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Parliamentary privileges in India: **A legal analysis of the lacunae and** **assembling privileges**

Authored By - Adish Joy

Abstract

The parliamentary privileges are considered of prime importance. The privileges provided to the members of the parliament are of great relevance since it is a direct reflection of the representative behold and capacity of the people and hence the increased restrictions in any manner will directly synthesise by contributing to the violation of civil liberty. However, as Article 19(2) of the constitution reasonably restricts the fundamental rights of the citizens, the rights of the parliamentarians also have to undergo similar scrutiny to strike the most requisite balance. The need to analyse the underlying lacunae behind all privileges of the parliament hence is on par with the requirement of an improved system that mirrors the democracy of the nation. The class privileges and the individual privileges of the parliament, alongside the sources and facts, compile to contribute towards the effective functioning of both houses. Moreover, there have been precedents laid down time and again by the judiciary in association with the need for the striking balance necessity. The working of the prevalent committee that exclusively works for the privileges as the committee of privileges of semi-judicial nature is one of the essential factors of the overall working. Deriving the relevance from the very origin of parliamentary privileges and the stance of the said aspect in today's democracy could precisely identify and lay down the differences at their best. The paper, therefore, analyses the parliamentary privileges in detail and the associated shortcomings and privileges thereafter.

Introduction

The parliamentary privileges in operation in India are one of the derived underlying principles of the constitution that have been derived similar to the numerous other features such as the emergency provisions from Germany, fundamental rights identifying its origin from the Magna Carta Charter and Bill of Rights, a concurrent bill from Australia and goes the list.¹ Hence, the

¹ Prakash, P., Abisla, R., Jash, S., Kaushik, A. K., Mishra, S., Padmanabhan, A., Ratna, T., Simons, J., Srikumar, M., & Young, K., *Improving India's Parliamentary Voting and Recordkeeping. In The Promise of Public Interest*

former has its origin in the British Parliament alongside the general functioning of the parliament. Whether it be the Rule of Law, the procedure followed in and out through legislature and the parliament, the bicameral and cabinet structure are all developed from the functioning of the parliament. The efficient and effective working of the parliament is ensured with the regulatory framework established in the parliament alongside the privileges of the parliamentarians. The powers possessed by the members of parliament as enshrined in the parliamentary rule book and implied together constitute the privileges. Apart from the right of single transferable voting eligibility, the parliamentarians are also enshrined with a set of additional privileges. Hence, on one hand, there is the prevalence of proportional representation and non-deprived rights of the parliamentarians.²

Origin & history

The prime understanding of the compilation of the rights of parliamentarians of both the houses, the upper and the lower houses as the parliamentary privileges as an extended facility of the existing laws of the land and thereby the gradual development of these immunities have a story of origin to understand and foreign cases to exemplify from. The Charter Act, of 1833 could be traced down as one of the prime sources of parliamentary privileges. The present type of legislative machinery and its working had come into existence thereafter. The prescribed Charter Act (Later renamed as Helena Act, 1833),³ led to the formation of a new legislative structure and set-up already. Hence, in the quest to form a completely separate law-making body, the legislative started operating full-on and hence came into existence thereafter operationally.⁴

The specifications concerning the parliamentary privileges came into existence in the Indian Councils Act, of 1909. After the demands raised post the declaration of Queen Victoria in 1906 the demand for home rule for the first time in India by INC, parliamentary privileges turned out to be one of the fundamentals of the reforms considering that one of the aims of the reform included creating positive changes in the country.⁵ The Act that is prominent for the

Technology: In India and the United States, (pp. 94–108), (2019), New America. <http://www.jstor.org/stable/resrep19980.10>.

² Malik, B. S., *Parliament impairs federalism: A critique of Mararum v. Union of India*, 4 JOURNAL OF INDIAN LAW INSTITUTE 36, 512–521 (1999), <http://www.jstor.org/stable/43952372>.

³ Tinker, I., *India's One-Party Democracy*. *Pacific Affairs*, 29(3), 265–268 (1965), <https://doi.org/10.2307/2753476>.

⁴ Sakthivel, P., *Jawaharlal Nehru: The parliamentarian and contemporary Indian Parliament*, 1 IJPS 72, 103–111, <http://www.jstor.org/stable/42761810>.

⁵ Jacob, A., *Centre-State governmental relations in the Indian Federal System*, 4 JOURNAL OF INDIAN LAW INSTITUTE 10, 583–636 (1968) <http://www.jstor.org/stable/43949975>.

introduction of the Minto Morley reforms hence, resulted in the slight dilution of the parliamentary privileges.⁶ The Act is prominent for the furtherance of more Indians and their increased participation in the parliament hence, is also known for the parliamentary privilege part of it.

This was by way of the introduction of indirect election techniques. The right to freedom of speech was reinstated in the parliament post the Government of India Act, 1935 and hence validated the civil right inside the premises of the parliament. Therefore, the relevance of the provision was validated in the parliament post the Act. Hence, as far as the parliament is concerned the government is dealt with by the constitution, then by the rules of procedure of the house and the remaining rests with the statutes of governance.

Examining the role of privilege

The prime reasoning behind providing the parliamentary privileges and rights to the parliamentarians is the aim of ensuring that the exemptions and rights provided therein gives the parliamentarians, an effective tool of functioning wherein the independence of functioning can be ensured and so the effectuation of the actions they take on behalf of the public at large in every aspect and manner whatsoever. The privileges at their best help in maintaining the honour, authority and dignity of the house without counter-effecting the parliamentary intent in any way. The immunity from being held liable for the words uttered inside, and fair criticism within the limits of parliamentary rules make sure that the entire mechanism is flexible in nature and is not unruly or arbitrary as the actions are directly taken against the members in the manner prescribed. Until and unless the powers become arbitrary in nature and the overpowering as a result of the granted immunity could be avoided, the privileges stand valued and not undone.

Prevalent parliamentary privileges in India

The parliamentary privileges present to the members of the parliament can be categorized into several layers.⁷ From the first category being, the basic freedom of speech in the parliament, further the presence of immunity to the members of the parliament about what is being said

⁶ K. P. Joseph, *Mess in Management of Government Finances: Will New Parliamentary Committees Help?* 28 ECONOMIC AND POLITICAL WEEKLY 17, 794–795 (1993) <http://www.jstor.org/stable/4399635>.

⁷ Tewari M & Saxena R, *The Supreme Court of India: The Rise of Judicial Power and the Protection of Federalism*, ARONEY & J. KINCAID (Eds.), *Courts in Federal Countries: Federalists or Unitarists?* (pp. 223–255), The University of Toronto Press (2017) <http://www.jstor.org/stable/10.3138/j.ctt1whm97c.12>.

and what is being voted or decided upon within the parliament premises, the attached liability about the publications made in association with the parliament, existent speeches and related aspects via publications including newspaper, reports, votes and so on. Once the first category privileges are discussed the ones that follow are the second category privileges wherein the privileges enjoyed by the House of Commons members persist until and unless taken away or disrupted by the law in any manner.

The other categorization that has been prevalent concerning the privileges include both collective and individual privileges wherein the former is enjoyed by the parliament as a whole and the latter by the individuals alone which falls on the members of parliament individually. Concerning the collective rights via the relevant insertion in the 44th amendment of the constitution, wherein from a point of not being able to publish any information of the parliament, there has been the provision that associated and allowed the publication of all the relevant information except the ones circulated during the secret sittings of the parliament. Further, the parliament proceedings are not permitted to be viewed by strangers out of the privacy of the discussion in any manner. The very fact that secret sittings are allowed in the house precisely stands out as a reasonable privilege of the parliament. Now, concerning the rule-making powers, the parliament is free to make rules concerning the procedural regulations, business conduct and the work adjudication of the house post the discussion of affairs. The parliament is also vested with the right to receive information about the arrest, detention, conviction, imprisonment and release of both the outsiders and the members. The parliament is free to conduct relevant enquiries and thereby the right to call upon the witnesses as well as it may deem fit.

The parliament is also immune from being called or enquired by the court via any intervention whether it be on the houses or the committees If at all. Any arrest or associated legal issue has to take place inside the parliament, it has to take place with the permission of the concerned presiding officer, that is the speaker or the vice president in the lower house or the upper house respectively. The sources of these privileges as aforesaid could be traced back to the provisions of the constitution parliamentary laws, rules established and laid down by the houses, the conventions of the parliament and the judicial pronouncements concerned.

The individual privileges of parliamentarians include non-arrest rights wherein while the parliament is in session no arrest can be executed against the members of the parliament in whatsoever offence commission, secondly, the freedom of speech is enshrined on the members

of parliament as enshrined to the common men. There cannot be any court proceedings against the parliament members for the speeches made inside the premises of the parliament in any circumstance. The regulations of the speech however are made via the rules of the parliament and hence not by other means in any manner. Moreover, there have been exemptions concerning jury service as well, wherein they have the right to refuse to provide, evidence, or give statements or testimonies in the court while the parliament is in session. Hence, in clubbed unanimity there exist enumerable privileges.

The niche of the constitution

The parliamentary privileges can nowhere be brought toward discussion in anyways unless the relevant articles are concerned. i.e. Articles 105 and 194 are duly discussed. Under Article 105, the freedom of speech inside the parliament shall be only regulated with the rules and standing orders similar to the overall operation of Article 19(2) of the constitution and not otherwise. The corresponding articles to the aforementioned articles are Articles 194 and 212 of the constitution. So until and unless barred by the aforesaid rules and standing orders, the rights of the parliamentarians remain intact.⁸ The former right lays down or mirrors Article 19(1)(a) and while the latter concrete the provision even further with the reasonable restriction imposed being discussed alongside. As per Section 194, no parliamentarian, in any case, can be held liable for what has been spoken by him inside the parliament in any manner whatsoever and also concerning the publications that are released associated with the said speeches, remarks or words uttered in the parliament session towards the members or in general. Also, when the immunity or privilege is defined, it has to be on par with the up-to-date rules and regulations framed for the house and its smooth operation as prescribed and not otherwise and the same shall turn out to be contradictory.⁹ On one hand when the articles refer them to be rights or privileges, they sound more like immunities to the members, especially concerning their rights to not be arrested thereof.

Precedential study

The case laws that precedentially dealt with the parliamentary privileges and the law courts came to a level of resolution in the case of Keshava Singh¹⁰ wherein the publication followed

⁸ Rubinoff, A. G., *India's New Subject-Based Parliamentary Standing Committees* 7 ASIAN SURVEY 36, 723–738 (1996) <https://doi.org/10.2307/2645719>.

⁹ Chatterjee N C, *Control of the legislative powers of administration*, 1 JOURNAL OF INDIAN LAW INSTITUTE 1, 123 (1958)–xvii. <http://www.jstor.org/stable/43952887>.

¹⁰ Keshava Singh v. State, 23 AIR 1965 (India).

by the printing of the pamphlets associating the functioning of the UP Legislative Assembly had been brought in as a matter of concern before the court wherein the speaker was convicted for the breach of privilege of the parliament. However, the prime matter involved was the demand for the arrest of Keshava Singh who has been a member of the parliament for contempt of the house against whom a warrant was issued. The arrest and detention of the parliamentarians were sought to be replaced by their presence before the assembly with an explanation instead.

Further, to explain the set of terms parliamentary privileges were brought about in the case of *Raja Ram Pal v. the Hon'ble Speaker*¹¹, wherein a definition was brought about as: "*A special right, advantage or benefit conferred on a particular person. It is a particular advantage or favour granted to one person as against another to do certain acts.*" Hence, the court addressed parliamentary privilege as a matter of special right unlike the ones that are pre-bestowed and exclusive in nature, that have been granted from a higher authority being a summation of a fundamental right. Concerning the immunity of the transactions inside the parliament has been laid down in the case of *Tej Kiran Jain v. Sanjeeva Reddy*¹² wherein the court drew the line of the part where a transaction is identified to have started inside the house of parliament, then it deems to be immune from being proceeded before any court of law. Dating back for the first time, the concept of freedom of speech was brought about in the 17th century and hence was declared to be established in the case of Sir John Eliot.

Also, in the case of the JMM Bribery Case, the privilege was defined to the extent that even the bribery collected for garnering votes in the parliament was considered to be included under the privileges of the parliament and hence is expected to be condoned. On a differential note, in the case of *Wason v. Walter*¹³, the court took the focal point to the aspect that the parliamentary proceedings have to be communicated to the public considering the paramount importance of the information although prioritising certain settings and other information to the public as to be retained within the four walls of the parliament considering the secrecy. The stance is followed in India as well wherein there prevails partial transmission of information inside and outside. Moving ahead right after the other, the cases multiplied concerning the multiple observations that covered privileges one after another. In the case of *K Anandan*

¹¹ *Raja Ram Pal v. the Hon'ble Speaker*, Civil W.P. No. 1 of 2006 (India).

¹² *Tej Kiran Jain v. Sanjeeva Reddy*, 1970 AIR 1573 (India).

¹³ *Wason v. Walter*, QBD 1868 (England).

Nambiar v. Chief Secretary¹⁴, Governor of Madras, the court held against the privileges stating that there exist no additional privileges to the members apart from the existing rights of the common people.¹⁵

State the landmark case, the Searchlight case, wherein on the other hand, the Supreme Court favoured the parliamentary privileges by stating that publishing the contents discussed in the parliament cannot be considered an agreeable action and hence is to be condemned. Hence the breach of privilege was considered as a matter of concern in the case. It was held that:

“We do not think it would be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must always yield to the former. The majority decision, therefore, is taken to have settled only that Article 19(1)(a) would not apply and Article 21 would.”

In the case of Gunupati Keshavram Reddi v, Nafsul Hussain¹⁶, the right as bestowed under Article 22(2) of the constitution was considered with prime relevance and the arrest over the breach of parliamentary privilege was condemned and the order was quashed by the court. Therefore, the case laws that have made reference and remarks to the parliamentary privileges prevalent hence goes with the list.¹⁷

Benefits to the members & prime limitations in exercise

The prime advantages alongside the free and fair usage of the powers of the parliamentarians include multiple aspects governing the principles within the parliament and the representative capacity of the members. Primarily, the fact that the province of separation of powers, there exists an undeniable possibility of friction between the arms of government, the legislature and the executive. The checks and balances are ensured with no disturbance caused whatsoever. Further, when there are reduced restrictions, decision-making becomes quicker and smoother. This is primarily because there is no scope of time constraints out of time taken due to the imposed restrictions over the parties. Concerning the requisite personnel and cost incurred, the overall reduction is evident in the best ways possible due to the fact the ensure system is less

¹⁴ Anandan Nambiar v. Chief Secretary, W.P.(Civil) 47 of 1965 (India).

¹⁵ Sabapathy, N., *The second chamber in Andhra Pradesh: Members' perceptions*, 48 THE INDIAN JOURNAL OF POLITICAL SCIENCE 1, . 23–50, <http://www.jstor.org/stable/41855121>.

¹⁶ Gunupati Keshavram Reddi v, Nafsul Hussain, W.P.(Civil) 75 of 1952 (India).

¹⁷ Dasharath, W., *Changing equation between Indian Parliament and judiciary*, 71 THE INDIAN JOURNAL OF POLITICAL SCIENCE 1 (2010) , 163–167. <http://www.jstor.org/stable/42748377>.

expensive in operation compared to the presidential form of governance. Therefore, benefits are such that there exists no breach of the laws of privilege and hence ensuring that the voices are being heard without any restrictions in a whatsoever manner as prescribed.

On the contrary, there exist certain disadvantages to the existent advantages due to multiple reasons. Primarily, the high chance of arbitrariness in operation. Further, there is a high chance of misappropriation of power and arrogance that will govern the houses of the parliament due to the unquestionable nature of the arguments or immune statements made by the members of the parliament. The further added fact of loyalty of the Prime Minister towards the ruling party will increase the possibility of bias and hence increased favouring towards the people. The chances of instability in the functioning of the parliament and thereby the increased uncertainties in the functioning and powers of the parliament is the possibility of usage of veto power causing a vote of no confidence against the government. The functions of the cabinet are also such that the same can overload the present powers of both houses making the entire functioning complex and difficult for the executant. Finally, the lack of specialization within the parliament can lead to inefficient functioning making it difficult and complex to operate altogether.

On one hand, the privileges provide immunity wherein the overall functioning becomes easier operation due to the freedom enshrined upon the parliamentarians concerning their representation in the houses, while on the other hand, the absolute sovereignty will end up giving excessive powers to the members of the houses wherein the judiciary is also not subsisting the powers to make unnecessary interruptions to the functioning of the governance inside the house of parliament or legislature. The non-interruption of the judiciary, however during multiple has resulted in numerous jargon which is left unquestioned and not asked about irrespective of being major violations and disruptions over the civil rights of the members of the houses.¹⁸ For instance, if the European Court of Human Rights (ECHR) is taken into consideration, the courts have always favoured and upheld the rights of the citizens rather than making it taxing for the members in whatsoever manner prescribed.¹⁹ However, alongside the liberty bestowed, the courts also prescribe the houses to take reasonable care over the entire machinery to prevent a laissez-faire system of governance inside the houses of the parliament.

¹⁸ Mathur, R. N., *Legislative control of delegated legislation: A survey*, 21 THE INDIAN JOURNAL OF POLITICAL SCIENCE 1, pp. 25–37 (1960), <http://www.jstor.org/stable/41852089>.

¹⁹ Chauhan, D. C., *Parliamentary sovereignty v. Judicial supremacy in India*, 74 THE INDIAN JOURNAL OF POLITICAL SCIENCE 1, pp. 99–106 (2013), <http://www.jstor.org/stable/24701031>.

Conclusion

The overall study hence, precisely implies that parliamentary privileges are a combination of both reasonable restrictions and unreasonable arbitrary exercise of powers. The entire functioning of the machinery hence is aimed at ensuring that the reasonable capacity of the parliament in undertaking representative capacity on behalf of the electorate is undertaken in an undisturbed manner and format in the best ways possible. In finality, the relevance of parliamentary privileges alongside the lessons taken from the British parliamentary system hence makes the overall working effective and precise.²⁰



²⁰ Chima, J. S., *Changing Patterns of Democracy and Political Representation in India: An Introduction* 52 ASIAN SURVEY 52, pp. 239–246. (2012), <https://doi.org/10.1525/as.2012.52.2.239>.