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PARLIAMENTARY PRIVILEGES IN INDIA AND USA; **A COMPARITIVE ANALYSIS**

AUTHORED BY - MS. MONIKA

Research Scholar, Department of Law MDU-Rohtak

CO-AUTHOR: - DR. VIRENDER SINDHU

Associate Professor, Department of Law MDU-CPAS, GURUGRAM

ABSTRACT

The Parliament's budget session was disrupted by Member of Parliament Mahua Moitra's scathing criticism of the judiciary and the current government. Her "garb of Parliamentary Privilege" was invoked at the start of her speech. Parliamentary Privilege, as defined by Sir Thomas Erskine May, is the sum of the distinct privileges that each house of parliament has together, which make up the High Court of Parliament, as well as the individual rights of each member of each house of parliament, without which they cannot perform their duties and which outweigh those of other bodies or individuals. Articles 105 and 194 of the Indian Constitution discuss the benefits, privileges, and immunities enjoyed by parliamentarians. Among these benefits are the freedom of speech in Parliament and the protection from indictment for any remarks or actions made in Parliament or inside a committee. Additionally, they provide a member with immunity from legal actions related to the release of any report, paper, vote, and procedure. Any violation of the same can result in someone being found in contempt by the House. In this essay, I'll look at the extent of parliamentary privilege and whether or not the aforementioned privileges could interfere with judicial scrutiny. The laws of privilege in countries with continental systems, such as France, Britain, and Australia, are relevant when analyzing the notion of parliamentary privilege because different countries have different laws governing parliamentary privileges and immunities. In addition, India is an old democratic with a three-tiered system of government, just like South Africa. In The author of this study has decided to employ comparative research analysis in order to assess and analyze the extent of parliamentary privilege & immunities in India. The author will go into further detail on Parliamentary Privileges & their components in this paper.

Keywords; Parliamentary Privilege, Immunity, Government, Freedom.

INTRODUCTION

The authority, benefits, and privileges that the Houses of Parliament & their members possess while carrying out their responsibilities are collectively referred to as "parliamentary privilege." As an exception to regular legislation, these privileges are meant to enable lawmakers to carry out their responsibilities without hindrance or fear of retaliation. Parliamentary privilege, according to Sir Thomas Erskine May, is the term used to describe the unique rights that each House as a whole as well as its members individually enjoy as members of the parliament, which surpass those of other organizations or individuals and without which they would be unable to perform their duties. The House cannot function effectively without the Parliamentary Privileges. Individual members enjoy them since the House cannot function without their continuous cooperation, and each house as a whole enjoys them for the defence of its members and the upholding of its own power and honour. They have unique rights that they enjoy in the carrying out their responsibilities with dignity and honour. They have these rights because they are essential to their efficient operation, not because they are a result of their high status. Parliamentary privileges are granted to those in India who are not elected to a House but are still allowed by the Constitution to speak and take part in the operations of a House or any of its committees. The rights and immunities granted to the Indian Parliament and its members were modeled after those granted to the British Parliament and were included into the Indian Constitution. According to the Indian Constitution, the Parliament's and its members' rights are governed by the law and, unless such legislation is created, are deemed to be equivalent to those of the British House of Lords on the date that the Constitution was adopted.

The concept of congressional privilege was developed in England as a result of five centuries of strife between Parliaments and the Crown. Parliament had taken control by when the American Constitution was adopted in 1789, and its rights were not only wide-ranging but also mainly undefined by legal definition.¹Delegates to the Constitutional Convention reportedly rejected Mr. Pinckney's suggestion to have Congress decide its own privileges, according to the British system, on the grounds that a more precise definition of congressional privilege was required.

As a result, three clauses in the Constitution outlined what must be considered the entire

¹Blackstone, Commentaries

scope of congressional privilege: the publication clause². the provision protecting people from arrest;³.and the argument or speech clause⁴.The "independence and integrity" of the legislative have historically been safeguarded by the speech or debate clause, which provides members of Congress the right to speak, discuss, and deliberate without worrying about being intimidated by the judiciary or the executive branch⁵.Legislative privileges provide a unique type of national legislation that is administered and construed by Congress alone, without further external examination. Congress has the authority to penalize anyone who breaches the House's rights and dignity, whether they are inside or outside the building.

Every legislative body needs these privileges in order to effectively carry out its many responsibilities on behalf of its respective countries. The query taken into account in this article: Do members of Parliament have unrestricted privileges? Do members of Congress and Parliament require these privileges in order to carry out their responsibilities and activities efficiently, and if so, why is codification necessary? This article discusses the nature and scope of parliamentary privileges in the US and India while also looking at the legislative regulations surrounding them.

PARLIAMENTARY PRIVILEGES IN INDIA

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Statements made by members of the state's Legislature and Parliament are protected whereas those made outside of the House are not⁶. *TejkiranJain v. N. Sanjiva Reddy & Others*⁷ is one in which the Supreme Court decided that Parliamentarians have the right to free

² U.S. CONST. art. I, cL. 3.

³Art.1.Sec, 6, cl. 2.

⁴Ibid.

⁵Johnson, 382 U.S. at 181

⁶AIR 1961 SC 612

⁷AIR 1970 SC1572

expression in the House & its committees so no court can punish them for whatever they say during proceedings⁸. The names of Dr. Suresh Chandra Banerjee and Dr. Punt Goala clause (1) and (2) of Article 194 of the Constitution, according to two justices (Harries C.J. and Banerjee J.), completely and totally safeguard a member with regard to any speech he makes in the Legislative Assembly. No legal action, either civil or criminal, may be taken in connection with the statements made within the walls of the Assembly because they are entirely confidential. *Legislative Council of U.P. v. Jagdish Gandhi*⁹ Under According to Article 194 (1), a lawmaker's right to free expression is unassailable. If someone is offended by a member's remarks, the matter will be resolved in the legislature's own house rather than in court.

No official in Parliament may be held legally responsible for anything he says or voting on in Parliament and any of its committees, as stated in Articles 105(2) and 194(2). In *State v. P.V. Narsimha Rao (CBI/SPI)*¹⁰, the Supreme Court's five-judge panel ruled 3:2. The majority has ruled that members of Parliament have a broad range of immunity protections that extend beyond legal proceedings and cover all civil and criminal actions related to anything they say or vote on in the House of Parliament.

The right to free expression is subject to both constitutional and self-imposed limitations. The restricting terminology of Clause (1) implies that Articles 19(1)(a), 20, 118, and 121 (Articles 208 & 211 in the case of the State Legislatures) apply to privilege, subject to the Constitution's restrictions. In addition to being self-imposed, restrictions on the right to free expression are also lawful, and they are upheld by the House's internal regulations. The Lok Sabha's internal processes are governed by Rules 352 through 356, respectively. The Speaker has the authority to punish a member who disobeys these rules by ordering him to leave the House, suspending him, or expunging his offensive remarks from House proceedings.

No one shall be subject to any legal procedures with regard to the publishing of any paper, report, vote, and proceeding by or within the jurisdiction of a House of Parliament or a State legislature.¹¹ No one shall be subject to any legal procedures with regard to the publishing of any paper, this privilege is only available for publications that were produced by or with the consent of a House. If a private These privileges and the protections provided by

⁸Article 105 of Clauses (1) & (2)

⁹AIR 1966, all.297

¹⁰AIR 1998 SC 2120

¹¹Articles 105(2) & 194(2) of the Indian Constitution

this article will not apply to anybody who discloses the House's report and proceedings without authorization. According to the court's ruling in *Dr. Suresh Chandra Banerjee &ors v. Punt Goala*, Clause (2) of Article 194 protects all parties involved in the distribution of legislative proceedings, so long as the publication is made by or under the jurisdiction of the legislature itself. Article 194(2) does not apply to newspaper publishing unless the legislative assembly approves of them.

The court ruled in *Surendrav. Nabakrishna*,¹² that the publication of a House statement by a newspaper editor constituted contempt of court. It was determined that the general public, who are primarily interested in understanding about what occurs in Parliament, would gain a great deal from a newspaper providing an accurate account of parliamentary activities.¹³ Consequently, The According to the Parliamentary Proceedings (Protection of Publication) Act of 1956, unless it can be demonstrated that the Speaker specifically ordered No one will be held responsible for any criminal or civil lawsuit in any court pertaining to the publication of a largely accurate report of the legal processes of either body of Parliament after such proceedings are purged. This viewpoint has been greatly reinforced by the Constitution (44th Amendment) Act of 1978, which added Article 361-A. This protection does not extend to the release of any report detailing the actions of a secret session of the State Legislature or any House of Parliament. Broadcasting on the air is also granted a comparable immunity. Newspapers and television broadcasts are the only publications that are protected; pamphlets and booklets are not.¹⁴

Additional privileges are listed in Article 105, clause (3). According to the original legislation, these would be those that Parliament may occasionally specify by law, and until that time, these would be those of the House of Commons of the United Kingdom Parliament as of January 26, 1950. There was no mention of the House of Commons in 1978. In all other respects, clause (3) of the amended article states that the powers, privileges, as well as immunities of each House, as established by parliament through laws, shall be those of that House and its members as well as committees prior to the implementation of the fifteenth section of the Constitution (44th Amendment) Act 1978. This amendment's only significant change is the elimination of the term "House of Commons." As of January 26, 1950, the House

¹²AIR 1958 Orisa 168

¹³Wason v. walter (1868) 4 IRQB 73

¹⁴article 361-Aof Clause (2)

of Commons remains in its return posture. This implies that every privilege that a House has on that date will remain in effect until Laws are made by parliament. Members of the State Legislature and Parliament currently enjoy the following privileges under Articles 105(3) and 194(3):

- 1. Freedom from Arrest:** No person serving in the state legislature and parliament may be jailed or imprisoned in a civil proceeding during the 40 days before and 40 days after a legislative session.¹⁵ A member should be released if they are arrested during this time so they can attend parliament.¹⁶ This protection only applies to civil arrests; it does not cover arrests or incarcerations for criminal charges, contempt of court, or preventive detention.¹⁷ Like any other person, a member of a house will be arrested if he commits a crime. This privilege does not apply to detention under the Preventive Detention Act or to arrest or incarceration on a criminal charge.¹⁸ In *Anandan Nambiar V. Chief Secretary, Madras Government*,¹⁹ In this instance, the court ruled that a House member who is incarcerated for a criminal offense is not entitled to attend a House meeting.

It has been established that without the Speaker/Chairman's consent, no summons, civil or criminal legal process, or arrest of members of the state legislative or parliament may take place inside Parliament's walls. Since only the Speaker/Chairman's or the House of Parliament's writ and instructions are enforceable within the Parliamentary premises and not those of any other governmental entity, no one may be detained within the Parliament House without the Speaker/Chairman's consent. authority or local government. Parliamentary precincts are not even covered by Section 144. This privilege's goals are to control members' attendance in Parliament and guarantee their safe arrival.²⁰

- 2. The authority to call witnesses and conduct inquiries;** The British House of Commons has the authority to hold inquiries and call witnesses for the House's consideration. It also has the authority to demand that records, documents, or data be produced. In India, every House of Parliament & State Legislature has the authority to carry out investigations and summon witnesses & documents for the House to consider.²¹

¹⁵Prof. Jatindra Ranjan DE, *The Growth of Parliament in India*

¹⁶Section 135 (A) of CPC, 1908

¹⁷AIR 1952 Cal, 633

¹⁸AIR 1975 SC 2298

¹⁹AIR 1966 SC 657

²⁰Subhash Kashyap, "Our Parliament",

²¹Kailash Rai, "Constitutional Law of India", 11th Edition, CLP, Allahabad, 2013

3. Authority to Reprimand Members and External Parties: It is the duty of each House of Parliament to safeguard its own privileges. Indian courts have recognized that only a House of Commons (or State Legislature) has the authority to decide whether or not privilege has been violated. contempt of the House in one case. For "contempt" and "breach of privileges," a House can penalize anyone, whether or not they are a member. The punishments that a House may impose include reprimands, condemnation, suspension from the House for the period of the session, costs, and imprisonment.²² In *Ram Pal v. The Hon'ble Speaker*,²³ the Supreme Court recently affirmed the Parliament's decision to dismiss the members for engaging in a cash-for-query scheme, which is considered a contempt of the House. The keystone of Parliamentary privilege, as it has been rightly named, is the House's power to punish disrespect or privilege infractions. This power is seen to be crucial to the House's capacity to fulfill its responsibilities and defend its rights²⁴.

The English House of Parliament has the authority to keep strangers out of its meetings and to conduct them behind closed doors. The House may exercise this authority to convene in secret for national security-related purposes. When he feels it is appropriate, the Speaker/Chairman may compel visitors to leave the house immediately. Immediately after the matter is put to a vote, the Speaker will order the outsiders to leave if the vote is carried. The Speaker may also be notified by any member who feels uncomfortable with the presence of strangers. The right to exclude strangers from a meeting when there is a chance of disruptive disruption can be viewed as both an essential part of maintaining order in company as well as a corollary to the principle of free expression. Since 1998, this procedure has evolved, and the Speaker is now the only one with the power to order the expulsion of any non-member or non-officer from any part of the House at any time. In line with the Rule, the Speaker or Chairman of the Indian Parliament may, at any time, mandate the "withdrawal of strangers from any part of the House."²⁵

²²HardwariLalv. Election Commission of India, ILR (1977)2 P&H 269

²³(2007) 3 SCC 184

²⁴Cushing, Legislative Assemblies, para 533;

²⁵Rule 265th of the Rules of the Council and Rule 387th of the Rules of the House

ANALYSIS OF LEGISLATIVE PRIVILEGES IN U.S.A

According to the American Constitution, members of state and national legislatures are generally allowed certain privileges that are seen essential for the legislative branch of government to function independently. Freedom of expression and protection from arrest are the rights. Most often shielded. These paragraphs' objective is to examine the nature and extent of these rights.

Members of Congress are protected by the US Constitution from being interrogated outside of either House for any speech or debate they take part in.²⁶ Forty-three state constitutions have similar provisions. The right of free expression guaranteed by this provision has been construed broadly on the grounds that its purpose is to safeguard the representatives of the people's freedom for the benefit of the public, rather than to protect individual members. Therefore, it has been shown that immunity includes;

- a) Anything a member says or does in the course of the House's or any committee's²⁷ business, including casting a vote, writing a report, proposing legislation, and, generally speaking, everything that is done during a House session.²⁸
- b) Immunity remains intact. notwithstanding the fact that its usage was improperly motivated or in violation of the House's rules.

However, the clause's immunity would not be extended:

- a) to assist a member in preparing for or carrying out legislative activities, or in violating an otherwise lawful criminal statute.²⁹
- b) b) To absolve a participant of accountability for any activity that is not "integral part" of either House's legislative and deliberative work, or, in other words, that is not required for the House's debates.³⁰

Therefore, a member would be subject to punishment under any statute that makes it an offense and may be questioned by a body looking into the offense if he organized the private publishing of any document that was discussed in either House or by any committee of that House.³¹

²⁶U.S.A Constitution Article 1, Section 6(1)

²⁷Tenney v. Brandhove, (1951)

²⁸Kilbourn v. Thompson (1881)

²⁹Gravel v.U.S (1972)

³⁰Ibid.

³¹Dr.D. D. Basu, "Commentary on the Constitution of India", 8th Edition, 2008

Congressmen have the right to discuss freedom of expression and privileges. They are not legally liable for statements made in their official capacity or subject to libel or slander lawsuits, with the exception of the House or Senate. Both verbal and written statements on the House floor everything that a member of the House usually does at a meeting on the topic at hand, such as reports, proposed resolutions, voting, and more.³² The unfettered right to free expression in Congress throughout the legislative process is specifically covered by this article. For example, a congressman cannot utilize this provision to protect him from a libel case if he is dedicated libel in addition to his official duties.

The courts have upheld this view on many occasions.

The Supreme Court maintains that in house and committee hearings relating to their legislative activity, members of Congress have an official legislative obligation to take activities that are necessary to the deliberative and communicative processes they participate in. The section protects the right to vote, to speak on the floor of a house or at committee hearings, and even to read sensitive documents that have been stolen into the record. However, there is no protection for negotiating with government agencies, issuing a news release, or speaking outside of Congress. The Supreme Court has decided that legislative employees engaged on official congressional business are likewise protected by the provision, even though legislators in Congress are included in its wording. Strangely enough, the Court decided that even if the legislator has breached the law, he won't be charged if his legislative actions provide proof of the offense. Complete immunity is granted if the Member's activities fall within the "legal process." Despite the provision protecting them from both civil and criminal procedures, members of Congress are totally exempt from civil and criminal lawsuits alongside grand jury inquiries. Legislative assistance are likewise protected by this exemption, but only with regard to the "statutory acts" that they support.³³

The freedom of arrest is one of the important rights guaranteed by the federal and state constitutions. Except in cases of treason, crime, and breach of peace, members of Congress are protected from arrest while they are both in traveling to and from the respective Houses and in being present throughout their session. This privilege needs to balance the need for the normal legal system to function well with the need for politicians to be able to fulfill their civic responsibilities. Several sections in the US Constitution approach the duration of the immunity

³²C. Pritchett, "the American Constitution", 3rd Edition,

³³Ibid.

from arrest differently. Only phrases like "going to" & "coming from" the session of parliament are found in certain constitutions. While some sections specify how many days before and after the session the advantage will be in effect, other constitutions require that the privilege be in existence for fifteen days before the session begins. When the constitution states that the privilege extends beyond the legislative session for a specified number of days, there is little problem. Under the Protection from Arrest Clause, a member of Congress is solely entitled to a privileged from civil arrests; they are not entitled to any immunities from other civil proceedings. In each instance, the Supreme Court defined the word to encompass all offenses except treason, a crime, and breach of peace.³⁴

When tracing the origins of the phrase to parliamentary privilege, the Court found that the identical phrasing was used to define Parliament's protection from arrest, meaning that the Parliamentarians might still face criminal charges. The Court concluded that Congress's immunity would be subject to similar criminal conduct limits as the legislative power from which the wording was borrowed since the Framers used an identical word without justification. Therefore, the clause does not exclude Congress from criminal penalties. Applying the Framers' intent, the Supreme Court later decided that the wording did not confer any protection from civil prosecutions. Therefore, civil litigants may compel members of House to appear before a court with the proper jurisdiction in order to fight against civil lawsuits. Furthermore, because of the court's incredibly narrow construction of the clause, members of Congress could potentially be summoned to testify in both criminal and civil court proceedings while Congress is in session. The arrest privilege challenges us to weigh the need for the ordinary legal system to function properly with the need for politicians to be permitted to fulfil their public duties.

The U.S. Constitution's Art. 1 Sec. 5(2) grants the House of Congress the power to eject members. A constitution gives each house the power to establish the rules for its operations, punish members who violate them, and, with the consent of two-thirds of the members, remove a participant. Each House of House has the power to penalize its members for contempt, as stipulated in the US Constitution. Even non-members may be subject to fines for contempt imposed by the Congress. The Supreme Court held in *McGrain v. Daugherty*³⁵ that each House has the appropriate and necessary auxiliary authorities to guarantee the effectiveness of the

³⁴Williamson v. United States U.S. (1908)

³⁵(1927)274 U.S 135

explicit authority. As a result, the Congress is naturally able to penalize non-members as well.³⁶

Members may be disciplined by the House without the Senate's approval. Currently, the House's most popular methods of disciplining its members are "expulsion," "censure," and "reprimand," while it can also use additional measures like fines or monetary reparations, loss of seniority, as well as the loss or suspension of specific rights. Besides the sanctions enacted by the full House of legislators, the body's standing committee that deals with ethics and official conduct matters, the House Senate Committee on Ethics, previously known as its Committee on Rules of Official Conduct, is authorized by House Rules to provide a formal "A Letter of Reproval" for conduct that does not warrant thought or approval by the full House of Representatives.

Articles 105 and 194 of the Indian Constitution explicitly give two privileges: (1) freedom of expression and (2) no participant of Parliament will become liable to any legal action over anything spoken or voted in the House or any publication made by or under the authority of the House. Members of the federal Legislature & Parliament in England gained "other privileges" of the Senate and House of Commons on January 26, 1950, in accordance with Articles 105(3) & 194(3), until they were expressly specified by law. Finally, by cosmetically changing Clause 3 of Articles 105 & 194 in the 44th Legislative Amendment, the Parliament eliminated the allusion to the House of Lords in 1978.

There is no need to codify parliamentary privileges since the Freedom of Speech and Debate Clause of Article 1 Section 6(1) of the U.S. Constitution gives senators and representatives unrestricted powers. Since Article 1 Section 5 gives Congress the power to detain and punish both members and foreigners, there is no need to codify its privileges.

CONCLUSION

Parliamentary privileges in India and the United States are critical to ensuring that legislative bodies can function independently and effectively. These rights, enshrined in their respective constitutions, shield lawmakers from undue interference, allowing them to debate freely and perform their duties efficiently. In India, Articles 105 and 194 protect free speech in parliamentary debates and grant immunity from legal action for actions related to their

³⁶T.S.Raja GopalaIyengar, "Indian Parliament- A Critical study",1972

legislative responsibilities. At the same time, mechanisms such as privilege motions and expulsion help to ensure accountability.

In the United States, the "Speech or Debate Clause" of the Constitution provides legislators with broad protections for their official duties, as well as strong disciplinary powers to address any misconduct. While both countries value legislative independence, India's privileges are not codified, unlike the United States, which clearly defines them in its constitutional framework. This difference reflects the two countries' distinct histories and institutional structures.

As democracies evolve, it is critical to strike a balance between protecting elected officials and holding them accountable. Codifying privileges, as is done in some parts of the world, could help India achieve clarity and consistency in its framework while maintaining the delicate balance between legislative autonomy and judicial oversight. Finally, these privileges should reinforce democratic values by promoting transparency and good governance.

