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PARLIAMENTARY PRIVILEGE AND FREEDOM OF SPEECH: CONSTITUTIONAL LIMITS AND JUDICIAL INTERVENTION

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ABSTRACT

Parliamentary privilege is an important part of the constitutional framework of a democratic legislature. It provides certain rights, powers, and immunities to members of Parliament and legislative Houses so that they can perform their functions independently and without unnecessary interference. In India, parliamentary privileges are mainly governed by Articles 105 and 194 of the Constitution. These provisions protect legislative freedom of speech and provide immunity in relation to parliamentary proceedings. At the same time, the exercise of these privileges must operate within the limits of the Constitution.

This article examines the meaning, nature, historical development, and constitutional basis of parliamentary privileges in India. It traces their origins to the British parliamentary system and examines their development during the colonial period and after the adoption of the Constitution. The article also discusses individual and collective privileges, including freedom of speech, protection from arrest in civil matters, control over publication of proceedings, the power to punish for breach of privilege, and the power to regulate internal proceedings.

*Particular attention is given to the relationship between parliamentary privilege, freedom of speech, freedom of the press, fundamental rights, and judicial review. Important judicial decisions, including *Tej Kiran Jain v. N. Sanjiva Reddy*, *M.S.M. Sharma v. Sri Krishna Sinha*, *in re Keshav Singh*, *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, and *Sita Soren v. Union of India*, are examined to understand the constitutional limits of parliamentary privilege. The article also provides a comparative overview of parliamentary privilege in the United Kingdom, Australia, and Canada.*

Keywords: *Parliamentary Privilege; Freedom of Speech; Article 105; Article 194; Fundamental Rights; Judicial Review; Legislative Immunity; Parliamentary Proceedings; Freedom of Press; Constitutional Law.*

INTRODUCTION

Parliamentary privilege refers to the protections given to legislatures and their members to perform their legislative duties effectively and without unnecessary interference. These privileges allow members to participate freely in parliamentary proceedings and express their views while remaining subject to the constitutional framework.

The concept of parliamentary privilege originated from the British parliamentary tradition and later influenced the Indian legislative system. In India, these privileges are mainly recognised under **Articles 105 and 194**, which apply to Parliament and State Legislatures respectively. Their exercise may raise issues relating to freedom of speech, freedom of the press, fundamental rights, and judicial review. Indian courts have therefore examined the scope and constitutional limits of these privileges through various decisions.

This article examines the development, constitutional basis, and major forms of parliamentary privilege in India. It also discusses their relationship with freedom of speech, fundamental rights, and judicial review, along with a brief comparison of parliamentary privilege in the United Kingdom, Australia, and Canada.

❖ PARLIAMENTARY PRIVILEGES

Parliamentary privileges are special rights, powers, and immunities given to legislators and legislative Houses to perform their constitutional duties independently and without undue interference. Since these privileges provide limited protection from ordinary legal rules, they are justified only when necessary for the effective functioning of the legislature.

Thomas Erskine describes parliamentary privilege as a body of rights enjoyed collectively by each House of Parliament and individually by its members, which are necessary for the proper discharge of their parliamentary functions. These rights are distinct from those ordinarily available to individuals or other institutions. Some parliamentary privileges have developed through parliamentary law and established practice, while others have been recognised through legislation.

Parliamentary privilege in India has its roots in British rule. The British Parliament had developed these privileges, particularly through the **Bill of Rights, 1689**, which protected freedom of speech and debate in Parliament.¹

During the colonial period, Indian legislators also sought similar protections to participate freely in legislative proceedings. They demanded safeguards against interference and greater

¹ Pulkit Taneja, *Parliamentary Privileges*, 1 Int'l J. Legal Res. & Analysis (2020).

freedom to perform their representative functions, which contributed to the constitutional development of India.

After the Constitution came into force, parliamentary privileges became part of India's constitutional system. **Article 105** deals with Parliament, while **Article 194** applies to State Legislatures. These provisions protect legislative freedom of speech and provide certain immunities to enable legislatures to perform their functions effectively and independently.²

EVOLUTION of PARLIAMENTARY PRIVILEGE

➤ British Origins and Colonial Legacy

Parliamentary privilege in the **United Kingdom** developed through Parliament's struggle to protect its authority from the monarchy. Over time, Parliament gained important rights, including freedom of speech, protection from certain arrests, and the power to deal with conduct affecting its functioning.

The British parliamentary system influenced the development of legislative institutions in colonial India. However, Indian legislators had fewer privileges than British MPs. The Government of India Acts of 1919 and 1935 provided certain protections, but these were limited by law and reflected the restricted powers of colonial legislatures. Post-Independence Development

The **Constituent Assembly** included parliamentary privileges in the Constitution to protect legislators while preventing misuse. After 1950, **Articles 105 and 194** governed privileges of Parliament and State Legislatures. Initially, they referred to the House of Commons, but this reference was removed by the Forty-Fourth Amendment Act, 1978.³

➤ Constitutional Development of Parliamentary Privileges

The Forty-Second Amendment Act, 1976 introduced changes to the constitutional provisions concerning parliamentary privileges under Articles 105(3) and 194(3). Before these provisions were revised, the Constitution provided that the privileges of Parliament and State Legislatures would be those recognised by the House of Commons as they existed at the relevant time, until they were defined by law. The Forty-Fourth Amendment Act, 1978 subsequently removed this express reference to the House of Commons and provided the present constitutional framework for parliamentary privileges.

² *Id.*

³ Suraj Kumar & Ambar Srivastava, *Parliamentary Privilege in India: Constitutional Framework, Scope, and Contemporary Challenges*, 5 Indian J. Legal Rev. (2025).

Article 105 provides the constitutional basis for the privileges of Parliament.⁴ Under **Article 105(1)**, Members of Parliament have freedom of speech in Parliament, subject to the Constitution and parliamentary rules.⁵ **Article 105(2)** protects members from court proceedings for anything said or any vote given by them in Parliament or its committees.⁶ It also provides protection for authorised publication of parliamentary proceedings. **Article 105(3)** deals with the powers, privileges, and immunities of Parliament, its members, and committees.⁷ **Article 105(4)** extends these protections to persons who have a constitutional right to participate in parliamentary proceedings, even if they are not members.⁸

Similarly, **Article 194** provides privileges to State Legislatures.⁹ It protects freedom of speech¹⁰ under **Article 194(1)** and provides immunity from court proceedings for speeches and votes under **Article 194(2)**.¹¹ **Article 194(3)** deals with the privileges of State Legislatures, their members, and committees¹², while **Article 194(4)** extends relevant protections to persons entitled to participate in legislative proceedings.¹³

Thus, **Articles 105 and 194** provide the main constitutional basis for parliamentary privileges in India. Article 105 applies to Parliament, while Article 194 applies to State Legislatures, enabling them and their members to perform their functions effectively within constitutional limits.¹⁴

❖ TYPES OF PARLIAMENTARY PRIVILEGES

In India, Parliamentary privileges have been divided into 2 broad categories. These are as follows;

- Privileges individually enjoyed by the members.
- Privileges enjoyed by the members collectively as part of parliament.

A. Privileges Individually Enjoyed by Members of Parliament

Members of Parliament enjoy certain privileges in their individual capacity. These include

⁴ INDIA CONST. art. 105.

⁵ INDIA CONST. art. 105 (1).

⁶ INDIA CONST. art. 105 (2).

⁷ INDIA CONST. art. 105(3).

⁸ INDIA CONST. art. 105 (4).

⁹ INDIA CONST. art. 194.

¹⁰ INDIA CONST. art. 194 (1).

¹¹ INDIA CONST. art. 194(2).

¹² INDIA CONST. art. 194 (3).

¹³ INDIA CONST. art. 194(4).

¹⁴ Shivprasad Swaminathan, *The Conflict between Freedom of the Press and Parliamentary Privileges: An Unfamiliar Twist in a Familiar Tale*, 22 Nat'l L. Sch. India Rev. 123, 123–24 (2010).

freedom of speech, protection from arrest in civil matters, and exemption from attending court as witnesses or jurors.

- **Freedom of Speech**

The principle of parliamentary freedom of speech developed in Britain, particularly through the case of Sir John Eliot and the Bill of Rights, 1689. It established protection for speeches and debates in Parliament from being challenged outside Parliament. Since India adopted the parliamentary system from Britain, the concept of parliamentary privileges was also influenced by the British model.¹⁵ Freedom of speech is a key parliamentary privilege that allows members to express their views freely during proceedings. While Article 19(1)(a) protects freedom of speech generally, Article 105(1) specifically protects speech within Parliament.

In *Tej Kiran Jain v. N. Sanjiva Reddy*¹⁶, the Supreme Court affirmed the broad immunity of Members of Parliament under Article 105(2). It held that the term “anything” is comprehensive, protecting statements made by members in Parliament from judicial proceedings.

This privilege is subject to the Constitution and the rules governing parliamentary proceedings. It enables members to participate freely and fearlessly in legislative discussions. The Attorney General and certain other persons who are constitutionally entitled to participate in parliamentary proceedings may also receive the relevant protection.

- **Freedom from Arrest**

Members of Parliament have protection from arrest and detention under civil process during the period specified by law. **Section 135A of the Code of Civil Procedure, 1908** provides exemption from arrest or detention under civil process during the continuance of parliamentary meetings and for the prescribed period before and after such meetings. The purpose of this protection is to ensure that legal proceedings do not unnecessarily prevent members from attending Parliament and performing their legislative duties.

- **Exemption from Attendance as Jurors or Witnesses**

Members of Parliament are generally given exemption from being required to attend

¹⁵ Masoom Reza, *Parliamentary Privileges and the Fundamental Right to Free Speech: A Conundrum of the Conflicting Entitlements*, Live Law (Sept. 11, 2020), <https://www.livelaw.in/columns/parliamentary-privileges-and-the-fundamental-right-to-free-speech-a-conundrum-of-the-conflicting-entitlements-162749>.

¹⁶ *Tej Kiran Jain v. N. Sanjiva Reddy*, AIR 1970 SC 1573.

court as witnesses or jurors when such attendance would interfere with their parliamentary responsibilities. The purpose of this privilege is to ensure that members remain available to participate in parliamentary proceedings and discharge their legislative functions without unnecessary interruption.¹⁷

B. Privileges enjoyed by the members collectively as part of parliament.

Members of Parliament enjoy some other privileges as well. These are as follows;

- **Right to Control Publication of Proceedings**

Parliament has the authority to regulate the publication of its proceedings. Article 105(2) protects authorised publication of parliamentary proceedings from legal liability.¹⁸ However, inaccurate or malicious publications are not protected and may amount to a breach of parliamentary privilege.

In *M.S.M. Sharma v. Sri Krishna Sinha*¹⁹, the Supreme Court examined the conflict between legislative privilege under Article 194 and freedom of speech under Article 19(1)(a). The case concerned the publication of portions of a legislative speech that had been ordered to be expunged. Applying harmonious construction and the maxim *generalia specialibus non derogant*, the Court treated the specific provision relating to legislative privilege as prevailing over the general guarantee of freedom of speech.

- **Right to Exclude Strangers**

Each House has the power to exclude non-members from its proceedings when necessary. This privilege helps the House maintain orderly and effective parliamentary discussions. Violation of this authority may attract appropriate parliamentary punishment.

Rule 248 of the Rules of Procedure and Conduct of Business in Lok Sabha empowers the Speaker to order the withdrawal of strangers from any part of the House when necessary. During a secret sitting, strangers are not permitted in the Chamber or Galleries, subject to the applicable rules.²⁰

- **Power to Punish for Breach of Privilege**

Parliament has the power to take action against members or outsiders for breach of privilege or contempt of the House. Depending on the circumstances, penalties may include admonition, reprimand, suspension, imprisonment, or other measures permitted

¹⁷ Agam Bansal, *Parliamentary Privileges, Freedom of Speech and Judicial Review*, 3 Int'l J. L. Mgmt. & Hum. 898 (2020).

¹⁸ INDIA CONST. art. 105 (2).

¹⁹ *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395.

²⁰ *Rules of Procedure and Conduct of Business in Lok Sabha* p. 96 (16th ed. 2019).

under parliamentary rules. This power enables the House to protect its authority and functioning.

- **Right to Regulate Internal Proceedings**

Each House of Parliament has the authority to regulate its own procedure and conduct of business, subject to the Constitution. Article 118 empowers each House to make rules for this purpose. This ensures that the internal functioning of one House is not ordinarily controlled by the other House.²¹ Article 122 limits judicial interference in parliamentary proceedings on grounds of procedural irregularity, while permitting judicial review in cases involving constitutional violations or illegality.²²

❖ **FREEDOM OF PRESS**

It forms important part of freedom of speech and expression, as it is the fourth pillar of a healthy democracy and it is the responsibility of the state to ensure press is able to convey true and reliable information to the public.

In *Express Newspaper Ltd. v. Union of India*²³, the Supreme Court held that newspapers are subject to general economic and labour laws, but the government cannot impose measures specifically intended to restrict their circulation or editorial freedom. The Court recognised that the financial viability of the press is connected with the freedom of expression under Article 19(1)(a).

In *Romesh Thappar v. State of Madras*²⁴, the Supreme Court recognised that freedom of the press includes the right to circulate and distribute ideas. The Court struck down a government order restricting the circulation of a journal, holding that freedom of speech could not be restricted on grounds of public order beyond the limits permitted by the Constitution.

In 1956, Feroz Gandhi, a Lok Sabha member, introduced the *Proceedings of Legislature (Protection of Publication) Bill*, which became the ***Parliamentary Proceedings (Protection of Publication) Act, 1956***. The Act provided protection for the publication or broadcast of substantially accurate parliamentary proceedings made in the public interest. It was repealed in 1975, but similar protection was restored through the ***Parliamentary Proceedings (Protection of Publication) Act, 1977***.

These developments reflected the continuing relationship between parliamentary privileges and

²¹ INDIA CONST. art. 118.

²² INDIA CONST. art. 122.

²³ *Express Newspaper Ltd. v. Union of India*, AIR 1958 SC 578.

²⁴ *Romesh Thappar v. State of Madras*, AIR 1950 SC 124.

press freedom. During the same period, the Forty-Second and Forty-Fourth Constitutional Amendments, enacted in 1976 and 1978 respectively, also introduced significant changes concerning parliamentary privileges.²⁵

❖ PRIVILEGES AND FUNDAMENTAL RIGHTS

Parliamentary privileges and fundamental rights may sometimes come into conflict. While fundamental rights protect individual liberty and freedom, parliamentary privileges are intended to ensure the effective and independent functioning of the legislature.

In *Gunupati Keshavram Reddy v. Nafisul Hasan*²⁶, the Supreme Court held that parliamentary privilege is subject to constitutional safeguards. The Court ordered the release of a journalist detained for breach of privilege because he was not produced before a magistrate within the period required under Article 22(2).

The conflict between parliamentary privileges and fundamental rights can be seen in the case of *M.S.M. Sharma v. Sri Krishna Sinha (searchlight case)*²⁷, discussed earlier. The case involved the relationship between Article 194(3) and Article 19(1)(a). In resolving this conflict, the Supreme Court applied the principle of harmonious construction and considered the two constitutional provisions together.

❖ PRIVILEGES AND COURTS

In the case of *in re Keshav Singh (Special Reference No. 1 of 1964)*,²⁸ the Supreme Court considered the conflict between legislative privileges and judicial review. Keshav Singh was imprisoned by the Uttar Pradesh Legislative Assembly for breach of privilege. When the Allahabad High Court admitted his habeas corpus petition and granted bail, the Assembly initiated contempt proceedings against the judges and the advocate involved.

The matter was referred to the Supreme Court under Article 143(1).²⁹ The Court held that legislative privileges are subject to the Constitution and cannot completely bar judicial review. It recognised the High Court's power under Article 226 to examine unlawful detention, reaffirming constitutional supremacy and the balance between legislative and judicial powers.³⁰

²⁵ Nihar Chitre & Pragya Dixit, *Parliamentary Privileges and the Freedom of Press*, ILS Ctr. for Pub. L. (2022).

²⁶ *Gunupati Keshavram Reddy v. Nafisul Hasan*, AIR 1954 SC 636.

²⁷ *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395.

²⁸ *In re Keshav Singh (Special Reference No. 1 of 1964)*, AIR 1965 SC 745.

²⁹ INDIA CONST. art.143(1).

³⁰ INDIA CONST. art. 226.

In *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*³¹, the Supreme Court examined Parliament's power to expel members following the cash-for-query allegations. The Court recognised the power of Parliament under Article 105(3) to take disciplinary action against its members. However, it clarified that parliamentary privilege is subject to constitutional limitations and that courts can review parliamentary action involving substantive illegality or violation of constitutional provisions.

In *P.V. Narasimha Rao v. State*³², the Supreme Court considered whether Members of Parliament could claim immunity under Article 105(2) for accepting bribes in connection with their votes. By a 3:2 majority, the Court held that members who accepted bribes and subsequently voted as agreed were protected by parliamentary immunity, while those who accepted bribes but did not vote were not. This interpretation was later overruled by the seven-judge Bench in *Sita Soren v. Union of India*³³, (2024) 5 SCC 629. The Court held that bribery is an independent criminal act and is not protected by Articles 105(2) or 194(2), regardless of whether the legislator ultimately votes or speaks as agreed.

❖ COMPARATIVE ANALYSIS OF PARLIAMENTARY PRIVILEGE OF INDIA WITH OTHER COUNTRIES

UNITED KINGDOM

The UK has a long history of parliamentary privileges based on customs and practices. The Bill of Rights, 1689 protects freedom of speech and debate in Parliament. Unlike India, the UK does not have one complete law defining all parliamentary privileges. Each House can control its proceedings and discipline its members. India was influenced by the UK system but follows a written constitutional framework.

AUSTRALIA

Australia follows a partly codified system of parliamentary privileges, mainly governed by the *Parliamentary Privileges Act 1987*. The Act clearly defines important privileges, including freedom of speech and protection for parliamentary proceedings. It also balances legislative independence with the rule of law. Australia therefore provides a useful example of how clearer legal rules can regulate parliamentary privileges.

³¹ *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.

³² *P.V. Narasimha Rao v. State*, (1998) 4 SCC 626.

³³ *Sita Soren v. Union of India*, (2024) 5 SCC 629.

CANADA

Canada follows a partly codified system of parliamentary privileges under the *Constitution Act, 1867* and the *Parliament of Canada Act*. These laws protect freedom of speech, parliamentary proceedings, and Parliament's power to manage its internal affairs. Canada combines British parliamentary traditions with constitutional safeguards and provides a useful comparison for India in developing clearer rules on parliamentary privileges.

The cases discussed in this article show how courts have developed principles balancing parliamentary privileges with constitutional rights. Cases such as *Tej Kiran Jain, M.S.M. Sharma, In re Keshav Singh, Raja Ram Pal*, and *Sita Soren* deal with issues such as freedom of speech, publication, judicial review, and the limits of parliamentary immunity. The comparison with the UK, Australia, and Canada also shows different methods of regulating parliamentary privileges.³⁴ These developments emphasise the need to balance legislative independence with constitutional accountability and individual rights.

CONCLUSION

Parliamentary privileges are important for enabling legislatures and their members to perform their constitutional functions independently. In India, Articles 105 and 194 provide the main constitutional basis for these privileges and recognise protections available to individual members and legislative Houses. The development of parliamentary privilege in India has been influenced by the British parliamentary tradition and shaped by the Indian Constitution. Its relationship with freedom of speech, freedom of the press, fundamental rights, and judicial review has been examined by the Supreme Court in several important cases. The decision in *Sita Soren* also clarified the limits of parliamentary immunity in cases involving bribery.

A comparison with the United Kingdom, Australia, and Canada shows that different constitutional systems adopt different approaches to parliamentary privilege. Ultimately, parliamentary privileges must facilitate legislative functioning while remaining within constitutional limits and respecting individual rights and judicial oversight.

³⁴ Sonu Kumar & Pradeep Kumar, *Privileges of Member of Parliament in India: A Comparative Study with UK, Australia, New Zealand and Canada*, 13 Int'l J. Creative Res. Thoughts 184, 186 (2025).