

**PARLIAMENTARY PRIVILEGES IN INDIAN GOVERNANCE SYSTEM: ROLE OF
FREE SPEECH IN PROMOTING TRANSPARENCY**

Dr. Prashna Samaddar¹

Victor Nayak²

INTRODUCTION

Parliamentary privilege as a concept can be defined in various manners and has been done so by various eminent jurists. May defines the privileges as,

“The sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus, privilege though part of the law of the land, is to a certain extent an exception from the ordinary law.”³

The legal concept regarding parliamentary privileges is laid down under Article 105 and Article 194 of the Indian Constitution. As per these provisions the members of Parliament have been given protection from being tried or prosecuted under any civil or criminal proceeding with regards to anything that they might say or approve or disprove by casting their vote in the parliament or any committee as has been exclusively provided in the constitution.⁴ The advantages are sure rights having a place with Parliament aggregately and some others having a place with the Members of Parliament individually, without which it would be inconceivable for the House to keep up with its autonomy of activity or the pride of position or for the individuals to release their capacities.⁵

While providing the explanations behind leaving the parliamentary privileges vague in the Indian Constitution, Dr. B R Ambedkar, while chairing the Constituent Assembly which drafted the Indian Constitution, brought up that aside from the advantage of the right to speak

¹ Assistant Professor, School of Law, Galgotias University

² Assistant Professor, School of Law, Galgotias University

³ Hajare, Shashikant *The law of parliamentary privileges in India: problems and prospects*, Sodhganga (Oct. 30, 2018 10:04 AM) shodhganga.inflibnet.ac.in/bitstream/10603/52360/12/12_chapter%205.pdf.

⁴ V Razdan, *Parliamentary privileges in India: separation of powers*, Sodhganga (Oct. 30, 2018 10:04 AM) www.shodhganga.inflibnet.ac.in/bitstream/10603/8783/4/04_preface.pdf.

⁵ DALIP SINGH, *Parliamentary Privileges In India*, 26 IJPS, No. 1 76, 75-85 (1965).

freely of discourse and resistance from capture, the advantages of parliament were a lot more extensive and amazingly hard to characterize. Thus, according to him it was not workable to *create a complete code on the above subject matter and incorporate the same as a part of Indian Constitution*. So, it was thought best to leave it to the Parliament to define and limit its privileges whereas the Indian Parliament was vested with the same set of privileges that were enjoyed by the England House of Commons.⁶

The Constitution specifies some of the privileges. They are:

- the right to speak freely of discourse in Parliament;⁷
- not liable to any procedures in any court in regard of anything said or any vote given by him in Parliament or any board of trustees thereof;⁸
- resistance to an individual from procedures in any court in regard of the distribution by or under the authority of one or the other Place of Parliament of any report, paper, votes or procedures.⁹
- Courts are disallowed from questioning the legitimacy of any procedures in Parliament on the ground of a supposed abnormality of strategy.¹⁰
- No official or individual from Parliament enabled to control technique or direct of business or to keep control in Parliament can be dependent upon a court's locale in regard of the activity by him of those forces.¹¹
- No individual can be at risk to any considerate or criminal procedures in any court for distribution in a paper of a generously obvious report of procedures of one or the other place of Parliament except if the distribution is demonstrated to have been made with perniciousness. This invulnerability is additionally accessible for reports or matters broadcast through remote telecommunication.¹² This immunity, however, is not available to publication of proceedings of a secret sitting of the House.¹³

⁶ *Id* at 78.

⁷ INDIA CONST. art. 105, cl. 1.

⁸ INDIA CONST. art. 105.

⁹ *Id*.

¹⁰ INDIA CONST. art. 105, cl. 1.

¹¹ INDIA CONST. art. 105, cl. 2.

¹² INDIA CONST. art.361A.

¹³ INDIA CONST. art.361A, cl. 1, proviso.

Aside from the advantages indicated in the Constitution, the Code of Common System, 1908, accommodates independence from capture and confinement of individuals under common interaction during the duration of the gathering of the House or of a board thereof and forty days before its initiation and forty days after its decision.¹⁴

Different advantages, as provided under the Rules of Procedure and Conduct of Business in Lok Sabha¹⁵ by specific legislative inputs have been discussed hereunder:

- Exclusion of Individuals from responsibility to fill in as legal hearers.¹⁶
- Right of the Parliament to get quick data with regards to capture, confinement, detainment as well as arrival regarding the Part.¹⁷
- Prohibition with respect to capture and administration of lawful interaction inside the Parliament premises without acquiring authorization of the House Speaker.¹⁸
- Restriction regarding exposure to the procedures or choices of a mysterious sitting of the House.¹⁹
- All legislative Councils can send people, documents, and accounts important with the end goal of the request by an advisory group.²⁰
- A Parliamentary Panel might direct promise or insistence to an observer (witness) analyzed before it.²¹
- The proof offered in front of the Panel of Parliamentarians and its statement and procedures can't be revealed or distributed by anybody unless it comes to the Parliament.²²
- Option to deny the distribution of its discussions and procedures.²³
- Privilege to leave out outsider from the House.²⁴

¹⁴ §135A of Code Of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908 (India).

¹⁵ Rules of Procedure and Conduct of Business in Lok Sabha, 1952 (Aug. 13, 2021, 02:05 PM) <http://164.100.47.194> › RULES-2010-P-FINAL_1

¹⁶ SUBHASH C. KASHYAP, OUR PARLIAMENT 234-36 (National Book Trust 1995).

¹⁷ §§ 229 and 230 of Rules of procedure and conduct of Business in Lok Sabha, 1952

¹⁸ Kashyap, *supra* note 15 at 236

¹⁹ *supra* note 16, §§ 232 and 233.

²⁰ *Id* § 252

²¹ *Id* §§ Rules 269 and 270

²² *Id* § 272

²³ *Id* § 275

²⁴ *Id* § 249

- Right to punish individuals in case if any breach of privilege or contempt of the House, whether they are members of the House or not.²⁵

CONTEMPT AND FREE SPEECH: CONFLICTS

As a rule, any demonstration or oversight which deters or blocks either Place of Parliament in the exhibition of its capacities, or which hinders or obstructs any Part or official of such House in the release of his obligation, or which has a propensity, straightforwardly or by implication, to deliver such outcomes might be treated as a hatred despite the fact that there is no point of reference of the offense.²⁶

At the point when one looks at the connection between the courts also, lawmaking bodies, the inquiries with respect to the position to choose the presence of an advantage and with regards to whether the courts could look at the legitimacy of committal by a lawmaking body for its hatred or break of advantage and so forth have to be tended to.²⁷ Indeed, the circumstances under which the lawmaking bodies guarantee advantages in India get the courts the field regularly. In India, the lawmaking bodies might guarantee the advantages under three circumstances and where the courts can't be allowed to have any part to play:

- at the point where the Constitution provides the same explicitly;
- the council has made the legislation;
- a privilege that has been provided to by the House under the Indian Constitution²⁸

A portion of the above-expressed issues were analyzed by the Apex Court in Kesava Singh In re²⁹ and the greater part assessment for this judgment is provided regarding a constitutional interpretation as upheld by 6:1 majority:

²⁵ *Id* § 248

²⁶ ERSKINE MAY, PARLIAMENTARY PRACTICE 115 (21st ed., 1989).

²⁷ M.P. JAIN, INDIAN CONSTITUTIONAL LAW 66 (8th ed. 2018).

²⁸ *Id* at 68.

²⁹ AIR 1965 SC 745; This reference was a continuation of the death of a request by a phenomenal Full Seat of 28 Appointed authorities, remaining, under Article 226, the execution of the U.P. Gathering Goal requesting two Appointed authorities of the Allahabad High Court to be brought into care before the Bar of the House to clarify why they ought not be rebuffed for the scorn of the House. The two Appointed authorities had conceded the habeas corpus request and allowed bail to Mr. Kesava Singh who was going through detainment in compatibility of the Gathering Goal pronouncing him blameworthy of the break of advantage. The goal of the Get together and the stay request gave by the Full Seat brought about an established impasse. Therefore, the President alluded the matter under Article 143 to the High Court for its viewpoint.

- The manner of interpreting Article 194 (as well as Article 105) concerning the nature, degree and impact of the autonomy of the House rests with the legal executive of the country.
- As per powers provided under Article 226, the High Court can investigate the orders given by the law makers with regards to the articulation “any position” as mentioned under Article 226 which encompasses the latter too.
- Article 211 provides clearly that the behaviour of a judicial member in the release of his obligations cannot be the topic of any activity which can be tabled by the House while exercising its functions or advantages presented by Article 194(3).
- Article 212 prevents the Court from regulating the procedure that is to be followed inside the House but does not prevent it from checking the validity of any action that has been taken in connection to the same.
- The first part of Article 194(3) when read with the last part of Article 194(4) ensures that the future laws define the privileges which should be in conformity to the fundamental rights and thus such enactment would be “law” as per Article 13 of the Indian Constitution which thus gives the Court the competency to check the sanctity of action in light of the existing fundamental rights.

FREE SPEECH AND PARLIAMENTARY PRIVILEGES: RELATIONSHIP AND ISSUES

The ability to speak freely is dependent upon different arrangements of the Constitution and subject to the principles outlined by the House under its ability to control its own procedures.³⁰ Indian Parliament’s upper and lower house both have outlined certain guidelines and have approved their directing officials to apply and authorize them. For instance, the guidelines of the strategy of the lower chamber enforce various impediments upon the right to speak freely of its individuals and enable the speaker to make a fitting move guiding the individuals to pull out from the House;³¹ on requesting his suspension;³² or ordering the ban of offensive words from the proceedings of the House.³³

³⁰ INDIA CONST. art. 118, cl. 1.

³¹ § 373, Rules of procedure and conduct of Business in Lok Sabha, 1952.

³² *Id.* § 374.

³³ *Id.* § 380.

Besides the Constitution forces another constraint upon the the right to speak freely of discourse whereby in the Parliament that no conversation will happen concerning the direct of any appointed authority of the High Court or a High Court in the release of the obligations besides upon a movement for introducing a location to the President appealing to God for the evacuation of the adjudicator.³⁴

The expression “powers, privileges and immunity” as provided in the Constitution have evoked sharp contention in the country since the initiation of the Constitution. This is perhaps the most disputable provision in the Constitution which looks to connect and equalise, the advantages and immunity accessible to the individuals from Parliaments in the two nations.³⁵

The House of the People (Lower House) of the Indian Parliament made history on August 29, 1961, by reprimanding a journalist at the Bar of the House and in that context functioning as the High Court of Parliament for the first time. It was a unique event and has set in motion the discussion which actually proceeds unabated. The individual to whom the censure was controlled was the supervisor of Barrage, a Bombay liberal diary. His offense was the distribution of an article in the diary entitled “The Kripaloony Impeachment”³⁶ which, as per the Privileges Committee of the Lower House of Indian Parliament, “in its tenor and substance criticized a fair individual from this House (J. B. Kripalani) and cast reflections on him by virtue of his discourse and direct in the House and alluded to him in a derisive and offending way.”³⁷

The Parliamentary Proceedings (Protection of Publication) Act, 1956 states that no criminal or civil proceedings may be initiated before any judicial forum against any individual in matters related to the distribution of a fundamentally correct report which deals with the Parliament proceedings unless it can be shown with reasonable conviction that it was specifically instructed by the Speaker of the House to obliterate the same.³⁸ This position was

³⁴ INDIA CONST. art. 121.

³⁵ Singh, *supra* note 5.

³⁶ Gunupaty Keshavram Reddy v. Nafisul Hassan AIR 1954 SC 636; MSM Sharma v. Shri Krishna AIR 1959, SC 365.

³⁷ M. V. Pylee, *Free Speech and Parliamentary Privileges in India*, 35 Pacific Affairs, 13, 11-23 (1962).

³⁸ Dr K. Madhusudhana Rao, *Codification of Parliamentary Privileges in India - Some Suggestions*, (2001) 7 SCC (Jour) 21.

strengthened after the insertion of Article 361-A brought about by the 44th Constitutional Amendment Act of 1978.³⁹

In *Alagaapuram R. Mohanraj and Ors vs Tamil Nadu Legislative Assembly*⁴⁰ Justice Chelameswar has given a decision in this regard in recent times whereby the Court made the following issues:

1. When an individual from a State Assembly takes part in the House proceedings, does it come under the purview of freedom of speech and expression as guaranteed under Article 19(1)(a) of Indian Constitution?
2. Whether any act of anybody or authority empowered by any law hinders any individual from taking part in the discussions held at any sessions being conducted by the body or authority in question and that hindrance leads to preventing that individual from exercising his fundamental right to speech and expression as provided under Article 19(1)(a) of Indian Constitution?

Upon examination of the above issues in context of the mandate provided under the constitution, it was decided by the Apex authority that the scope of freedom of speech and expression as guaranteed under Article 19(1)(a) is quite distinct and holds a higher position as compared to the same right when provided as a privilege under Article 105 or Article 194 of Indian Constitution. There are 4 major factors which go on to highlight the mentioned distinction:

- The former is wider in scope as its available to every citizen of India, whereas the latter is applicable and enjoyed only by the legislators;
- whereas the former is unassailable, the latter is applicable only while individual remains as a member of the Parliament;
- more importantly Article 19(1)(a) has not confinement issues unlike the other set of provisions i.e. Article 105 and 194 which are restricted to the legislative premises
- though both the sets of provisions provide for some restrictions upon the enjoyment of the rights, but the freedom of speech in as a part of parliamentary privileges are regulated by legislative bodies or as imposed by the Indian constitution as under Article 121 and 211 of Indian constitution.

³⁹ *Id.*

⁴⁰ WRIT PETITION (CIVIL) NO. 455 OF 2015.

CODIFICATION AND PARLIAMENTARY PRIVILEGES: CONCLUDING REMARKS

There is an indisputable difference in the position regarding the supremacy of all rights and advantages and the privileges that are present under Indian legal framework. In India the legislative bodies decide about the privileges in context of its scope, violation and punishment for any such violation with regards to their speech in the Parliament which is somewhat unsettling and raises some grave questions regarding the unrestricted power that is available and somehow its undermines the principles of Indian constitutional and democratic framework.⁴¹

It is the utmost responsibility of the authorities to maintain the balance between the privileges and the rights so that it does not affect the constitutional framework. Though in many judicial opinions judiciary has respected the privileges of the members of Parliament and State Assemblies but later even they also felt that the privileges should be restricted in such a way that it does not damage the fabric of Indian democracy. It has been seen that on many occasions the freedom of press have been curtailed in the garb of these privileges. Paying heed to the Constitution of various countries, the Apex Court in case *M.P.V. Sundaramier and Co. v. Territory of Andhra Pradesh* advised:⁴²

“The strings of our Constitution were no vulnerability taken from other Government Constitution yet when they were woven into the surface of our Constitution their compass and their structure experienced changes. Thusly, critical as the American decisions are as demonstrating how the request is overseen in the Government Constitution exceptional thought should be taken in applying them in the comprehension of our Indian Constitution.”

The National Commission to Review the Working of the Constitution (NCRWC) in its report has mentioned that:⁴³

“the advantages of lawmaking bodies should be portrayed and delimited for the free and independent working of Parliament and State Councils.”

⁴¹ Subodh Asthana, *Parliamentary Privileges in India*, iPleaders (Jul. 23, 2018, 02:05 PM) https://blog.ipleaders.in/parliamentary-priviledges/#Misuse_of_Parliametary_Privileges.

⁴² AIR 1958 SC 468.

⁴³ NCRWC Report, 2002 (Jul. 23, 2018, 02:05 PM) <https://legalaffairs.gov.in/ncrwc-report>

Thus, it needs to be understood that the process of codification has its advantages and establishes the principles of Rule of Law. It thus goes without saying that the advantages of the Parliamentarians need to be systematized by removing penal provisions for any violations of the privileges by any common man. Parliamentarians and the greater part of the Presiding Officials have gone against the transition to classify them on the ground that as the legal understanding of the law is the obligation of none else except for the legal executive. Article 105 clause (3) and Article 194 clause (4) of the Constitution of India, 1950 are provision which enable for characterizing the forces, advantages and insusceptibilities of Indian Parliament just as its individuals and committees. The un-codified and characterize corrective forces of authoritative bodies in India lead to legitimate polemics between assemblies, court and resident in India. As rightly put by Justice Iyer “*Parliament of India is not and can never be a court and we have separate judiciary*”⁴⁴.

⁴⁴ Dr. Jyoti Dharm and Mr. Gaurav Deswal, *Parliamentary Privileges In India: A Comprehensive Study*, 3 BLR 177, 172-177 (2016).