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“PARLIAMENTARY PRIVILEGES – COMPARATIVE STUDY WITH DIFFERENT COUNTRIES AND NEED FOR LEGISLATION ON PARLIAMENTARY PRIVILEGES”

AUTHORED BY: ADV. PALLAVI NITIN PAWAR

1. Introduction

- Brief overview of parliamentary privileges and their significance in democratic governance -- Parliamentary privilege is a legal immunity enjoyed by members of certain legislatures, in which legislators are granted protection against civil or criminal liability for certain actions done or statements made in the course of their legislative duties. Sources of parliamentary privileges

There are five sources of parliamentary privileges. These are as follows –

- Various laws made by Parliament
- Parliamentary conventions
- Rules of both the Houses
- Constitutional provisions
- Judicial interpretations

- Explanation of the purpose and scope of the comparative study.

1. **Legal Framework Comparison:** It allows lawmakers to compare the legal provisions and constitutional safeguards that grant parliamentary privileges in different countries. This helps in understanding the variations in legal interpretations and application.
2. **Practical Application Analysis:** By examining how parliamentary privileges are practically exercised, enforced, and interpreted in different contexts, lawmakers can gain insights into the real-world implications of these privileges.
3. **Protection of Democratic Institutions:** Understanding parliamentary privileges is crucial for protecting the independence and integrity of legislative bodies. Comparative studies can help

identify gaps in legal protection and provide solutions to strengthen democratic institutions.

4. International Standards and Norms: Comparing parliamentary privileges with international standards and norms helps ensure compliance with global best practices and human rights principles.
5. Policy Development and Reform: Comparative studies can inform policy development and legislative reforms aimed at enhancing transparency, accountability, and the rule of law within parliamentary systems.

Uses of Parliamentary privileges

The following are the uses of the Parliamentary privileges –

- The privileges given helps in maintaining the honour, dignity and authority of the members of Parliament.
- The immunities, exemptions, or rights given to the members of the parliament houses along with the parliament committees secure the effectiveness of actions decided by them.
- These privileges secure the members of each house of the Parliament from any kind of obstruction in regards to their action.

Types of Parliamentary privileges

The Parliamentary privileges are mainly classified into two major categories. Collective privileges

- The first point under the collective privilege includes the ability or power to conduct debate, publish reports, or proceedings. Also, having the power to stop others from doing so.
- Keeping strangers out of the room to address any emerging issues.
- Making and following your own rules for governing commercial activities and procedures.
- Ability to immediate notification of the member's conviction, arrest, imprisonment, custody and release.

Individual privileges

- No member can be arrested forty days before and after the parliament session. Note this privilege is only applicable in civil matters.

- Another parliamentary privilege is that the member has the right to express or speech. No one has the power to question them.
- The parliament members have the right to decline to give tests or evidence in court.

Why India adopted for a parliamentary form of government:

There were several reasons why India chose to adopt the Parliamentary form of government. These were as follows –

- **Familiarity with the System:** The constitution-makers were fairly familiar with the parliamentary system as it had been in operation in India during the British colonial rule (modern history legacy).
- **Priority to More Responsibility:** The parliamentary system of government clearly outlines the responsible behaviour of the executive, and the makers of the Constitution prioritised the principle of responsibility on the highest pedestal.
- **Avoid Conflicts:** The framers of the Constitution sought to avoid the conflicts among the executive and legislature which are bound to occur in the Presidential system prevalent in the USA.
- **Rich Diversity:** India is one of the most heterogeneous States and most composite plural societies in the world. Representation of these diversities was seen as more promising by the parliamentary system.

Benefits of parliamentary form of government:

- **Coherence between Legislature and Executive organs:** The privilege of having a parliamentary form of government is that it upholds a balance between the legislative and executive organs of the government.
- **Prevents Despotism:** In the parliamentary form of government, the executive authority is placed in the group of individuals which includes the Council of Ministers, which reduces the chances of arbitrariness while making decisions.
- **Ready Alternative Government:** If the party which is currently ruling loses the elections, the State's Head sends an invitation to the opposition party to form a new government.
- **While considering the nation's rich diversity,** the parliamentary form of government was the best-suited option available to the makers of the Constitution, which has maintained its sanctity to date and

is expected to serve the same in the future¹.

2. Conceptual Framework: Understanding Parliamentary Privileges

- Definition and historical evolution of parliamentary privileges.

ORIGIN

In the United Kingdom, it allows members of the House of Lords and House of Commons to speak freely during ordinary parliamentary proceedings without fear of legal action on the grounds of slander, contempt of court or breaching the Official Secrets Act. It also means that members of Parliament cannot be arrested on civil matters for statements made or acts undertaken as an MP within the grounds of the Palace of Westminster, on the condition that such statements or acts occur as part of a proceeding in Parliament—for

¹ Unacademy – Parliamentary Privileges – Benefits of parliamentary form of government available at unacademy.com/content/ last seen on 05/04/2024.

example, as a question to the Prime Minister in the House of Commons. This allows Members to raise questions or debate issues which could slander an individual, interfere with an ongoing court case or threaten to reveal state secrets.

There is no immunity from arrest on criminal grounds, nor does the civil privilege entirely extend to the devolved administrations in Scotland or Wales. A consequence of the privilege of free speech is that legislators in Westminster systems are forbidden by conventions of their House from uttering certain words, or implying that another member is lying.

Similar rights apply in other Westminster system countries such as Canada and Australia. In the United States, the Speech or Debate Clause in Article One of the United States Constitution provides for a similar privilege, and many state constitutions provide similar clauses for their state legislatures².

3. Parliamentary Privileges in Selected Countries

- Comparative analysis of parliamentary privilege provisions in countries such as the United Kingdom, Canada, Australia, India, and South Africa.

- The United Kingdom:

- The Parliament at Westminster enjoys similar privileges, including freedom of speech, immunity from arrest, and the right to regulate its own proceedings.

- These privileges are established through a combination of statute, common law, and precedent.

- Canada:

- The Parliament of Canada also has established privileges for its members, including freedom of speech, immunity from arrest, and the right to punish breaches of privilege.

- These privileges are outlined in the Constitution Act, 1867 and the Parliament of Canada Act.

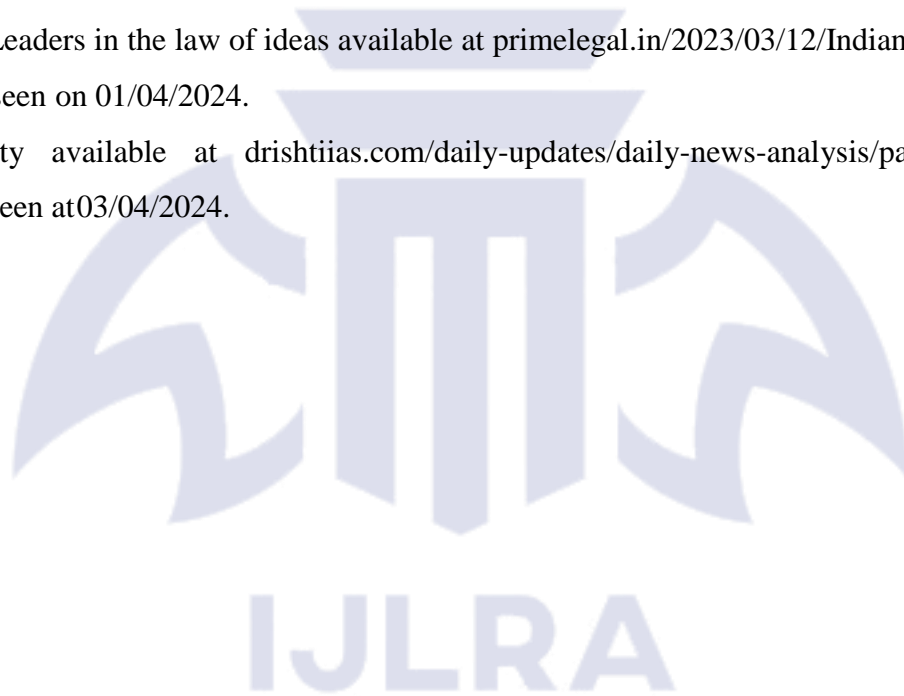
- Australia:

- The Parliament of Australia follows similar principles, with privileges enshrined in its Constitution. Members enjoy freedom of speech, immunity from arrest, and the right to regulate their own proceedings³.

4. Scope of Parliamentary Privileges

² Prime Legal Leaders in the law of ideas available at primelegal.in/2023/03/12/Indian-parliamentary-privileges/ lastseen on 01/04/2024.

³ Indian Polity available at drishtias.com/daily-updates/daily-news-analysis/parliamentary-privileges last seen at 03/04/2024.



- **Analysis of the types of privileges granted to parliamentarians, including freedom of speech, freedom from arrest, and immunity from legal proceedings.**

Freedom of Speech in Parliament:

- The freedom of speech and expression guaranteed under Article 19(2) provided to a member of the parliament is different. The freedom of speech guaranteed to citizens under A. 19 (1) (a) is therefore separate and independent of Article 194 (1) and does not control the first part of clause 1 of A.194.
- It has been guaranteed under Article 105(1) of the Indian constitution. But the freedom is subject to rules and orders which regulate the proceedings of the parliament. He/she cannot be sued for defamation for something which was said by him/her during the session.
- Freedom of speech should be in accordance with the constitutional provisions and subject to rules and procedures of the parliament, as stated under Article 118 of the Constitution.
- Under Article 121 of the Constitution, the members of the parliament are prohibited from discussing the conduct of the judges of the Supreme Court and the High Court.

Freedom from Arrest:

- The members enjoy freedom from arrest in any civil case 40 days prior and after the adjournment of the house and also when the house is in session.
- No member can be arrested from the limits of the parliament without the permission of the house to which s/he belongs so that there is no hindrance in performing their duties.
- If the detention of any members of the parliament is made, the chairman or the speaker should be informed by the concerned authority, of the reason for the arrest.
- But a member can be arrested outside the limits of the house on criminal charges against him under the Preventive Detention act, the Essential Services Maintenance Act (ESMA), the National Security Act (NSA), or any such act.

Right to Prohibit the Publication of Proceedings:

- Article 105(2) of the Constitution says that no person shall be held liable for publishing any reports, discussions etc. of the house under the authority of the member of the house.
- For coherence and national importance, it is essential that the proceedings should be conveyed

to the public to aware them of what is going on in the parliament.

Right to Exclude Strangers:

The members of the house have the power and right to exclude strangers who are not members of the house from the proceedings. This right is very essential for securing free and fair discussion in the house

5. Limits and Restrictions on Parliamentary Privileges

- Examination of case law and legislative reforms addressing abuses of parliamentary privileges.

What was P V Narasimha Rao Case and Recent Ruling of Supreme Court?

▪ Case Background:

○ In the 1993 *P V Narasimha Rao case*, certain members (MPs) of the Jharkhand Mukti Morcha (JMM) were accused of accepting bribes in exchange for voting against a No- Confidence motion.

○ This case highlighted allegations of corruption within the parliamentary system, raising concerns about the integrity of legislative processes and the accountability of elected representatives.

▪ Court's Observation in 1998 Case:

○ The Supreme Court's ruling in 1998 established immunity for MPs (Members of Parliament) and Member of Legislative Assembly (MLAs) from prosecution in bribery cases as long as they fulfilled their end of the bargain.

• The Supreme Court held that the bribe takers who cast their vote against the no-confidence motion were immune from criminal prosecution under Parliamentary Privilege (Article 105(2)).

○ This decision underscored the importance of stability in governance and the functioning of parliamentary democracy.

- The court's observation prioritised the smooth operation of the government over individual accountability, suggesting that prosecuting lawmakers for bribery could potentially disrupt the stability of the government.

- Court's Observation in 2024 Case:

- The 7-Judge Constitution Bench overturned the 5-Judge Bench verdict of *P.V. Narasimha Rao v. State Case, 1998*.

- Wherein it was established that the Member of Parliaments and Member of Legislative Assemblies enjoyed immunity if they cast vote in the House after taking bribes for it.

- The SC emphasised the detrimental impact of bribery on democratic principles and governance.

- The court highlighted that accepting a bribe is a separate criminal act, unrelated to the core duties of lawmakers within the Parliament or legislative assembly.

- The Section 7 of the Prevention of Corruption Act, deals with 'offence relating to public servant being bribed'.

- Therefore, the immunity provided under Articles 105 and 194 of the Constitution does not extend to cases of bribery.

- This decision signifies a shift towards prioritising accountability and integrity in governance over stability alone, aiming to uphold the ideals of a responsible, responsive, and representative democracy in India.

6. Judicial Review and Oversight of Parliamentary Privileges

- Evaluation of the role of courts in reviewing parliamentary privilege claims and adjudicating disputes between the legislative and judicial branches. -- The Constitution guarantees certain rights and immunities to the House and individual MPs so that they may discharge their parliamentary duties effectively. These rights and immunities are called parliamentary privileges. For example, MPs enjoys a wide power of freedom of speech and expression on the floor of the House, or while working in

Parliamentary Committees. They cannot be held liable for anything that they say or any vote that they make in a court of law. Other examples of parliamentary privileges may include: freedom to publish parliamentary proceedings without incurring any liability and freedom from arrest in civil cases. Further, parliamentary proceedings may not be called into question in any court of law for irregularity of procedure so that a separation of powers is maintained. However, in several decisions, the courts have asserted their power to exercise judicial review over parliamentary privileges and proceedings (and state legislative assembly privileges and proceedings). For example, the Supreme Court has held that the Speaker's decision to disqualify an MP for defection is subject to judicial review as the Speaker is discharging an adjudicatory function⁴.

7. Interplay with Human Rights and Constitutional Principles

- Assessment of the compatibility of parliamentary privileges with international human rights standards. -- While parliamentary privileges are essential for the functioning of democratic institutions, they must be balanced against international human rights principles, such as freedom of expression, non-discrimination, and the right to a fair trial.

Some argue that parliamentary privileges, such as immunity from prosecution or freedom of speech within parliamentary proceedings, may conflict with human rights standards if they are used to shield parliamentarians from accountability for human rights abuses or discriminatory speech. Others contend that these privileges are necessary to ensure the independence and effectiveness of parliamentary oversight and debate.

⁴ Public Engagement with the Legislative Process – PRS legislative Research available at prsindia.org/files/parliament/discussion_papers last seen at 05/04/2024.

In practice, the compatibility of parliamentary privileges with international human rights standards depends on how these privileges are exercised and interpreted within each country's legal system. Courts and human rights bodies may need to weigh competing interests and consider the specific circumstances of each case when determining the limits of parliamentary privilege in relation to human rights.

Ultimately, achieving compatibility between parliamentary privileges and international human rights standards may require legislative reforms, judicial oversight, and a commitment to upholding both democratic principles and human rights obligations.

8. Public Perception and Accountability

- Examination of public attitudes towards parliamentary privileges and their impact on democratic accountability. -- In the Indian Parliament, legislation typically involves three stages corresponding to three readings of a bill. In the first reading, the bill is introduced, and its contents and aims are explained. After the second reading, the bill may be taken into consideration and put to an immediate vote. It can also be referred to a select committee of the house in question or to a joint committee of both houses, or even circulated for public opinion. However, this option is almost never exercised after a bill has been introduced. Instead, most bills are referred to select committees that report back to Parliament. At this point, the ministry in question can request that the bill be recommitted to a committee or be taken up for consideration by Parliament. A bill placed in Parliament is then scrutinized clause by clause, with members also having the right to move amendments. After all clauses have been dealt with and all amendments considered, the bill is put forward for its third and final reading. At this stage, no major amendments can be entertained, although amendments that pertain to clarification can sometimes be adopted. Under the doctrine of collective responsibility, the Cabinet must accept all amendments, even if the approval is post facto. After the bill has been put to a vote, the speaker certifies the passage of the bill, and it is sent to the second chamber where the entire process is repeated. After a bill has been passed by both houses, it is sent to the president and, if approved, becomes law⁵.

- **Analysis of mechanisms for holding parliamentarians accountable for abuse of privileges, including parliamentary ethics committees and electoral processes –**

⁵ The Indian Parliament as an Institution of Accountability by Devesh Kapur and Pratap Bhanu Mehta (Democracy, Governance and Human Rights Programme Paper Number 23 January 2006) (United Nations Research Institute for Social Development)



1. **Parliamentary Ethics Committees:** Many legislatures have Ethics Committees responsible for investigating allegations of misconduct by parliamentarians, including abuse of privileges. These committees typically have the authority to conduct inquiries, hear evidence, and recommend disciplinary actions, such as censure, suspension, or expulsion from the legislature. However, the effectiveness of Ethics Committees may depend on factors such as their independence, transparency, and enforcement powers.
2. **Electoral Processes:** Elections provide a mechanism for holding parliamentarians accountable to the electorate. Voters can assess the conduct of their representatives and choose whether to re-elect them based on their performance, including their respect for parliamentary privileges and adherence to ethical standards. In some cases, electoral defeat can serve as a powerful form of accountability for parliamentarians who abuse their privileges.
3. **Legal Remedies:** In cases where parliamentarians engage in serious misconduct or abuse of privileges, legal remedies may be available through the judicial system. Courts may have the authority to review actions taken by parliamentarians, particularly if they violate constitutional or human rights standards. Legal challenges can serve as a check on the abuse of privileges and ensure compliance with the rule of law.
4. **Public Scrutiny and Media Oversight:** Public scrutiny and media reporting can play a significant role in holding parliamentarians accountable for their actions. Investigative journalism, public debates, and civil society advocacy can shine a spotlight on abuses of privileges, putting pressure on parliamentarians to address misconduct and uphold ethical standards.
5. **Internal Codes of Conduct:** Many legislatures have internal codes of conduct or rules of procedure that govern the behavior of parliamentarians and outline standards of ethical conduct. These codes may include provisions specifically addressing the abuse of privileges and mechanisms for enforcement, such as sanctions or reprimands.

Conclusion

- Reflections on the challenges and opportunities in regulating parliamentary privileges across different legal systems.

- Need to Codify Parliamentary Privileges:
 - Clarity and Precision: Codification would provide a clear and precise definition of parliamentary privileges. It would specify what constitutes a violation of privileges, eliminating any ambiguity.
 - A statute would establish a precise threshold beyond which no penalty may be meted out for privilege violations.
 - Enhanced Accountability: Clearer guidelines for parliamentary privilege would facilitate better accountability mechanisms, enabling parliamentarians to exercise their privileges responsibly while also subjecting them to appropriate scrutiny and oversight.
 - Modernization and Adaptation: Codifying parliamentary privilege would provide an opportunity to update and modernize existing laws to reflect contemporary governance practices and societal norms, ensuring that legislative privileges remain relevant and effective in a rapidly evolving political landscape.
 - Checks and Balances: Codification would introduce checks and balances on privileges, preventing their misuse. It would curb unnecessary curtailment of press freedom.
- Need not to Codify Parliamentary Privileges:
 - Risk of Encroachment on Parliamentary Autonomy: Codifying parliamentary privilege could potentially lead to encroachments on the autonomy of the legislature by subjecting parliamentary affairs to greater judicial scrutiny or government intervention.
 - Against Constitutional Mandate: Article 122 deals with the restrictions on courts not to inquire into proceedings of Parliament. It further states the following: The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
 - Loss of Flexibility: Codification may restrict the flexibility of parliamentary privilege, making it challenging to adapt to unforeseen circumstances or changing political dynamics that may require a more nuanced approach to legislative affairs.
 - Complexity and Lengthy Process: The process of codifying parliamentary privilege could

be complex and time-consuming, requiring extensive deliberation and consensus- building among stakeholders, including legislators, legal experts, and civil society organizations.

From the discussion made above it is clear that, parliamentary privileges are a special case to customary rule and are expected to permit parliament and Member of Parliament to play out their obligations unafraid of any threat fear or penance, and short of hindrance. Further, we have discussed in brief two components of parliamentary privileges i.e. Exclusive Cognizance and Freedom of speech and debate. It has been also regarded as requisite in allowing parliament to perform their function smoothly. . As per discussion made above, UK, India, and South Africa practice non-accountability protection only with regard to *ratione loci* whereas France and Australia practices both types of privilege. Further, with regard to *ratione materiae* India, UK, and Australia follow non-accountability protection against civil but not against criminal proceedings whereas France and South Africa provides protection to both civil and criminal. Further, we have observed that rights and immunities provided to the members and parliament are too wide that they have chances of getting encountered with general public or other pillar of the government. In last we have observed that the Constitution of India and South Africa provides that other privileges, then the Freedom of Speech and Freedom of Publication will be prescribed by the National Legislation but it has not yet been done. On the other hand, Australia enacted their National Legislation acts which are Parliamentary Privileges Act 1987. The United Kingdom even having an unwritten constitution tries to codify the law related to parliamentary privileges but failed to do so and at last, the Joint Committee on Parliamentary Privilege 1999 suggest, that there is no need to codify the law. Interestingly, the United Kingdom which is a source for parliamentary privileges and was followed by many countries including India has not comprehensive but randomly tries to codify the law related to parliamentary privilege under different statutes. Hence, it can be said that there is need to codify the parliamentary privileges in India since the practices we follow today in India might not have any relevance in U.K. Since it is clear that to keep a pace with the development of society it is necessary to implement the law which is need of the hour. Similarly, codification of parliamentary privileges is need of hour. Articles 74 and 75 enshrine the parliamentary system at the Centre and Articles 163 and 164 at the states. There are mainly two types of parliamentary privileges that the members of Parliament enjoy that we discussed in today's article.

In this article describing parliamentary privileges in India, we studied the concept of parliamentary privileges in length. We covered several other topics such as the privileges offered in Parliament, the use of Parliamentary privileges, types of Parliamentary privileges, and other related topics.

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