

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 3

2024

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PARLIAMENTARY PRIVILEGES IN INDIA: EXPLORING THE IMPERATIVE FOR CODIFICATION AND A COMPARATIVE PERSPECTIVE WITH AUSTRALIA

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I. ABSTRACT

"Parliamentary privilege is not a cloak for fraud." - Lord Denning

Is it really necessary to grant special privileges to those who represent, serve, and govern the people? This is arguably the most critical question in the history of democracy. Why should we grant special rights to politicians in their capacities as representatives is a subject that has been posed all across the world? The term "parliamentary privileges" refers to the specific rights and protections afforded to members of parliament; this question becomes highly pertinent. This study digs into the complex world of parliamentary privileges, looking at their development across time and current problems. It gives a thorough analysis of these advantages within the Indian legal system, covering their reach, their immunities, and the precarious balance between accountability and immunity.

The research reveals different approaches to parliamentary privileges in various democratic systems through a comparative lens with Australia. The study fervently supports the codification of privileges as a revolutionary step towards enhancing accountability, transparency, and efficient governance. To eloquently depict the complex challenges legislators face while juggling their advantages in the face of the demand for responsible behaviour, a captivating Indian case study is explored.

II. KEYWORDS

Parliamentary Privilege, codification, Accountability, Australian Privileges, freedom, rights, democracy

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III. INTRODUCTION

"Liberty consists in the power of doing that which is permitted by law." – Montesquieu²

This enlightening quotation by Montesquieu reminds us of the core of parliamentary privilege - the freedom provided to politicians to carry out their roles within the confines of the law. Parliamentary privileges are the cornerstone of a viable democracy in the Indian parliamentary system, giving lawmakers the tools, they need to accomplish their jobs without external interference. To ensure the integrity of democratic governance, however, legislative privileges must be properly balanced with accountability.

The term "privilege" refers to an unusual entitlement and exemption. The phrase "Privilege and Immunity" refers to various special and exceptional powers granted to Lok Sabha and Rajya Sabha or their individual members under the Indian Constitution and in the context of Parliament, which are generally considered necessary for the execution of constitutional functions.

Sir Thomas Erskine May, defined Parliamentary Privilege as the *"The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals."*³

The Supreme court in the matter of **Raja Ram Pal vs. The Hon'ble Speaker Lok Sabha**⁴ stated its own view of parliamentary privilege it referred "privilege" as an immunity or a right granted to a certain person.

The Indian legislative system, which consists of the Lok Sabha and the Rajya Sabha, is critical in shaping the nation's laws and policies. The Indian Constitution offers specific rights to Members of Parliament (MPs) in order to enable them to carry out

² William &Marry, Famous Quotes Of Montesquieu, <https://www.wm.edu/offices/auxiliary/osher/courseinfo/classnotes/corberfamousquotesmontesquieu.pdf> (last visited August 10, 2023)

³ Hajare, Shashikant The law of parliamentary privileges in India: problems and prospects, Sodhganga (last visited July 30th 2023) shodhganga.inflibnet.ac.in/bitstream/10603/52360/12/12_chapter%205.pdf.

⁴ Raja Ram Pal vs. The Hon'ble Speaker Lok Sabha, (2007), 3 SCC 184.

their duties successfully. The powers, immunities, and privileges enjoyed by members of the Indian Parliament are addressed in Articles 105 and 194 of the Indian Constitution.

The awarding of such rights, however, often raises significant considerations regarding the boundaries and consequences of immunity for legislators. Finding the correct balance between the ability to operate freely and the obligation to be accountable to the public becomes a critical task.

IV. STATEMENT OF THE PROBLEM

The proposed research article addresses the difficulty of balancing parliamentary privileges with the requirement for accountability in the Indian legislative system. It seeks to investigate the ramifications of these privileges and how they affect the legislative body's functioning and democratic governance in general.

V. RESEARCH OBJECTIVES

- Examine the past evolution of parliamentary privileges while placing it within the perspective of democratic regimes.
- Analyse comprehensively the breadth, protections, and potential effects of India's parliamentary privileges on democratic accountability.
- Find the parallels, differences, difficulties, and best practices in the use of parliamentary privileges by conducting a thorough comparative investigation of India and Australia.
- Encourage the codification of parliamentary privileges, highlighting how having a well-defined legal framework improves openness, accountability, and efficient governance.
- Investigate an important case study from India to highlight the challenges of juggling parliamentary privileges with accountability under democracy, providing practical insights and ramifications.

VI. LITERATURE REVIEW

A. “Parliamentary Privileges in the Indian Governance System: Role of Free Speech in Promoting Transparency”⁵

Dr. Prashna Samadda’s explores the complex interactions between free speech and parliamentary privileges within India's governance structure. The study's objective is to learn how the use of parliamentary privileges may promote legislative openness or may compromise people's freedom of speech.

However, it's important to note a significant research gap. This essay ignores contemporary case studies that would show present consequences for the balance of privilege and freedom of expression in favour of relying mostly on historical examples. Additionally, even though the global framework was only briefly highlighted, a more thorough comparison research could offer broad perspectives for changing Indian practises.

It's still unclear how the internet era will affect parliamentary privileges and the right to free speech. Public views merit careful examination, especially those that touch on accountability. Additionally, new viewpoints may emerge from the intersection of gender, marginalised voices, and parliamentary privilege.

Finally, a more thorough examination of the subject of privilege codification is required. The probable effects and difficulties of codification are just briefly mentioned in this work. Filling up these gaps will increase research's complete understanding and applicability.

B. “Parliamentary Privilege: An Analysis & Extent of 'Privilege’”⁶

The study by Rudra Chandran L digs into the nuanced aspect of parliamentary privilege and investigates its theoretical and historical foundations. But some research gaps demand attention. By evaluating the significance of parliamentary privilege in

⁵ Dr. Prashna Samaddar, Victor Nayak, Parliamentary Privileges in the Indian Governance System: Role of Free Speech in Promoting Transparency, Volume 5, Issue 1, 2019, International Journal of Law and Social Sciences (IJLS)

⁶ Rudra Chandran L, Parliamentary Privilege: An Analysis & Extent of 'Privilege', Volume 2 issue 4, International Journal of law Management & Humanities , 1464-1467.

the current political climate and connecting its historical roots to the present, the article could be concluded.

It would be easier to comprehend the various interpretations if the comparative analysis was expanded to include more international jurisdictions outside the UK and Australia. Incorporating real-world case studies or examples would give the theoretical arguments more application and show how these privileges function in practise.

Finally, investigating the relationships between parliamentary privilege and issues of gender, diversity, and marginalised voices may shed light on equality-related questions. Filling in these gaps would allow for a more thorough understanding of how parliamentary privilege affects the democratic framework

Tapesh Raghav's⁷ research on this topic is also very captivating however, it the issues that's been identified in the paper has not been resolved.

D sahmuganth⁸ in his paper provided a comparative analysis of the parliamentary privilege system of India with that of UK. The lacuna lies in the fact that what lessons can India learn from that module or what are the additional steps India could incorporate is not addressed in the same.

Similar to the previous analysis **Dr Raj Singh's Paper**,⁹ where he talks about parliamentary privilege and compares India with South Africa, UK, and Australia, however, how they are relevant to India or what India can do to improve its policy has not been addressed.

VII. BACKGROUND AND CONTEXT

When the origins of parliamentary privileges are examined, it is discovered that they emerged during a period of strife in England between the Monarch and the

⁷ Raghav, Tapesh, Relevance of Right to Speak with Parliamentary Privileges (April 19, 2012). Available at SSRN: <https://ssrn.com/abstract=2042558> | Scopus or <http://dx.doi.org/10.2139/ssrn.2042558>

⁸ D sahmuganth, Parliamentary privileges in India , Amicus Curiae Issue 30 September 2000 , University of London , school of advanced studies, Journal.

⁹ Dr. Raj Singh, 2019 JETIR March 2019, Volume 6, Issue 3, Parliamentary Privileges in India: A Comparative study with the United Kingdom, France, Australia, and South Africa, Journal of Emerging Technologies and Innovative Research.

Parliament. During King Richard II's reign, a member of the House of Commons was sentenced to death on the grounds that he brought a measure to lower the Royal household's expenses, but it was overturned on the grounds that it was made in good faith.

Sir Thomas Moore petitioned to the then-King Henry VIII for the ability of members of the House to speak freely within the House for the first time in 1523. However, rather than being regarded as a right, the freedom to speak freely within the House was regarded as a privilege¹⁰. During King Charles I's reign, there was a greater conflict between Parliament and the monarch.

However, it was the Glorious Revolution of 1689 that resulted in the Bill of Rights, which recognized the right to free expression and became a foundation block in the recognition of other liberties. This finally led to the recognition that privilege is essentially necessary for Parliament to function properly and for members to carry out their duties.

The passing of the Government of India Act, 1919, marked the beginning of the history of Parliamentary privileges in India. Prior to it, Indian legislators had very limited freedom to express themselves on issues of public concern. They were not granted any significant privileges.

As a result, the functions and powers of the presiding officer of a House of legislature did not extend beyond the regulation of the House's business, the preservation of order, granting strangers permission to eat in the Council Chamber or ordering them to leave, and the keeping of records of proceedings.

India's bicameral legislature was established by the Government of India Act of 1919. Members of the central legislature were granted freedom of speech under Section 35, subsection 7 (B) of the Act. Soon after the formal inauguration of the Assembly, the regulations agreed to have high standards of discussion and to build helpful and healthy conventions.

¹⁰ Dr. Krishna Kishor Trivedi, Volume 11 issue 6, Historical and Conceptual Development Of Parliamentary Privileges In India, International journal on multidisciplinary educational research.

No member was to be made liable in any court as a result of his speech or vote in the House. In the words of Lucien Lamourex “*The parliamentary privilege is that which sets the members of parliament apart from other citizens providing them with an advantage which is not possessed by public at large*”¹¹ Parliamentary privileges are a unique collection of rights and safeguards given to legislators that ensure their ability to carry out their responsibilities without interference while protecting the independence and efficiency of the institution.

VIII. OVERVIEW OF THE PARLIAMENTARY PRIVILEGE IN INDIA

Members of Parliament and state legislatures are granted numerous liberties by the Indian Constitution, most notably the Freedom of Speech and the Right to Publication in Clauses (1) and (2) of Article 105. Beyond these sections, unless explicit legislation on privileges is adopted, parliamentary privileges in India correspond to those of the English House of Commons as they were on January 26, 1950.

Article 194(1) for State Legislatures and Article 105(1) for Parliament both guarantee the right to free speech. Legislators are protected by these regulations for remarks made inside the legislative chamber, but not for those made outside.

Important legal precedents, such *TejKiran Jain v. N. Sanjiva Reddy*¹², highlight the immunity that members of Parliament have for their statements made inside the House and its Committees. The court determined that Clauses (1) and (2) of Article 194 grant speeches made in legislative assemblies unlimited privilege in *Dr. Suresh Chandra Banerjee &orsv. Punit Goala*¹³. Members are also protected by Articles 105(2) and 194(2) from legal repercussions related to their actions in Parliament or its committees.

However, constitutional restrictions as well as ones you place on yourself apply to the right to free expression.¹⁴ In addition to being restricted by internal procedural rules,

¹¹Michel Bonsaint, *Parliamentary Privilege: The Impact of New Brunswick Broadcasting Co. V. Nova Scotia*, volume 9 issue 4, Canadian Parliamentary review.

¹² *tejkiran Jain v. N. Sanjiva Reddy*, AIR 1970 SC 1573.

¹³ *Dr. Suresh Chandra Banerjee &ors v. Punit Goala*, AIR 1951 Cal 176.

¹⁴ Arvind P. Datar, *Hohfeldian Analysis- Application By The Indian Judiciary, A Lawyer’s perspective*, J-17,10 SCC (2012)

the freedom is subject to the Constitution's restrictions, particularly Articles 19(1)(a), 118, and 121. Examples of rules that govern internal processes are Rules 352 to 356 of the Lok Sabha, which give the Speaker the authority to discipline members who violate them.

The Constitution (44th Amendment) Act of 1978 added Article 361-A, which strengthens the protection for publishing accurate reports of parliamentary proceedings and emphasises the value of transparency. The publication of secret meetings or broadcasts other than those found in newspapers and on the air, however, is not covered by this protection.

Additional rights are granted by Article 105(3), which was originally linked on January 26, 1950, with the House of Commons privileges. In civil cases, members are protected from arrest for 40 days before and after a legislative session; however, this protection does not apply to criminal charges¹⁵.

Additionally, privileges include the power to call witnesses and conduct enquiries as well as the ability to bar outsiders from participating in proceedings. To ensure the upkeep of decorum and protect its authority, the House also has the right to penalise members or outsiders for contempt or privilege violations.

In conclusion, the integrity and effectiveness of legislative procedures in India are crucially dependent on the parliamentary privileges that are anchored in the Constitution and historical precedents. While carefully balancing privileges with responsibility, they defend transparency, uphold legislative authority, and protect free speech.

IX. IMMUNITY SCOPE AND EXTENT

A. Freedom of speech

In a parliamentary democracy, the fundamental right to free speech is essential for candid and fearless debate among lawmakers. They can voice their opinions as a result without worrying about negative legal repercussions like slander. This right was first

¹⁵ S. L. Shakhder, *Parliamentary Practice In India* 67 (1972)

acknowledged in the seventeenth century, most notably in the instance of Sir John Elito.

Parliamentary democracies must have the freedom of expression to allow for unfettered debate without worrying about possible legal ramifications for their members. Parliamentary immunity, which is safeguarded by Article 105 of the Constitution, guarantees that words and votes made during parliamentary sessions are immune from judicial action.

This protection encompasses comparable actions, but is constrained by parliamentary regulations and constitutional constraints. Due to the 1971 Contempt of Courts Act, it does not apply to conversations about judges' behaviour. *The "Tej Kiran Jain v. Sanjeeva Reddy"*¹⁶ case is a prime example of how this immunity includes behaviours like bribery that are connected to speeches or votes. This protection, however, is only applicable inside the confines of legislative proceedings.

B. Publication of proceeding

No one may be forced to be held accountable for the publication of reports, documents, journals, votes, or procedures made by or under the authority of either house of Parliament, according to Article 105, Clause (2), and Article 194 of the Indian Constitution. However, this protection does not apply to publications that were created without parliamentary approval.

In accordance with the common law principle of qualified privilege, accurate official reports of parliamentary sessions are protected, highlighting the public's interest in understanding what happens in Parliament. However, reports that are incomplete or have malicious intent are not covered by this safeguard.¹⁷

In the case of *Wason v. Walter*¹⁸ C.J. Cockburn, it was made clear that while it is important to provide the public with accurate and thorough reporting of legislative

¹⁶ M.A. Qureshi, Indian Parliament, Power, Privileges, Immunities 2, (1994)

¹⁷ M.A. Qureshi, Indian Parliament, Power, Privileges, Immunities 2, (1994)

¹⁸ *Wason v. Walter*, (1868) LR 4 QB 73, [1861-73] All ER 105

proceedings, broadcasting detached or incomplete material on purpose to damage someone's reputation is not protected.

According to the Parliamentary Proceedings (Protection of Publication) Act of 1956, unless malice could be demonstrated, a person could not be held responsible for publishing basically truthful reports of parliamentary proceedings. Later on, during the 1975 emergency, this law was revoked.

This protection is further strengthened by Article 361-A. Unless malice is established, it bars legal or criminal action against someone for publishing basically factual accounts of parliamentary or state legislative procedures. Reports that are broadcast using wireless technology or other platforms are also covered by this protection.

C. Freedom from arrest

The 40 days before and 40 days following a house session are exempt from arrest and detention for civil proceedings for members of parliament and state legislative assemblies under this law. A member who has been arrested must be freed so they can attend the meeting. However, criminal accusations, judicial disobedience, or preventative imprisonment are not covered by this immunity.

The detaining body's obligations are outlined in Rule 261 of the Lok Sabha, which includes notifying the member's home of the arrest, its justifications, the occasion, the location of confinement, and the anticipated length of incarceration. With relation to detention orders, the decision of *K. Anandan Nambiar v. Chief Secretary Governor of Madras*¹⁹ makes clear that legislative proceedings do not possess unique legal standing.

D. Right to regulate internal affairs

Parliament has the power to independently run and oversee its processes. While the governor has the authority to call sessions of the state legislature, they do not have the authority to direct how the house will perform its business.²⁰

¹⁹ K. Anandan Nambiar v. Chief Secretary Governor of Madras, AIR 1966 SC 657.

²⁰ S. L. SHAKDHER, PARLIAMENTARY PRACTICE IN INDIA 67 (1972)

The proceedings are in accordance with the parliamentary procedures established by the House. The sanctity of these processes is protected under Article 122, which renders them unchallengeable in court.

E. Right to exclude strangers

In order to create a concentrated and secure environment, Parliament traditionally holds secret sessions and excludes outsiders or guests. The Lok Sabha's presiding officer has the authority to bar guests as necessary under Rule 248.

Only those who are authorized, such as council members and those who have been given the presiding officer's approval, are allowed in during secret sessions. In the 1959 case *M.S.M. Sharma v. Dr. Shree Krishna Sinha*²¹, parliamentary privileges and the management of the House's business, including the exclusion of outsiders, are covered.

F. WITNESS FREEDOM

Members of parliament enjoy the special privilege of not being required to testify in court as witnesses. They are able to focus on their parliamentary responsibilities thanks to this unique right without being distracted by legal issues.

Even in the context of bribery and voting, parliamentary privileges and immunity were discussed in the case *P.V. Narasimha Rao v. State JMM Bribery*.²²

G. Courts and privileges

The **Keshav Singh**²³ case, also known as the U.P. Assembly case, was crucial in establishing the proper relationship between legislative privileges and judicial authority. Keshav Singh was the subject of the case; his publication of a pamphlet resulted in the U.P. Legislative Assembly placing him under arrest. Through a number of petitions and resolutions, the issue was brought to the Supreme Court.

By a margin of 6:1, the court's decision confirmed the high courts' ability to review detentions ordered by legislative assemblies in accordance with Article 226. The court

²¹ *M.S.M. Sharma v. Dr. Shree Krishna Sinha*, 1958 (AIR 1959 SC 395).

²² *P.V. Narsimha Rao v. State JMM Bribery*, AIR 1998 SC 2120.

²³ *Keshav Singh vs Speaker, Legislative Assembly*, (AIR 1965 SC 745).

emphasized the special circumstances of India, where, in contrast to England, legislative privileges do not obstruct judicial review.

The court emphasized that these privileges must be consistent with the fundamental rights protected by Articles 21 and 22 of the Indian Constitution, even though Parliament will continue to be the only arbiter of privilege disputes. Additionally, Article 121 emphasizes the separation of powers by prohibiting state legislative assembly members from criticizing judges' behaviour.

However, there is still debate in the law regarding whether the immunities granted by Article 194(3) are subject to limitations in light of fundamental rights.

H. Fundamental rights and privileges

In the case of *Pandit M.S.M. Sharma*,²⁴ the interaction between parliamentary privileges and fundamental rights was highlighted. The petitioner asserted that Part III of the Constitution applies to the privileges listed in Article 194 (3), a claim that was backed up by a prior case involving legislative assembly warrants.

The court determined that while privileges may occasionally take precedence over fundamental rights, they do not always do so. Interestingly, Article 21 was not broken in this situation.

In terms of procedure, each House has a privileges committee that adjudicates cases of contempt or privilege violations. Individuals may be called before this committee, and failure to appear or provide false information is grounds for contempt. The House then deliberates on the committee's recommendations before making a decision.

X. ACCOUNTABILITY MECHANISM

"Accountability is the essence of democracy." This Jan Peter Balkenende remark effectively highlights the importance of systems that provide accountability amid the presence of parliamentary privileges. Numerous essential mechanisms are at work in the delicate equilibrium between legislative authority and democratic norms.

²⁴ Pandit M.S.M. Sharma Vs Shri Sri Krishna Sinha and others, 1958 (AIR 1959 SC 395).

- **Committee privileges:** This committee consists of 15 members in Lok Sabha (10 in the case of Rajya Sabha) nominated by the Speaker /Chairman. Every inquiry involving a violation of the House, member, or committee privilege is examined by the committee. Additionally, it decides if a breach of privilege is present based on the facts of each case and provides appropriate suggestions in its report. When the House refers a privilege question to the Committee, the Chairman presents the Committee's report to the House. If the speaker receives the referral, the speaker receives the report.
- **Judicial review:** While parliamentary privileges are essential for the smooth operation of the legislative process, they do have some restrictions. The judiciary is required under the separation of powers principle to review and decide cases involving the exercise of privileges. By using this technique, it is made sure that privileges do not conflict with the inalienable rights guaranteed by the Constitution. In circumstances where privileges are claimed, courts consider them in light of the greater constitutional framework. By doing this, they ensure that parliamentarians continue to be held accountable under the protection of the law and stop privileges from being used as instruments of impunity.
- **Media and public criticism:** The media and public scrutiny act as outside accountability tools. Instances of privilege abuse can be exposed by the media and the public, encouraging transparency and making legislators responsible for their conduct. Public dialogue and awareness can put pressure on lawmakers to use their power wisely.
- **Code of conduct and ethics committee:** Several lawmaking bodies establish codes of conduct that specify acceptable conduct and moral principles for members. These codes define the standards for polite behaviour, upholding decorum, and appropriately using privileges. The legislative body may censure, suspend, or take other disciplinary measures in response to violations of the code. A clear code of conduct guarantees that members are subjected to the highest ethical standards and promote an accountability culture. The ethics

committee has the power to call members, witnesses, and pertinent information. If misconduct is discovered, the committee may suggest to the house that the proper measures be taken, including warnings, fines, or other types of disciplinary action.

- Election procedures obviously are another important tool for accountability.

XI. ROLE OF JUDICIARY

In order to monitor legislative proceedings and prevent any abuses of parliamentary privileges, the judiciary plays a crucial role. The judiciary assesses whether these privileges are used in accordance with the constitution through judicial review, preventing their abuse. This procedure protects citizens' rights and preserves a delicate balance between the various governmental branches.

The famous Indian case **Kesavananda Bharati v. State of Kerala (1973)**²⁵ serves as an important example of this function. In this case, the Supreme Court declared that constitutional modifications cannot change the inviolability of basic rights. The court's ability to review legislative actions, especially those involving constitutional revisions, was highlighted by this ruling.

By closely examining legislative activities, the judiciary guarantees that privileges are not abused to subvert the rule of law or the rights of citizens. The judiciary upholds justice for all by establishing a balance amongst parliamentary authority and accountability. This strengthens the nation's democratic foundation.

XII. COMPARATIVE ANALYSIS

In the United Kingdom and Australia, it was asserted, parliamentary privileges were the outcome of civil and political disputes. In contrast, the Constitution in India, France, and South Africa serve as the primary source for the privileges. The choice of parliamentary privilege statutes and the application of privilege in India, Australia, and South Africa have all been significantly influenced by the English frame of reference.

²⁵ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

COUNTRY	ORIGIN
INDIA	CONSTITUTION
AUSTRALIA	POLITICAL STRUGGLE
UNITED KINGDOMS	POLITICAL STRUGGLE
SOUTH AFRICA	CONSTITUTION
FRANCE	CONSTITUTION

A. Comparison between India and Australia

Parliamentary privileges in Australia are a result of the adoption of the rights and privileges of the UK House of Commons. The powers, privileges, and exemptions of the Senate, the House of Representatives, and each of them shall be those declared by the Parliament, according to Section 49 of the Commonwealth of Australia Constitution Act.

These rights are to be modeled after the privileges enjoyed by the UK Commons House of Parliament at the time of the founding of the Commonwealth until such statements are made. These privileges were further codified by the Parliamentary Privileges Act of 1987 and are now regarded as a part of Australian common law.²⁶

The parliamentary privilege framework in Australia distinguishes between two different types of immunity. The first is the freedom of expression that MPs have during parliamentary proceedings, which enables them to discuss issues and voice their opinions without fear of retaliation or retribution.

The second type of immunity protects evidence, papers, and debates held in the Parliament from being used against them in judicial proceedings. Due to this

²⁶ Dr. Raj Singh, 2019 JETIR March 2019, Volume 6, Issue 3, Parliamentary Privileges in India: A Comparative study with the United Kingdom, France, Australia, and South Africa, Journal of Emerging Technologies and Innovative Research.

protection, judges are prohibited from questioning the veracity, reason behind, sincerity, or intent of any remarks or actions taken in a parliamentary setting.

The courts in Australia also have the authority to impose restrictions on the admissibility of parliamentary proceedings as evidence. According to paragraph 16(3), parliamentary proceedings cannot be used as evidence in court if they are "intended to call into question the truth, the motive, the intention, or the good faith of anything in those proceedings if they are intended to establish the credibility, the reasonableness of any person, the intentionality of any person, or if they are used to draw conclusions or inferences from parliamentary proceedings."

In India, there is no single legal act that codifies all parliamentary privileges. Instead, they originate from Articles 105 and 194 of the Constitution, which give certain powers to members of Parliament and immunities to members of state legislatures, respectively.

The same as in Australia, India's parliamentary rights include the ability to address the legislature and the right for parliamentary proceedings to be taken seriously without being subject to judicial review. The use of these advantages, however, can occasionally be ambiguous and inconsistent due to India's lack of a unified legal system. The codification of parliamentary privileges, which offers more structure and clarity, is ultimately the primary distinction between Australia and India.

B. Lessons for India

Australia's parliamentary privilege framework offers important lessons for India's legislative landscape. Codification, such as in Australia's Parliamentary Privileges Act, provides a clear and organized view of privileges, minimizing ambiguities. *Defining "proceedings" clearly*, like Australia does, makes sure that all parliamentary activities are included.

- **Limiting judicial intervention:** Like Australia's approach, protects the legislative domain and preserves its independence.

- **Empowering parliamentarians through education:** Like Australia, helps them understand their rights and obligations. Encouraging freedom of expression, like Australia, encourages open dialogue and robust debate.
- **Whistleblower protections:** Like in the Australian model, promote transparency by protecting those who report wrongdoing.
- **Balancing privileges with public interest:** Like in Australia, ensures that they are not abused. Regular review, like Australia, ensures that privileges remain in line with changing societal dynamics. Independent oversight (like Australia's mechanism) prevents undue influence and preserves privileges' integrity. India's legislative system can be built on the lessons learned from Australia's framework.

XIII. CODIFYING PARLIAMENTARY PRIVILEGES: ENSURING CONSTITUTIONAL HARMONY AND CLARITY.

The National Commission to Review the Working of the Constitution (NCRWC) ²⁷has mentioned that “the advantages of lawmaking bodies should be portrayed and delimited for the free and independent working of Parliament and State Councils”²⁸

Despite being a crucial component of the legislative process, parliamentary privilege raises concerns about whether it is consistent with the rule of law. As a result, codifying these privileges is an important topic to take into account in order to strike a balance.

The idea of codification first emerged in the 1920s, but despite being addressed in the constitutional assembly at the time, it was initially dismissed as impracticable due to its possible inability to adapt to shifting conditions.

As a result, privileges were established in accordance with Article 105 and Article 194 of the Constitution. The Indian legislative system still lacks comprehensive legislation on the subject, even if codification would help to clear up the uncertainties surrounding privileges.

²⁷ NCRWC Report, 2002 (Jul 30 , 2023 02:05 PM) <https://legalaffairs.gov.in/ncrwc-report>

²⁸ NCRWC Report, 2002 (Jul 30 , 2023 02:05 PM) <https://legalaffairs.gov.in/ncrwc-report>

The advantages of codification are numerous. First, it would eliminate any potential inconsistencies by bringing legislative privileges into line with fundamental rights. Second, it would specify the boundaries of parliamentary privilege, clearing up any confusion. Codification may potentially provide an answer to the debate over judicial review of parliamentary privilege.

The bounds of judicial review could be defined by offering specific legal provisions. Additionally, codification would include the shifting privileges, and minimizing the need for ad hoc creations.

The **1954 recommendations of the Press Commission**²⁹ emphasized the necessity of passing legislation to specify the powers, privileges, and immunities in accordance with the provisions of the Constitution and the fundamental rights of the populace.

In conclusion, codifying parliamentary privileges offers a chance to harmonize them with constitutional precepts, encourage openness, and uphold accountability while establishing a clear framework that guarantees legislative autonomy and adherence to the Constitution.

XIV. CASE STUDY: RAJA RAM PAL VS. SPEAKER, LOK SABHA (2007)³⁰

The Raja Ram Pal v. Speaker, Lok Sabha case serves as a case study for the challenges India has in balancing parliamentary immunity with accountability. The case centers on the expulsion of 11 members of parliament who were charged with taking part in a scandal involving money-for-questions.

A. Background

The incident started in 2005 when a news outlet ran a sting operation where it was claimed that some members of parliament would answer questions in the House in exchange for cash. The claims brought up important moral issues with parliamentary democracy.

²⁹ Report of the Press Commission (1954) Part 1 p. 421, para 1096.

³⁰ Raja Ram Pal V Speaker, Lok Sabha, 2007, 3 SCC 184.

B. Challenges

The situation demonstrated the stark distinction between parliamentary privilege and public accountability. Members of the House have the freedom to express themselves without restriction thanks to parliamentary privilege, but that doesn't absolve them of responsibility for any unethical behaviour.

The case also demonstrated the necessity of internal systems to examine and handle claims of MP misbehaviour, which must be done fairly and without compromising their independence.

C. Implication and lessons

The incident has highlighted how crucial it is for ethics committees to monitor MP behaviour to ensure that it complies with moral principles and institutional respect. Additionally, it has helped us to understand how crucial it is to maintain the public's faith in the process by being forthright and honest with them.

The situation has also brought to light the necessity of striking a balance between parliamentary privilege and moral responsibility. Remember that parliamentary privilege should not be viewed as an excuse for unethical behaviour.

XV. CONCLUSION AND SUGGESTIONS

The Indian Parliament is made up of representatives of the Indian people, and it expresses the wishes and ideals of the people. In the past, and even now, opposition parties frequently criticized how the government ran its affairs. It is crucial that the Parliamentarians receive all the privileges necessary to carry out their duties effectively.

Article 105, Section 3, arguing that privileges may occasionally be ambiguous and unclear, is the main justification for the call for a codification of privileges. The Parliament is being silent on this matter because they are concerned that if the rights are defined, they will lose many of the benefits they already enjoy.

the Supreme Court in case *M.P.V. Sundaramier and Co. v. Territory of Andhra Pradesh*³¹. advised: “The strings of our Constitution were no uncertainty taken from other Federal Constitution yet when they were woven into the texture of our Constitution their compass and their composition experienced changes. In this manner, significant as the American choices are as indicating how the inquiry is managed in the Federal Constitution extraordinary consideration ought to be taken in applying them in the understanding of our Indian Constitution.”

As opposed to Australia, which formalised its parliamentary rights in the Parliamentary Proceedings Act of 1987. Because of this, the country's common law incorporates the codified law. In India, the Constitution specifically mentions parliamentary privileges. The existence, breadth, and mechanisms of parliamentary privilege are evaluated as part of the Judicial Review of Parliamentary Privileges by the Supreme Court and the High Court.

The parliamentary privilege is, however, a murky subject in India. Although parliamentary privilege appears to be a topic of broad agreement, it is still unclear if judicial review is possible, what exactly qualifies as parliamentary privilege, and how it is exercised.

Parliamentary privileges need to be codified in order to overcome these difficulties. However, Mr. Justice Hidayatullah stated his opposition to codification by saying “with a codified law more advantage would flow to persons bent on vilifying Parliament, its members and committees and the courts will be called upon more and more to intervene”³²

My recommendation would be to do a thorough investigation to determine which privileges are required and which go against fundamental rights and are unneeded. However, the said survey should not be carried out by a single legal professional, but rather by a committee of experts who would thoroughly investigate and examine the entire situation before deciding whether or not the privileges provided in clause (3)

³¹ M.P.V. Sundaramier and Co. V. Territory of Andhra Pradesh, 1958 AIR 468

³² Kaul And Shakhthar, Practice And Procedure Of Parliament 185 (1979).

should be codified. The committee of experts should also strike a balance between the public's fundamental rights and parliamentary privileges.

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