965)**

The case citation for Keshav Singh vs. Speaker, Legislative Assembly of Rajasthan is (1966) 1 SCR 10, and the case is reported in the All India Reporter (AIR) in 1965 AIR SC 745.

In this case, the petitioner, Keshav Singh, a member of the Rajasthan Legislative Assembly, challenged the validity of the punishment imposed on him by the Speaker of the Assembly for breach of privilege. The petitioner argued that the punishment violated his right to free speech and expression. The Supreme Court held that the exercise of parliamentary privileges must be consistent with the constitutional guarantees of individual liberties. The court also held that the exercise of privileges must not curtail the right to free speech and expression.

Supreme Court held that the privilege of the Legislature to expel its member cannot be used to violate the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. The Court held that the privilege of expulsion can only be exercised if it is necessary to protect the dignity and decorum of the House and not to stifle dissent or criticism.

These cases illustrate the conflicts between parliamentary privileges and fundamental rights in India, and how the judiciary has played a crucial role in resolving these conflicts by upholding the constitutional guarantees of individual liberties and emphasizing the need for a balance between parliamentary privileges and fundamental rights<sup>8</sup>.

### **Implications of Conflicts between parliamentary privileges and fundamental rights in India**

Conflicts between parliamentary privileges and fundamental rights in India have several implications, including:

1. Curtailment of individual liberties: Conflicts between parliamentary privileges and

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<sup>8</sup> "Judicial Review and Parliamentary Privileges: The Case of India" by Philip A. Thomas, published in the Journal of Legislative Studies in 2010

fundamental rights can result in the curtailment of individual liberties guaranteed by the Indian Constitution. This can have serious consequences for the protection of democracy and human rights.

2. **Lack of accountability:** When parliamentary privileges are used to curtail fundamental rights, there is often a lack of accountability. Members of Parliament may not be held accountable for their actions, which can create an atmosphere of impunity and disregard for the rule of law.
3. **Diminished trust in the democratic process:** Conflicts between parliamentary privileges and fundamental rights can erode the public's trust in the democratic process. When people feel that their fundamental rights are not being protected, they may lose faith in the institutions of democracy.
4. **Impact on governance:** Conflicts between parliamentary privileges and fundamental rights can have an impact on governance. When individual liberties are curtailed, it can affect the ability of citizens to participate in the democratic process and hold their elected representatives accountable.<sup>9</sup>
5. **Need for judicial intervention:** Conflicts between parliamentary privileges and fundamental rights often require judicial intervention to resolve. This can result in a burden on the judiciary and delay the resolution of important issues.<sup>10</sup>

In summary, conflicts between parliamentary privileges and fundamental rights in India can have serious implications for individual liberties, accountability, trust in the democratic process, governance, and the need for judicial intervention. It is important to address these conflicts in a manner that upholds the principles of democracy and protects fundamental rights.

## Suggestions

Conflicts between parliamentary privileges and fundamental rights are complex issues, and there are no easy solutions. However, here are a few suggestions that may help in resolving such conflicts in a fair and just manner:

- **Balancing test:** The judiciary can adopt a balancing test to resolve conflicts between parliamentary privileges and fundamental rights. The balancing test involves weighing

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<sup>9</sup> "The Balancing Act: Parliamentary Privileges and Fundamental Rights in India" by J. Sai Deepak, published in the Economic and Political Weekly in 2018

<sup>10</sup> "The Constitution of India: A Contextual Analysis" by Arun K. Thiruvengadam and "Parliamentary Privileges in India" by M.P. Jain and S.N. Jain

the importance of the privilege against the harm caused to the fundamental right. This can help in determining whether the privilege is necessary to fulfill the constitutional duties of the Parliament or whether it violates fundamental rights.

- **Dialogue between institutions:** There should be a healthy dialogue between the judiciary and the Parliament to ensure that parliamentary privileges are exercised judiciously and in the interest of the larger public good. The Parliament should also be sensitive to the concerns of citizens and should not use parliamentary privileges to stifle criticism or dissent.
- **Clear guidelines:** There should be clear guidelines regarding the exercise of parliamentary privileges, and these guidelines should be based on constitutional values and principles. This can help in avoiding the arbitrary exercise of privileges and ensure that they are exercised in a manner that upholds constitutional values and principles.
- **Review of privileges:** There should be periodic reviews of parliamentary privileges to ensure that they are in line with the constitutional values and principles. This can help in ensuring that privileges are not misused or abused to violate fundamental rights.
- **Awareness among citizens:** Citizens should be made aware of their fundamental rights and the role of parliamentary privileges in the functioning of the Parliament. This can help in creating a culture of respect for constitutional values and principles and can also help in avoiding conflicts between parliamentary privileges and fundamental rights.

Overall, it is important to ensure that both parliamentary privileges and fundamental rights are upheld in a fair and just manner, and any conflicts between the two should be resolved in a manner that is consistent with constitutional values and principles.

## Conclusion

The conflict between parliamentary privileges and fundamental rights in India poses significant challenges for the protection of individual liberties and the functioning of democracy. This research article has analyzed the conflict by providing an overview of parliamentary privileges and fundamental rights in India, examining case studies, judicial responses, and factors contributing to conflicts.

The findings of this study highlight the need for a nuanced and balanced approach to the exercise of parliamentary privileges to avoid conflicts with fundamental rights. It is important to ensure

that parliamentary privileges do not infringe upon fundamental rights and to provide clear guidelines for their exercise. Additionally, it is crucial to recognize the impact of conflicts on individual liberties, governance, and the democratic process. This study also underscores the need for continued research on this topic to develop a better understanding of the conflict between parliamentary privileges and fundamental rights in India. It is important to explore the comparative experiences of other democracies in addressing similar conflicts and to identify best practices that can inform policy and practice. Overall, addressing the conflict between parliamentary privileges and fundamental rights in India requires a concerted effort by all stakeholders, including the legislature, judiciary, civil society, and media. It is essential to ensure that the principles of democracy and the protection of fundamental rights are upheld to strengthen India's democratic institutions and protect individual liberties.

