

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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PARLIAMENTARY PRIVILEGES AND FUNDAMENTAL RIGHTS: CONSTITUTIONAL HARMONY OR TENSION?

AUTHORED BY - DIVYANSH SINGH

1. Introduction and Background

Parliamentary privilege is understood as an inseparable part of legislative operation and is based on the historical conflict between the parliament and the House of Commons as the British Crown. This doctrine was twice deliberately imbibed by the framers of the Indian Constitution, not as a colonial residue, but as actually designed to keep the autonomy of Parliament and State Legislatures free of outside interference and encroachment¹. In the Constituent Assembly Debates legislators like B.R. Ambedkar stressed that unless some immunities, most notably freedom of speech and immunity against executive or judicial pressure were guaranteed, the legislators could not be able to perform their representative functions well². Therefore, India borrowed the privilege tradition of Westminster, but in a written constitution form, raising multidimensional issues of its coexistence with basic rights.

Articles 105 and 194 give the constitutional basis of parliamentary privileges, giving to Parliament, and to State Legislatures, respectively, the powers, privileges and immunities required to enable them to operate³. Those provisions safeguard the freedom of speech in the House, immunity against any court proceedings that arise on the basis of statements made during the debates, and the power to penalize an infringement of privilege or contempt. The language adopted, however, especially the inclusion of the words powers and privileges of the House of Commons until such time as determined by statute, left much undefined, and created an ambiguity arousing question as to the extent and extent of these privilege⁴. The role of judicial interpretation, in drawing lines of privilege in India has thus been very crucial and courts have struck a balance between institutional autonomy and constitutional superiority.

¹ **Constituent Assembly Debates**, Vol. VII, 19 May 1949 (discussing adoption of parliamentary privileges).

² Id

³ INDIA CONST. arts. 105, 194.

⁴ *Pandit M.S.M. Sharma v. Sri Krishna Sinha (Searchlight Case)*, AIR 1959 SC 395 (India).

Development of the jurisprudence of fundamental rights in particular, since the land-mark decision in *Maneka Gandhi v. Union of India*, created a revolutionary change in constitutional law in establishing a substantive due process and fairness as entrenched under Article 21. Due to the emergence of dignity, liberty, proportionality as the guiding principles, a deadlock between parliamentary privilege and essential rights increased. However Arrests commanded by the legislature, curtailment of press coverage or punitive actions against citizens all started to be questioned under Article 14, 19 and 21. The judiciary was now left with the dilemma of whether privileges were to remain inaccessible under the review of rights or realize some normality with the shifting constitutional standards.

What is critical as a result of this tension is a dilemma, whether the parliamentary privileges existed as an institutional necessity that needs to be safeguarded to ensure the independence of the legislative functioning or is it an exception that can be used to compromise the supremacy of the Constitution? Although, the liberties safeguard free deliberation and legislative freedom, there has been inconsistent application and misuse of right to legislative freedom by the lack of statutory codification of the same[6]. Although various committees and jurists have made various recommendations, Parliament has failed to make a statute that delimits or defines power of privilege. This legal gap proves especially problematic when the claims of privilege collide with the constitutional guarantee as well as due process.

In this regard, the current study will attempt to address three significant questions. To back this up, it is important to ask whether parliamentary advantages impinge fundamental rights and whether these two can be understood in line with the constitution. Second, how did the Supreme Court balance institutional independence and constitutional rights in some of its key cases in *Keshav Singh*, *Searchlight* and *Raja Ram Pal*⁵ Third, is the codification of privileges necessary to make India transparent and prevent misunderstanding and lack of constitutionality? The second is what forms the basis of developing jurisprudence in institutional accountability and democratic government.

This research aims at critically appraising the judicial trend on the issue of privilege-rights conflicts, to analyze the financial uniformity of the existing doctrines and also analyze the implication on Indian democracy. Through interaction with case law, constitutional theory and

⁵ Report of the Committee on Parliamentary Privileges, Rajya Sabha (2008).

comparative structures, the work seeks to explain how privileges are supposed to be efficient in constitutional democracy dedicated itself to both the rights and accountability.

This debate is not just important as a reflection of theory. Parliamentary privileges have an effect on the transparency, freedom of media, rights of citizens as well as the separation of powers. At a time when institutions of the state are increasingly subject to the critical attention of the general public, it is necessary to consider how far privileges are continuing to achieve the intended effect, or whether changes are required to allow constitutional peace, e.g. the codification and the establishment of procedural protections. The Parliamentary privilege and fundamental rights therefore create one of the unanswered questions as far as the modern Indian constitutionalism is concerned⁶.

2. Conceptual and Theoretical Framework

Parliamentary powers are collaborated privileges, immunity and powers granted to legislative bodies in order to guarantee their proper and autonomous operation. On the philosophical level, such privileges were the result of the centuries-long fight between the British Parliament and the Crown that led to the conception of the importance of the legislative freedom to the democratic process⁷. Privileges in an Indian context are not based on some unwritten order but are evident as laid down by the constitutional requirement contained in Articles 105 and 194 though the Constitution does not give a comprehensive definition. The traditional concept of parliamentary privilege regards it not only as collective, including the authority over internal business, power to penalize incursion into House privileges and contempt, and power to provide order, but also as an individual right, including protection of freedom of speech in the chamber whilst sitting and protection against arrest in civil litigation. They are meant to ensure free deliberation, protect legislators against intimidation or harassment and maintain the institutional autonomy of legislating.

The object of parliamentary privileges is thus to be interpreted in the concept of their constitutional character. The framers did not understand these immunities under personal benefits but as a functional protections of the independence of the legislature⁸. The House is an example of the absolute freedom of speech because the legislators are required to express

⁶ P.D.T. Achary, *Parliamentary Practice and Procedure* 112–121 (2015).

⁷ Erskine May, *Parliamentary Practice* 75–80 (25th ed. 2019).

⁸ INDIA CONST. arts. 105, 194

their opinions with no threats of legal or executive penalty. On the same note, the internal disciplinary practices and processes are cushioned, since the House has to protect its own dignity and control unruly behavior. These characteristics prove that privilege is institutional as a necessity but not an extraordinary strength.

On the contrary, the Indian fundamental rights jurisprudence is rooted in the principles of constitutional morality, justice based on rights, as well as human dignity. The constitutional morality, hypothesized by theorists such as B.R. Ambedkar and legally established subsequently through judiciary rulings, enforces that all institutions such as the Parliament must operate within the stipulations of the constitutional provisions as opposed to the majoritarian instinct⁹. Inclusiveness of substantive due process, fairness, and reasonableness in the constitutional interpretation was introduced in the post-Maneka Gandhi expansion of Article 21, rendering even legislation to be subjected to the constitutional decision-making process¹⁰. The next case in *K.S. Puttaswamy v. Union of India* also solidified the values of privacy, autonomy and human dignity as the major constitutional values and strengthened the principle that the human rights cannot be easily displaced by institutional capacity¹¹. Proportionality, which has become the new measure of rights adjudication, calls on the inquiry that any restriction of rights must have a legitimate purpose, necessity, and be the least restrictive. These rights-based doctrines are bound to overlap when a privilege proceeding or action requires an unwarranted disproportionate burden on citizens, journalists or members.

This generates a great theoretical consternation. The rights of the parliament are based on the doctrine of separation of powers that the branches of government have been required to be autonomous in performing their constitutional duties¹². In a constitutional democracy such as India however, there is not absolute separation of powers as it functions under the principle of constitutional supremacy. In contrast to the United Kingdom, where the sovereign is the Parliament and all such privileges have historically been non-justiciable, India explicitly subjects all elements of the constitution to the Constitution¹³. Consequently, privilege cannot be stated as something unrestrategic. It has been restated many times by the Indian judiciary

⁹ Constituent Assembly Debates, Vol. VII, 19 May 1949.

¹⁰ Gautam Bhatia, *The Transformative Constitution* 45–53 (2019).

¹¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

¹² *KesavanandaBharati v. State of Kerala*, (1973) 4 SCC 225 (India).

¹³ *Shivabrata Sharma v. Rajasthan Legislative Assembly*, AIR 1966 Raj 106

that in a constitutional system with judicial review as part of the basic structure, the parliamentary sovereignty is not allowed.

The judicial check on the parliamentary privileges has changed considerably. The initial cases of Shivabrata Sharma and first Pandit Sharma (Searchlight) case were characterized by a certain measure of judicial restraint, which implied that privileges could work above fundamental rights¹⁴. The watershed moment however came with the reference involving Keshav Singh when the Supreme court ruled that infringement of constitutional rights as well as the jurisdictional overreaching of the legislative organization can be subject to judicial review. This conceptualization led to another great case Raja Ram Pal v. Lok Sabha, Speaker, which upheld that broad as parliamentary privileges are, they nevertheless are not beyond judicial correction on occasions involving a question of mala fides, constitutional breach, or reputation abuse, as in this case. The Court in that manner shifted more towards the direction of aligning privilege powers with the constitutional values as opposed to viewing them as an independent domain.

This paper will examine the parliamentary privilege under the analysis of constitutionalism, accountability, the rule of law and institutional checks. Constitutionalism lays the condition that despite the legitimate institutional ends being bestowed by power it must be constrained and suggestive of review. Accountability ensures that legislative institutions are not allowed to hide behind privilege on whatever they wish to do at any given time. The principle of law requires honesty, openness, and process protection during privilege proceedings. As a way of checking the constitutional power, institutional checks ensure that there is no branch monopoly. Used in combination these frameworks serve to make sense of case law as not isolated judicial intervention but as a component of a larger constitutional commitment of striking a balance between institutional autonomy and individual rights.

3. Legal and Regulatory Landscape

The legal constitution that regulates parliamentary privileges in India is mainly based on Articles 105 and 194 of the Constitution that forms the basis of directions about powers, privileges and immunities of the Parliament and State Legislatures. These clauses ensure the freedom of speech on the House, and the protection against any judicial prosecution on

¹⁴ *Special Reference No. 1 of 1964 (Keshav Singh Case)*, AIR 1965 SC 745 (India).

anything stated or a vote made by the members of the House¹⁵. Noticeably, in Article VI both state that the remaining privileges shall be those of the House of Commons, until established in law. But a complete law to codify these privileges has never been passed by Parliament, and much of their extent has been left to be determined by judicial interpretation and parliamentary usage. This lack of statutory highlight has occasioned a developing-and frequently disputed-jurisprudence regarding the interaction of privileges and fundamental rights and other constitutional principles in the broader context.

There are two types of privilege outlined in the text of the constitution. The former group contains the outspoken privileges, like the freedom of speech of the members and the inability to face legal procedures concerning an action performed in the House. The second group covers unspecified privileges consisting of power to punish contempt or breach of privilege, control internal proceedings, foreign strangers, and that witnesses be summoned¹⁶. Despite these powers being considered necessary to support legislative independence, their lack of definition has created procedural anomalies and created opportunities to misuse the powers especially in a political charged situation.

The attitude to privileges that was adopted in early Judicial adjudication was characterized by substantial modesty. In *Pandit M.S.M. Sharma v. In the Searchlight case (Shri Krishna Sinha)* the Supreme Court concluded that the legislative privilege had the ability to override the freedom of expression in the Article 19(1)(a) as Article 105(3) was not dependent on Part III. On the same note, the Court in *Shivabhajan Singh v. State of Punjab* took a passive position where it implied that a court may not intervene in legislative assertions of privilege¹⁷. These initial rulings depicted a tendency of considering privileges as areas of constitutional immunity where its application is not subject to primary rights analysis.

The decisive moment in classic Presidential Reference in Special Reference No. 1 of 1964 over the arrest and commitment of Keshav Singh by the Uttar Pradesh Legislative Assembly came. The Supreme Court stated that, even though the powers of the legislatures are enormous and include contempt jurisdiction, they are not limitless and may not encroach upon constitutional rights or weaken judicial authority. The Court explained that legislative privilege may not be

¹⁵ INDIA CONST. arts. 105, 194

¹⁶ M.P. Jain, *Indian Constitutional Law* 612–615 (8th ed. 2018).

¹⁷ *Shivabhajan Singh v. State of Punjab*, AIR 1954 Punj 178

practiced in a commerce that infringes and defies the constitution, and thus, judicial review is an assurance of lawmaking restraint. This case became the start of a harmonizing move with the aim of achieving a balance of autonomy of lawmaking and a constitutional supreme court.

This jurisprudence became gradually perfected by the Court. In *Amarinder Singh v. The Supreme Court*, known as *Punjab Vidhan Sabha*, ruled that the ability to punish contempt by the legislative bodies could not be applied to scores to settle political scores and punish acts unrelated to the legislative process¹⁸. The Court also underscored the fact that the privileges are here to safeguard the processes of legislation and that they cannot be mentioned haphazard. The further development of this school of thought manifested itself in *Raja Ram Pal v. Speaker, Lok Sabha*, wherein the Supreme Court ruled that the parliamentary privileges and even the exudation of members can be judicially reviewed based on the reasons of constitutional law breach or malafides or material illegality. The verdict turned the autonomy of legislation upside down and strengthened the Constitution as the highest source of power.

In addition to the case law, there is the regulatory framework comprising Rules of Procedure and Conduct of Business of the two Houses of Parliament specifying the process of initiating the privilege motions, investigating the violations, and intervening with the sanctions. These rules, however, though procedurally guidance do not prescribe what qualifies as privilege or restrict the parameters of powers of privilege.¹⁹ This legislative piece of rule-making authority highlights the independence of the legislative framework, as well as adds to the lack of specificity since the delimits of privilege have not been codified, and it is up to the privilege committees to interpret them.

A number of conflict fronts have cropped up as a result of such an unclear legal regime. Article 19(1) (a) has been used to raise concerns on the issue of the privilege of the journalist in claim he/she allegedly misreported the proceedings of a legislature. Article 21 of due process has been said to question privilege-based arrests or summons. The equivalent procedure has the potential of involving Article 14 of equality and fairness as the suspension of members or their expulsion could be carried out without procedural safety. These battles highlight the constitutional quandary of how there should be accommodative legislative independence, yet at the same time, these privileges must not develop into mechanisms of political retaliation or

¹⁸ *Amarinder Singh v. Punjab Vidhan Sabha*, (2010) 6 SCC 113 (India).

¹⁹ Rules of Procedure and Conduct of Business in Lok Sabha, ch. XX

mechanisms of invading individual rights.

The present position shows the lack of doctrinal ambiguity and the institutional uncertainties. Courts have always ruled that privileges are not above constitutional concerns and may not prevail over the rights themselves. However, without codification, the privilege committees keep on reading their powers widely and in most cases without clear guidelines. Several institutions such as the National Commission to Review the Working of the Constitution and other parliamentary committees have suggested codification in order to foster transparency, certainty and responsibility. However, the Parliament has not been legislating in this direction, perhaps because of political sensibilities and reluctance to curtail their powers.

All in all, the legal environment concerning parliamentary privileges in India is marked by judicial development, constitutional obscurity, and institutional conflict. Although the judiciary has done more to scrutinize claims of privilege under the constitution, there has been absence of such acts by the legislature which breeds confusion and questions of transparency and uniformity. It is in this dynamic interplay that it has become the premise of the perpetual arguments that can be made either that privileges are working together with the constitutional scheme or that the privileges are a mere reduction to the primacy of fundamental rights.

4. Comparative Jurisprudence and Global Perspectives

The comparative constitutional analysis offers useful understanding of the conceptualization and regulation of parliamentary privileges by various democracies. Even as India assimilated much of the privilege system that the British inherited, its constitutional system founded on judicial review and the basic rights of the citizens has resulted in a unique jurisprudential tradition. A closer look at the examples of the United Kingdom, the United States, Canada, and Australia indicates that there are various ways of accommodating the autonomy in legislation and cultural guarantees as it may be called, that demonstrates the originality of the Indian system and the lessons they can teach to reform.

The U.K. is the historical and theoretical pillar of the privilege of the parliament. Under the Bill of Rights of 1689, the freedom of debates or proceedings in Parliament, and of speech, shall not be impounded or taxed in any Court, but this shall be the doctrine of exclusive

cognizance, and that every House shall have the full control over its own internal matters²⁰. Courts (traditionally) do not challenge parliamentary actions since it is a sovereign body whose actions are not subject to a written constitution. It is through the judiciary and decisions made like the *Bradlaugh v. Gossett*, declared that the inner parliamentary ruling is not subject to judicial examination.. This has however changed in the modern British system, which has become more open especially following the initiation of the Committee on Standards in Public Life and the passage of laws to achieve external checks on the actions of members, including the Parliamentary Standards Act of 2009, which brought in external scrutiny of the Singaporeans government to the members²¹. In the UK, unlike in India, convention, political accountability and parliamentary sovereignty prevail in the model, as opposed to constitutional preeminence.

By contrast, the United States pursues a more restrictive (though constitutionally non-salient) strategy by the Speech or Debate Clause in Article I, Section 6 of the U.S. Constitution which specifically offers immunity to legislative conduct but not a wider political or administrative conduct. The U.S. Supreme Court has always maintained the view that the privilege is limited to legitimate legislative activity and that it does not cover conduct like bribery, political communications and administrative decisions. <human>The U.S. Supreme Court has constantly believed that the privilege is confined to legitimate legislative activity and is not applicable in situations of acts of bribery, political communications and administrative decisions. The cases like *United States v. Brewster* and *Gravel v. United States* point-out that albeit the founding's functions of lawmaking, the judiciary could still intervene in non-legal cases, which would ensure that privilege was not an instrument of evil²². This model reveals a clear distinction on what is a legislative act and what is not- a distinction that is mostly non-existent in India because it is not codified.

The Canadian model is quite following a constitutional model where privileges are accorded but subject to the Canadian Charter of Rights and Freedoms. *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House)* by the Supreme Court of Canada affirmed the principle that legislative bodies have certain privileges inherent to them like the control over their internal affairs. Nevertheless, the Court, at the same time, stated that the parliamentary

²⁰ Bill of Rights 1689, art. 9 (U.K.).

²¹ Parliamentary Standards Act 2009 (U.K.).

²² *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House)*, [1993] 1 SCR 319 (Can.).

privilege had to be construed in line with the constitutional values, such as the rights under the Charter Privilege claims may still have been affirmed in that case but the interim is that ultimately courts have the right to decide what privileges and what privileges exist and the full extent of the same. This model can guide India which has central role in providing limits to the privilege as a court.

This successful approach is due to the adoption of the Parliamentary Privileges Act 1987, which codified much of the parliamentary privilege in the wake of the controversy opening up with the so called Parliamentary Papers Case.²³ On this matter, major provisions covered by the statute include the freedom of expression within the Parliament, the safeguarding of committee proceedings, and restriction of courts in probing into things discussed within their Parliament. It also established crimes which were pertaining to interference with members. The Act is an effective codification and offers certain protection as well as clarity. Notably, Australia still has a judicial review in instances where privilege has been overridden or abused. This codification and constitutional accountability strike is something that most Indian scholars urge to follow.

The comparative survey shows that a number of themes can be used to shed light on the unique constitutional position of India. First, India is not like the UK, a subscriber of parliamentary sovereignty; the privileges have to be performed within the frames of the constitutional supremacy. Second, India has not clearly defined the definition of what is considered a legitimate legislative activity as compared to the highly structured U.S. system, giving the privilege committees a broad latitude area. Third, the Canadian and Australian systems prove that codification does not only work, but it is preferable in the contemporary constitutional democracies in which transparency and accountability are needed to inspire social trust in the legislative systems.

Some of the lessons are to be learned in the case of India. A degree to which ambiguity can be mitigated and privilege not utilized in a corrupt way is through codification as we saw in the example of Australia. A system of judicial control such as that exercised in the U.S. and Canada plays an important role in protecting rights as well as sensitivity to proportionality. Also, structural concerns involved in privilege adjudication can be tackled with independent ethics

²³ *KesavanandaBharati v. State of Kerala*, (1973) 4 SCC 225 (India).

committees, transparency norms, and elaborate statutory guidance. It is bonafide experience that a strike between autonomy and accountability is not only possible but is necessary in order to warrant a democratic legitimacy.

Combined, the international views indicate that the hybrid model adopted by India today, privileges of constitution without codification with the judicial review has to undergo another improvement. Codification, more articulate rules to invoke privilege, and improved procedural protection are some of the ways that India can reposition itself with international constitutional good practices without losing its legislative institutional autonomy.

5. Challenges, Conflicts, and Practical Implications

The issue concerning parliamentary privileges and basic rights in India has remained to pose considerable constitutional and institutional dilemma. The lack of codified law with the wide and unspecified powers of privilege has created multiple tension between citizenry, legislature, the media and the judicial. Since the rights of the privileges overlap with Article 14, Article 19 and Article 21, the courts often grapple with the challenging balancing act between legislative freedom and the rights and liberties guaranteed under the constitution. This tension is embodied in real life conflict over freedom of the press, legislative discipline within a particular country, political retaliation and procedural fairness to both members and non-members.

A principal difficulty is due to the absence of codification and consequently the contours of privilege have been left to be determined by custom, precedent, and the good will of legislative committees²⁴. In cases where there is no statutory elucidation, even privilege motions are launched based on vague or subjective reasons. The rules of calculating breach of privilege differ on a case-by-case basis and different Houses take inconsistent approaches. This vagueness does not only compromise transparency but also leaves room to abuse especially in politically polarized environments where privilege is used as a tool of strategy as opposed to being a constitutional protection. This inconsistency may be solved by codification, but recurrent proposals by parliamentary committees have not been adopted²⁵.

Media freedom and the rights of journalists is one of the most debatable fields of disagreement.

²⁴ P.D.T. Achary, *Parliamentary Practice and Procedure* 92–102 (2015).

²⁵ National Commission to Review the Working of the Constitution, Consultation Paper (2001).

The legislatures have also periodically issued notices of privilege on journalists and news houses due to perceived misreporting or even publication of criticism against the legislators. Article 19(1)(a) is critical of the privilege actions against the press. Even though legislatures have the disease power to defend their dignity and operation, the sanctity of privilege against journalists usually leads to chilling consequences on investigative journalism and political criticism²⁶. The legislative privilege over the freedom of speech authorised by the Searchlight case, and where the Supreme Court gave cases weight to the peoples choice, is now being counterbalanced by the ever-changing rights jurisprudence²⁷ The press has been found to play a crucial democratic role which the courts are finding more and more to have fulfilled and privilege can never be used to suffocate proper questioning.

The other big area of conflict is that on right of citizen and due process, particularly where legislative privilege would lead to summons, arrests and punitive actions. However, even though legislatures have the power to make attendance mandatory, to demand arrest in the case of contempt, this power must be consistent with the Article 21 the right to fairness and non-arbitrariness. In the case of Keshav Singh, the Supreme Court stepped in when the Uttar Pradesh Legislative Assembly demanded the arrest of a private citizen because it was found that the powers of the legislature cannot supersede constitutional boundaries and that the actions of it are liable to judicial review of the same. This issue supported the fact that privilege cannot turn into the tool of arbitrary punishment. Privilege proceedings should be done in accordance with the principle of natural justice, e.g., the right to sufficiently be notified, represented, and have their decision being reached in a reasonable manner.

It is also structural issues that are exposed in the internal conflicts, particularly in such a case as of suspension or expulsion of members in the legislatures. Even though there needs to be some form of discipline authority to ensure the preservation of decorum, there has been the occurrence of privilege proceedings being employed in silencing forces of opposition or even political vendetta. In *Amarinder Singh v. Guestation Punjab Vidhan Sabha*, the Supreme Court quashed the expulsion of a suspended Chief Minister on the account of the supposed misconduct not pertaining in the activities in the legislature²⁸. The Court made it clear that it should not be considered that the privilege is in place to frighten political actors about actions

²⁶ Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 215–220 (2016).

²⁷ *Pandit M.S.M. Sharma v. Shri Krishna Sinha*, AIR 1959 SC 395 (India).

²⁸ A.G. Noorani, *Constitutional Questions and Citizens' Rights* 147–153 (2005).

of the executives or other behavior unrelated with the legislative processes. The case highlights that legislative discipline to internal legislative processes is as important as it is, but it must be used with limits and not replace constitutional rights.

The judiciary on its part has its own dilemmas. Oversight of the judiciary can lead to usurping legislative independence on the other hand, under-review may lead to legislative overstretch. At Raja Ram Pal, the Supreme Court tried to find a perfect middle ground, and it was said that parliamentary privileges were open to judicial scrutiny, although limited on the basis of constitutional breach, mala fides, or even substantive illegality, but not on the basis of parliamentary processes or internal rulings²⁹. This is a subtle compromise allowing the parliamentary independency, but privilege would not be an unrestrained force. The judges however have at times been unable to draw the line between the internal and actions involving constitutional ramifications, therefore creating inconsistency in judicial review standards.

The implication on the functioning of democracy is great. When privilege is used too much or at random will, this will undermine the confidence of people in law making bodies. Privilege is reciprocated back to politics when it is used against unconcurring members, unsupportive journalists or ordinary citizens, thereby impairing transparent and democratic accountability [8]. Furthermore, the fear of privilege proceedings is likely to discourage healthy debate even in the legislature itself, which is directly against the very aim of privilege, free deliberation.

Procedural obscurity of privilege committees is also an institutional problem. Such committees do not have homogenous standards, transparency necessities or procedural protection. Reporting and recommendations are not always published or reasoned, and thus, it becomes hard to be accountable. It is widely debated by many scholars and commissions that the privilege procedures should feature judiciary acceptable principles of evenhandedness, namely notice, revelation of evidence, open hearings, and appeal systems.

In the face of these difficulties, there are some reforms that are very important. Privilege ought to be codified to bring clarity and eliminate abuse and ensure lawmakers practice within the provisions of the constitution. Procedural protections that are introduced in privilege proceedings can ensure the protection of the citizens as well as the members in the form of

²⁹ Lok Sabha Committee on Privileges, 36th Report (2013).

written and reasoned orders as well as the observance of natural justice. Also, partisanship could be minimized through the establishment of separate or hybrid membership privilege committees as witnessed in other parliamentary democracies. Lastly, drawing more distinct lines between the core legislative functions (non-justiciable) and non-legislative acts (justiciable) would assist the courts to work out the privilege issues more uniformly.

All of these conflicts help to prove that parliamentary privileges, being necessary to the legislative activity, should not exceed the limits of the constitution. There should be transparency, equity, and formal restrictions to ensure that privilege is not turned into an instrument of political action but a protector of the democratic deliberation.

6. Conclusion and Recommendations

Examination of the parliamentary privileges under the Indian constitution shows that there has always been confrontation of parliamentary independence and the sovereignty of the fundamental rights. Even though privileges are necessary in guaranteeing independence and integrity in the functioning of the legislature, their lack of definition and non-uniform application have led to conflicts with the constitutional guarantees especially Articles 14, 19, and 21. Judicial intervention over time has shifted Indian jurisprudence out of this zone of insulation, in which privileges were regarded as impunnerable to judicial review into that of a thoroughly judicial consideration. The Supreme Court has entered these decisions, such as, *Keshav Singh*, *Raja Ram Pal* and *Amarinder Singh* to establish that as important as they may be, privileges cannot be used as the forces of power beyond the limits of the constitution³⁰ This court path highlights the notion that the institutional autonomy should be aligned with the constitutional morality, rights-based justice, and rule of law.

The results of the aforementioned chapters show that whether or not privileges should be provided is not the most significant issue of the constitutional dilemma, but rather the extent of such privileges and to which circumstances such invocations may be applied. Privileges play the admittedly crucial role: the legislators should be able to discuss and to work without being intimidated by outside pressure. However, since they have not been codified, their reference is prone to political abuse, arbitrariness, and inconsistency. This kind of weakness

³⁰ *Special Reference No. 1 of 1964 (Keshav Singh Case)*, AIR 1965 SC 745 (India); *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184 (India); *Amarinder Singh v. Punjab Vidhan Sabha*, (2010) 6 SCC 113 (India).

breeds dislike in law-making bodies among the populace and gives an impression that privilege is a weapon that is used to settle an old score and not a requirement of the Constitution³¹. Such results are very worrisome in a democratic system that is founded on accountability and transparency.

The most significant tool in distributing institutional freedom against constitutional rights has become judicial oversight. The demand by the Court on legislative version of procedural fairness, proportionality, and applicability has provided much sense to the discourse on the privilege. Nonetheless, judicial solutions are not sufficient to eliminate the structural flaws of an uncoded system of privileges. The solution that provides the best way of achieving clarity and accountability, as a number of parliamentary committees, researchers, and commissions have repeatedly highlighted, is codification. Codification should not undermine the legislative power but instead it serves to give perfection, uniformity and security that enhances democratic legitimacy.

Considering these conclusions, there are a number of recommendations. To start with, Parliament ought to adopt a Parliamentary Privileges Act, based on the Australian Parliamentary Privileges Act of 1987, the definition of privilege powers, limitations, and procedures is explicit and the procedures are clear and well defined. This type of legislation should make a distinction between the core deliberative functions which are to have privileges that are both necessary and beyond justification and acts that are non-legislative and ought to be reviewed by courts. Objective statutory definitions would help decrease ambiguity and avoid the use of privilege in areas that are not related to the legislative operations.

Second, procedural protections that include but are not limited to the mandatory notification, right to attorney representation, evidence disclosure and issuing reasoned decisions must be included in the privilege proceedings. Privilege committees ought to be transparent and released on their reporting and apply uniform criteria on identifying privilege breaches. These would bring the privilege procedures in line with the constitutional entitlement of fairness in Article 21³².

Third, independently- or mixed-member privilege committees should be established, which

³¹ National Commission to Review the Working of the Constitution, Consultation Paper (2001).

³² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

would de-politicize privilege motions and minimize the chances of a partisan abuse. Comparative models show that an increased level of independence of disciplinary bodies is associated with an increase in institutional credibility without infringing legislative autonomy. Also, appeal or review mechanism especially of serious cases like suspension, arrest should be looked into to provide proportionality and protection of rights.

Fourth, the courts ought to remain in their limited but assertive position, and interfere only when privilege action denies constitutional rights, claims malaise of fides, or acts outside their jurisdiction. Through such a balance the courts affirm the freedom of the legislature as well as the constitutional preeminence. An even more distinct line between the proceedings held internally and those that have a wider constitutional focus would even better enhance consistency of the judicial system.

Lastly, greater public awareness and exposure of parliamentary privileges would have an effect in advancing democracy and trust. The publicity of privilege proceedings and committee records will make them more accountable and deterring of abuse.

Conclusively, parliamentary privileges constitute an inseparable component of the constitutional set up of India, though, their survival, going forward, is pegged on whether they comply with the set of constitutional ideals. The key to making sure that privileges serve their intended purposes, i.e. as a guarantee of legislative independence, along with inalienability of basic rights and democratic principles, is codification, procedural safeguards, independent oversight, and principled judicial review. The creation of such balance will enhance the parliamentary democracy in India and strengthen the Constitution as the most important authority.