



**ORIGINAL RESEARCH PAPER**

**Law**

**PARLIAMENTARY PRIVILEGES & THE COURTS**

**KEY WORDS:** Parliamentary Privileges, Article 105, Article 19.

**Tejaswini Bajpai** Student, LL.M., Amity University Uttar Pradesh, Lucknow Campus

**Dr. Arpita Kapoor\*** Asst. Professor, Amity University Uttar Pradesh, Lucknow Campus\*Corresponding Author

**ABSTRACT**

The two Houses of Parliament, its committees, and their members are granted specific rights, immunities, and exemptions known as "parliamentary privileges." The Indian Constitution's Article 105 defines certain rights. Members of Parliament are protected by these privileges from civil liability for statements made or actions taken while performing their official duties, but not from criminal culpability. Only when a person is a member of the house can they make use of the privileges. The privileges are stated to be terminated as soon as the person ceases to be a member. The privilege matters only see the question of Parliament and Court relationship. It involves certain facets, that are who amongst the Court or the Legislature, decides whether a particular privilege claimed by a House exists or not? When a privilege is held to exist, is the House the final judge of how, in practice, that privilege is to be exercised? Can the Courts go into the privilege of validity or propriety of committal by a House for its contempt or breach of privilege? Can the Courts interfere with the working of the Committee of Privileges? These are the areas that shall be dealt with in the following article to clarify the relation existing between the privileges provided to parliamentarians and the powers of the Courts.

In Webster's Third New International Dictionary, the definition of "privilege" is given as "a right or immunity granted as a peculiar benefit, advantage or favour; a peculiar or personal advantage or right especially when enjoyed in derogation of common right; a prerogative, a right or immunity attached specifically to a position or an office."

The Parliamentary privileges are explained by Sir Erskine May in his "Parliamentary Practice" as the total of unique rights that each House collectively enjoys as a constituent portion of the High Court or Parliament, as well as each member of each House individually, and which surpass those held by other organisations or individuals.<sup>1</sup>

The two Houses of the Parliament, their committees, and their members are granted specific rights, immunities, and exemptions known as "Parliamentary privileges." They are essential to ensuring the autonomy and efficacy of their acts. Without these rights, the House would be unable to uphold its authority, honour, and dignity or defend its members from any interference. As they carried out their Parliamentary duties, in accordance with the Constitution, anybody who is permitted to speak and participate in a House of Parliament's or a committee's activities is likewise entitled to Parliamentary privileges. They include the Union ministers and the attorney general of India. Although the president, being an essential member of the Parliament, does not enjoy these privileges.

As the primary role of the Legislature in a welfare state is to 'legislate and criticise,' it is crucial that members of the Legislature have all required privileges and immunities to enable them to carry out their responsibilities freely and according to their moral convictions. In order to accomplish this, legislators must possess a number of additional rights in addition to the fundamental liberties that all citizens share.

The framers of the Indian Constitution placed a High value on two fundamental rights that they believed were crucial to the success of Parliamentary democracy. As a result, they specifically enshrined these rights in the Constitution of India in Articles 105(1) and (2) relating to the Union Parliament as well as in Articles 194(1) and (2) relating to State Legislatures.

However, these privileges started to be misused by the Parliamentarians through defection under the garb of Right to Freedom of Speech and Expression. The much-anticipated anti-defection provision, which is included in the Tenth

Schedule to the Constitution, was thus born through the Constitution (Fifty-Second Amendment) Act of 1985. Nonetheless, despite being largely under control, the illness of political defection could hardly ever be fully cured.

In *Kihota Hollohon Vs Zachilhu and Others*,<sup>2</sup> it was argued that the Tenth Schedule infringes the democratic rights of elected members of Parliament and state Legislatures. It infringes upon a member's right to free speech, free election, and free conscience. The Supreme Court rejected the argument and determined that the Tenth Schedule's provisions do not violate the democratic rights of elected members of Parliament or state Legislatures. Their right to free speech, free elections, and freedom of conscience are not violated. In India, a member's freedom of speech is not unrestricted. The provisions under the Tenth Schedule do not intend to hold a member of a House accountable in a "Court" for whatever he said or did in the State Legislature or in Parliament. Articles 105 or 194 cannot be used as a shield from the repercussions of imprudent floor crossing. The provisions of paragraph 2 of the Tenth Schedule are therefore constitutionally lawful because they do not infringe upon any rights or freedoms guaranteed to elected members of Parliament or State Legislatures by Articles 105 or 194 of the Constitution.

The Court held in *Parkash Singh Badal Vs. Union of India*<sup>3</sup> that as far as a member's right under Article 105 is concerned, it has been made subject to the clause under the Constitution, as well as the norms and Standing Orders that govern how Parliament conducts itself.

Any constitutional measure, such as the 52nd Amendment Act, can be made to regulate or restrict the right to free speech granted to a member of the Parliament. As a result, it is impossible to claim that the clause in paragraph 2(1)(b) violates the terms of Article 105 of the Constitution.

A vital requirement of a Member of Parliament is the ability to communicate with voters, party members, political rivals, government agencies and the media. The value of this form of public outreach was acknowledged by the Legislature.

An MP is given a unique immunity because it is recognised that free speech is important to their constitutionally mandated duties. This applies to speeches, submissions, testifying before the House and document preparation for any of the aforementioned purposes.

It is alleged that Article 19's guarantee of fundamental rights is violated by the rules against defamation. The Court iterated that the right to reputation is a component of the right to life under Article 21. The Court, using the principle of "balance of fundamental rights", propined that right to freedom of speech and expression cannot be given so much latitude that even reputation of an individual, which is a constituent of Article 21, would have no entry into that region.

In Britain, there has been controversy in the past between the House of Commons and the Courts on the questions relating to parliamentary privileges. Presently, while the Courts deny the House of Commons, the right to determine the limits of its own privileges; they allow it to exercise its privileges within the established limits.

In Keshav Singh<sup>4</sup>, the Allahabad High Court stated that it was its responsibility to determine if the privilege claimed by the House was a privilege that the House of Commons had at the time the Constitution was put into effect. The judgement emphasises the importance of the three branches of the Democratic state—the Legislature, Executive and Judiciary—operating in unison. Only their harmonious working will help in the peaceful development and stabilization of India's democratic way of life.

The Court emphasised that Article 211 prohibits state Legislatures from debating a High Court judge's behaviour. No Legislature in India has the authority to take action against a judge for alleged contempt committed by him while performing his duties under Article 194(3) or 105(3).

Sir Ivor Jennings<sup>5</sup> has stated a correct position of the relation between Parliament and Courts as follows:

"Thus, the law and custom of Parliament is a different branch of law, administered in different Courts, the High Court of Parliament, from the common law, which is administered by the Supreme Court of Judicature. Whether it is called part of the laws of England is a matter of definition. If it is, then the laws of England deal with three kinds of rules, legislation, the case law of the Courts and the law and custom of Parliament; though the last is composed partly of legislation and conflicts with the second only in exceptional cases. As is implied in the name, there is a 'custom' as well as a 'law' of Parliament."

The first case in which the Supreme Court dealt with the warrant issued by the speaker, was of Gunupati Keshavram Reddy Vs. Nafisul Hasan<sup>6</sup>. However, in that case, no question of Parliamentary privilege was raised.

Later in the President's Reference No. 1 of 1964<sup>7</sup>, when the privilege of the Legislature to prohibit publication was read into Article 194(3), a conflict appeared between the right of publication conferred by Article 19(1)(a) and the right to prohibit publication conferred on a House of the Legislature by Article 194(3).

In the case of Pandit M.S.M. Sharma Vs. Shri. Krishna Sinha<sup>8</sup>, it was held that the House of Commons had the authority or privilege to forbid the publication of a true account of discussions that took place within the House at the outset of our Constitution. Thus, they had the authority to forbid the publication of an incorrect account of proceedings. In India, however, the position in respect of the reporting of proceedings of the House was made stronger by inserting Article 361-A vide Constitution (44th Amendment) Act, 1978.

In recent times, the role of media has been seen to have increased in affecting the outlook of people towards the use or misuse of the Parliamentary privileges conferred to the Members of Parliament. The media trial serves as a stimulant to hasten the legal procedure.

But, the role of media in publicizing about any event and its

efforts to generate views on those events, way before the actual trial before a Court of law, has led to biased approaches and predetermined thoughts that impact the principles of natural justice. It is motivated by emotions than facts, which undermines the idea of justice. The ideas of natural justice are in conflict with this situation. In a democracy, the separation of powers has been given prominence, media trials can be viewed as a media intervention in the legal system.

Recently, the CJI stated that agenda-driven discussions and kangaroo Courts run by the media are bad for democracy. Trial by media was a popular phrase to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before, or after, a verdict in a Court of law.

In March 2023, Congress leader Rahul Gandhi was disqualified from the Lok Sabha, following his conviction in a defamation case by a Surat Court over his remark made during the 2019 Lok Sabha elections.

In party politics and representative democracies, political score-keeping is constant, but it's important to comprehend the underlying currents. The Parliamentarians sometimes wobble and become overexcited during election campaigns, making disparaging remarks about others and that should be avoided at all costs.

To conclude, it can be stated that the House decides whether or not a recognised privilege has been violated. But, to determine whether a privilege exists or not, the Supreme Court and High Courts have a duty to interpret the Constitution and no legislative body may assert such authority.<sup>9</sup>

A democratic system is supported by two pillars: a democratic Legislature and an independent Judiciary. Both must work together in a spirit of cooperation to advance the cause of the nation's rule of law.

#### REFERENCES

1. Sir Erskine May, "Parliamentary Practice" 16th Edition, Pg 42.
2. AIR 1993 SC 412; 1992 Supp. (2) SCC 651.
3. AIR 1987 P&H 263.
4. AIR 1965 All. 349, Keshav Singh Vs. Speaker, Legislative Assembly.
5. Law and the Constitution, 5th ed.
6. ('54) A.S.C. 636.
7. (1965) 1 S.C.R. 413, ('65) A.S.C. 745.
8. AIR 1959 SC 395.
9. Jain M.P., Indian Constitutional Law, Sixth Edition, Pg. 116.