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PARLIAMENTARY PRIVILEGES IN INDIA: CONSTITUTIONAL LIMITS, JUDICIAL REVIEW, AND LEGISLATIVE IMMUNITY LIMITS

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I. ABSTRACT

This paper explores the constitutional parameters of parliamentary privileges in India, their development and limitations focusing especially on Articles 105 and 194 of the Constitution. The origins of these privileges go back to British tradition of parliamentary independence and were designed to protect the independence of legislature and prevent closed debate in Parliament. Nonetheless, as opposed to the British concept of parliamentary sovereignty, Indian privileges take place in an order of constitutional supremacy, judicial review and fundamental rights. Through examining landmark cases like MSM Sharma vs Sri Krishna Sinha, the current study traces the transformation of the judiciary whereby in early days; there was a deference form of judgement, but gradually the judiciary has changed into a model of conditional oversight based on the basic structure doctrine. It critically explains the tensions that exist between parliamentary privileges and fundamental rights under Articles 14, 19 and 21 and there is also the structural ambiguity that occurs in the non-codification of Articles 105(3). This paper presents that even though privileges are essential in the safeguarding of the deliberative democracy and the dignity of the institutions, they are not absolute; they must not be outside the constitutional boundaries, fairness in the procedures, and proportionality. The study therefore comes to the finding that legislative independence must be balanced with the rule of law and governmental accountability through statutory codification and better procedure protection.

II. KEYWORDS

Judicial Review, Article 194, Constitutional Supremacy, Article 105, Legislative Immunity.

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III. INTRODUCTION

Articles 105 and 194 in the Constitution of India protects parliamentary privileges that are supposed to guarantee independence in legislative processes, free debates as well as safeguarding institutional dignity. Having been historically borrowed after British traditions in parliament, these privileges became included in the constitutional system that also focuses on the priority of basic rights, judicial review, and the basic structure doctrine. Congressional independence and constitutional dominance have been in conflict over time especially when it comes to expulsion, suspension, contempt actions, media coverage and corruption claims. Lack of statutory codification under Article 105(3) has added more to the ambiguity and lack of consistency of doctrine.

A. Research Problem

The primary issue examined in this study is whether the existing constitutional system of parliamentary privileges in India is sufficiently balanced to provide the independence of legislation and the judiciary in its functioning and simultaneously whether the lack of such codification and the development of judicial norms imposes a new and unstable law that provides significant discretion in the exercise of its powers by the institutional body.

B. Research Objectives

The research questions will be as follows:

1. To investigate the constitutional underpinning and circumference of parliamentary privileges in Articles 105 and 194.
2. To examine the process of historical changes in parliamentary privileges between the British practice and Indian constitutional adaptation.
3. To consider judicial interpretation of the privileges based on landmark cases like the M.S.M. Sharma, P.V. Narasimha Rao and Raja Ram Pal.
4. To determine the relationship between parliamentary privileges and some essential rights in Part III of the Constitution.
5. To consider the effects of non-codifying Article 105(3).

6. To find out whether the judicial review is an adequate safeguard against abuse of power of granting privileges.

C. Research Questions

The study will attempt to provide responses to the following questions:

1. What does the constitution of India consider as the scope and nature of parliamentary privileges in India?
2. In what ways have Indian courts been able to reconcile parliamentary privileges and the doctrine of constitutional supremacy and the basic structure principle?
3. Just how far can privilege actions be likened to judicial review?
4. Is there a struggle between parliamentary privileges and fundamental rights especially Articles 14, 19 and 21?
5. Is there constitutive uncertainty under Article 105(3) because it is not codified?
6. Does the reform in legislation need to be done to establish a clear definition and regulation of the parliamentary privileges?

D. Research Hypotheses

The propositions underpinning the inquiry are as follows:

1. Indian parliamentary privileges are relative and may be limited by the constitution, such as by judges and fundamental rights.
2. The apparent restriction of parliamentary absolutism by judicial interpretation in favour of constitutional pre-eminence has evolved.
3. Article 105(3) creates ambiguity due to the absence of codification, and is susceptible to the abuse of privilege powers, which further adds to ambiguity.

E. Research Methodology

In this study, a doctrinal methodology (black-letter law) will be used, as it focuses on resonating statutory interpretation, the provisions of the Constitution, and judicial case law. The main sources of the study are:

1. **Primary Sources:** constitution of India (Articles 105,122,194,212, Part III), landmark Supreme court rulings, parliamentary rules of procedure.
2. **Secondary Sources:** Commentaries on the constitution (Seervai, Basu, Jain), articles in law-journals, reports by the constitutional review commission, studies on parliamentary privileges (in England, as compared to this).

This technique includes analytical and critical studies of the case law to track down evolution of doctrines, enforcement of the doctrine of harmonious constitution, and analysis of the principles of the constitution like the separation of powers and basic constitution. There is a small comparative method that is used to compare the practice in India with the UK model. The study is qualitative and interpretative, which will evaluate the existence of a constitutionally sustainable balance between legislative autonomy and the rule of law in the existing framework.

F. Literature Review

The literature on parliamentary privileges defines parliamentary privileges as constitutional immunities aimed at preserving legislative independence without at all usurping constitutional supremacy. Based on the English Bill of Rights, 1689, privileges were traditionally associated with the sovereignty of parliament, however, among Indian scholars, they were modified under the Articles 105 and 194 in a written Constitution that could be reviewed by the judiciary system. Intrinsic commentary presents the evolution of judicial deference in early cases, with early deference theory including a residual policy focus by referring to the unconstitutional or malaise and irrationality grounds, alongside procedural impropriety as a ground of judicial review, particularly in the context of legislative privilege disputes.

In *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, the Supreme Court (by majority) had held that Members of Parliament enjoyed immunity under Article 105(2) in respect of votes or speeches in Parliament, even where allegations of bribery were connected with such legislative acts. However, this position is no longer good law. In *Sita Soren v. Union of India*, Criminal Appeal No. 451 of 2019, decided on 4 March 2024, a seven-judge Constitution Bench expressly overruled *P.V. Narasimha Rao*, holding that MPs and MLAs do not enjoy immunity from criminal prosecution

for bribery merely because the alleged offence relates to a speech or vote in the House. The Court clarified that Articles 105(2) and 194(2) protect legislative speech and voting, but do not extend to criminal acts such as bribery, which strike at the core of constitutional morality and parliamentary integrity.

Among scholars, there always is a conflict between privileges and basic rights, the influence of the basic structure doctrine after the 44th Amendment, and the revaluation of the Constitution after the 44th Amendment. The biggest criticism in the literature is the lack of codification under Article 105(3), exhibiting ambiguity, leaving it susceptible to arbitrariness, and leading to more attainability of judicial involvement.

In light of the 2024 Constitution Bench ruling in *Sita Soren v. Union of India*, the contemporary position is that parliamentary privileges operate as functional constitutional safeguards, strictly confined to legislative speech and vote, and cannot be invoked to shield members from criminal prosecution for corruption or bribery. The trajectory of judicial interpretation thus reinforces constitutional supremacy, accountability, and the rule of law over claims of expansive legislative immunity.

IV. PARLIAMENTARY PRIVILEGES

A. Definition

Parliamentary privileges are special rights, immunities and exemptions conferred upon the Houses of Parliament, their members and committees to enable them to discharge their legislative functions without external interference. At the Union level, these privileges are primarily contained in Articles 105(1) and 105(2) of the Constitution of India.² Article 105(1) guarantees freedom of speech in Parliament, subject to constitutional provisions and the rules and standing orders regulating procedure.³ Article 105(2) grants immunity from judicial proceedings in respect of

² Constitution of India 1950, art 105(1)- (2).

³ *ibid* art 105(1).

anything said or any vote given in Parliament or its committees.⁴ The corresponding provision for State Legislatures is contained in Article 194(1) and (2).⁵

Clause (1): This ensures the freedom of speech in the Parliament, subject to a constitutional and procedural restriction. Clause (2) provides complete immunity to the judicial due process over any statement or vote cast in Parliament or a Parliamentary Committee. These exemptions, unlike the normal rights, secure the independence of Parliament, as do the historic prerogatives of the British Crown. They make legislators free to debate national issues.⁶ These privileges extend to the Lok Sabha, the Rajya Sabha, their members and parliamentary committees. Although Article 79 of the Constitution provides that Parliament consists of the President and the two Houses⁷, the President does not enjoy parliamentary privileges in the same sense as members of the Houses. The President's role is integral to the legislative process particularly in summoning, proroguing and assenting to Bills but the constitutional discourse on privileges under Articles 105 and 194 is confined to the Houses and their members.

Simply, privileges refer to the integrity of the legislative process. They ensure that there is no executive or judicial interference as well as report publishing and proceedings regulation. This is reinforced in article 122, which prohibits courts against rejecting actions of parliament by appealing only to procedural vices.

B. Justification of Privileges Granted

Parliamentary privileges are primarily there to maintain independence of legislature in a democracy. They enable members to scrutinize the executive, discuss policies and enact laws without the occurrence of cold feet of lawsuits or personal innuendos. Such protection leads to the encouragement of fearless expression; this is very important in keeping the government on its feet. In its absence, members may lose lawsuits on grounds of criticizing officials or exposing corruption and this has negated trust in

⁴ *ibid* art 105(2).

⁵ *ibid* art 194(1)- (2).

⁶ Bill of Rights 1689, 1 Will. & Mar. sess. 2 c. 2 (Eng.), https://csac.history.wisc.edu/wp-content/uploads/sites/281/2024/05/DC10-01-01-02_Eng.-Bill-of-Rights.pdf

⁷ Constitution of India 1950, art 79.

Parliament by the people. Article 105 values the freedom of legislation more than the liability of the individuals, making sure that there is strong and free debate.

C. British and Indian (Adaptation)

The origin of parliamentary privileges was in medieval England where the powers of the Crown and the Commons were in conflict. They were expressly safeguarded against legislator prosecutions by the royal courts over speech or action by the 16th and 17th centuries. The principle was formally crystallised in the Bill of Rights 1689, which declared: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."⁸ This statutory affirmation of parliamentary speech immunity became the doctrinal foundation for later constitutional adaptations, including Articles 105 and 194 of the Indian Constitution. These traditions were turned into laws and precedents, and the House received a monopoly over in-house affairs.

These principles were applied by India in the colonial times. The Charter Act, 1833 introduced a centralised legislative structure under colonial administration, and the Indian Councils Act, 1861 expanded legislative participation while permitting limited deliberative freedom. The more significant constitutional development occurred under the Government of India Act, 1935, which institutionalised provincial autonomy and structured legislative functioning in a manner that influenced the framing of parliamentary privileges under the Constitution of India. Article 105(3) of the Constitution being firstly in equating Indian privileges with the UK House of Commons privileges, following confidence in British tradition, when the code was still under construction even after independence.

This was tentatively expanded in the 42nd Amendment (1976)⁹ which eliminated judicial review. In the 44th Amendment (1978)¹⁰ this former Art 105(3) was repealed, and in its place a provision that enables Parliament to provide the law by which the

⁸ Bill of Rights 1689 (1 Will & Mar Sess 2 c 2).

⁹ Forty-second Amendment of the Constitution of India, WIKIPEDIA (last visited Feb. 12, 2026), https://en.wikipedia.org/wiki/Forty-second_Amendment_of_the_Constitution_of_India.

¹⁰ Forty-fourth Amendment of the Constitution of India, WIKIPEDIA (last visited Feb. 12, 2026), https://en.wikipedia.org/wiki/Forty-fourth_Amendment_of_the_Constitution_of_India.

privileges are defined, or, in the event of the absence of such provision, by specification at the time. This reform keeps the British absolutism on par with the Indian judicial control and fundamental rights without excesses yet preserving main protecting elements. Courts still adjust the boundaries by making interpretations.

V. METHODS OF PARLIAMENTARY PRIVILEGES

A. Collective Privileges of the House

Joint sittings of the two Houses of Parliament, Lok Sabha and Rajya Sabha, and parliamentary committees all have collective privileges. They authorize the institution as an entity and maintain the overall sovereignty, dignity and effective independence of the institution to the other arms of government. Connoted in Article 105(3) (as provided in the 44th Amendment Act, 1978), and strengthened by Article 122¹¹, such privileges allow Parliament to act without unnecessary interference. They are based on British parliamentary practices but are limited by the Indian constitution. They are vested in the Speaker or the Chairman and are imperative in ensuring that the rule making and disciplinary powers of the legislature in a democratic structure.

B. Encouragement to Control Internal Processes

Internal procedure is one of the privileges of the union which the right to control. It empowers each House to its own processes, to what is in the agenda, how to set the quorum, to adjourn, and also to debate. It is a matter of lack of procedural irregularity with which the courts can never challenge these. Article 122(1) prohibits judicial interference in the process of establishing the validity of either house of Parliament in these limited circumstances only and may only be scrutinised that the proceedings will be substantially unlawful, i.e. that they will entail violating a fundamental right. This privilege prevents the judiciary from micromanaging legislative routines; the Houses determine their own rules in Article 118.

¹¹ Article 122: Courts not to inquire into proceedings of Parliament, CONSTITUTION OF INDIA (last visited Feb. 12, 2026), <https://www.constitutionofindia.net/articles/article-122-courts-not-to-inquire-into-proceedings-of-parliament/>.

One of the critical instances that could be used to exemplify this is *Harish Chandra Gupta v. State Of Uttar Pradesh (AIR 1960)*¹². A petitioner has contested in that instance, by demanding the decision of the assembly to adjourn, on a no-confidence motion. The court stated that the court could not question the procedural decision of the assembly since the privilege was essential to independence of parliament. The authority to interpret the rules, suspension of the members or prioritization of the bills are other rights of the Speaker such that was experienced in common disturbances at the Lok Sabha, which was controlled by adjournments or expulsions. In the absence of this privilege, this could lead to inefficiencies of the legislative process in India where there will be an open-ended litigation process that will cripple legislative efficiency.

C. Right to Publish Debates and Reports

It is only the parliament that has the authority to authorize, publish and disseminate its debates, reports and proceedings. Article 105(2) shields official publications against civil or criminal liability. Criminal versions which are inconsistent with the official record can be considered as a contempt. This is purchased by use of the formal bulletins like the Lok debates or Rajya debates. It achieves openness and responsibility to the citizens and lawfulness by the House through the ability to delete commentaries of bad taste.

MSM Sharma v. Dr. Shree Krishna Sinha (AIR 1959 SC 395), the Supreme Court ruled that an official report cannot be defamed. This privilege is uncodified but provides the balance between openness and decorum and avoids sensationalism deforming records despite the challenges of digital media being experienced after 2000s.¹³

D. Contempt/ Privilege Breach Power to Punish

Both Houses may punish violations of privilege or contempt, meaning an act which diminishes its authority, e.g. by the derision of the members, the hindrance of officers

¹² *Harish Chandra Gupta v. State of Uttar Pradesh*, AIR 1960 All 650 (Ind.).

¹³ Anil Divan, *Is the Constitution of India Under Threat*, (2001) 7 SCC (Jour) 1, <https://www.ebc-india.com/lawyer/articles/2001v7a4.htm>.

or the disclosure of sittings of secret sittings, by a Committee of Privileges (COP)¹⁴. The COP is bicameral with 15 Lok Saba and 10 Rajya Saba members and operates in quasi-judicial way. Punishments will begin with a warning or apology and will move on to suspension (until the session is over) or to jail until compliance. This authority exists under Article 105(3) and does not require new codified legislation. An example of this is the suspension of Lalu Prasad Yadav in his Rajya Sabha. Although this privilege removes outside scandals, it is subject to criticism as being arbitrary without a codification.

E. Right to Exclude Strangers

To ensure collaboration, order, and security, the Houses have a self-governing right to lock out strangers (non-members), whether it be the media or the population. Speaker/Chairman announce galleries out of bounds when they are having secret sessions, or when there is disruption. This is not a Constitutional right but is confirmed by rules of parliament plus cuts across the board except when the House dispensates it to the public galleries.

It was used when people were debating on national security like the China war discussions of 1962 in a manner that mirrored British practices to avoid getting lobbied or leaked. There are no significant challenges to it in case law, although unruly conduct was indirectly supported in the case of Rajaram Pal (1950s). Post-COVID Innovations such as electronic voting or hybrid sessions have refined its purpose, but it is essential to delicate discussions such as budget previews.

F. Individual Privileges of Members

The personal capacity of the MPs is covered by individual privileges such as the Attorney General and Ministers when they are acting in a legislative act. Article 105 (1)-(2) that primarily protect the right of MPs to carry out their functions without endangering their personal safety goes to show the same thing. The privileges are

¹⁴ LOK SABHA SECRETARIAT, Introduction: Committee of Privileges (17th Lok Sabha), <https://sansad.in/getFile/LSSCOMMITTEE/Privileges/Introduction/Introduction%20Committee%20of%20Privileges%2017%20LS.pdf?source=loksabhadocs> (last visited Feb. 12, 2026)

individual and stop with the conclusion of a term (except immunities that persist), unlike group privileges.

G. Liberty of Speech in the Parliament

Article 105(1) provides MPs with freedom of speech in Parliament and in committees and is subject to the provisions of this Constitution and the rules which govern the procedure of the House. This replaces the reasonable restrictions in Article 19 (1) (a) and permits any person including the judiciary to be criticized.

In *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, a Constitution Bench of the Supreme Court held (by majority) that Members of Parliament were entitled to immunity under Article 105(2) in respect of a vote given in Parliament, even where allegations of bribery were connected with such vote. The majority reasoned that once a member had actually voted, the protection under Article 105(2) operated as a bar to prosecution insofar as the vote formed the basis of the charge.

However, this position has been expressly overruled by a seven-judge Constitution Bench in *Sita Soren v. Union of India*, Criminal Appeal No. 451 of 2019, decided on 4 March 2024. The Court held that Articles 105(2) and 194(2) protect only legislative speech and voting as parliamentary acts, and do not extend immunity to criminal acts such as bribery. The Bench clarified that the offence of bribery is complete upon the acceptance of illegal gratification and is independent of the subsequent vote or speech. Consequently, MPs and MLAs do not enjoy immunity from prosecution for bribery merely because it relates to legislative activity. The judgment restored constitutional accountability by affirming that parliamentary privilege cannot be used as a shield against corruption.

It is a privilege which is broader than public courses, allowing reveals of executive extravagance, such as in emergency critiques of 1975 but is not applicable to corridors or media briefings.

H. Immunity from Legal Proceedings

Article 105(2) grants full immunity in the courts in respect of any statements made or any action taken in common law or by parliamentary committees, making the MPs

immune against suits of sedition, defamation or contract breach in which their words in parliament were alleged to have been said.

The extent of this was made clear *Jatish Chandra Ghosh v. Union of India* (AIR 1962 SC 113) - MP Ghosh referred to a minister as a fool in the assembly; he was defamed. The issue was immunity scope. The court had struck down the suit and judged Article 194(2) (correspondent in the case of states) absolute in case of in-house statements, even scurrilous ones. The judgment is restated in *P.V. Narasimha Rao* where a judgment is made to prohibit admissibility of such statements given as evidence (*Raj Narain v. Speaker*, 1970). This helps in open discussion but not of non-parliamentary acts.

I. Independence of Arrest in Civil Cases

During 40 days before/after sessions and sessions, MPs are immune to arrest/detention on civil cases- including debt recovery. This is a traditional right to attend and was announced through gazette; civil actions continue, and the execution is suspended.

In *K. Anandan Nambiar v. Chief Secretary, Govt. of Madras* (AIR 1966 Mad 374): was arrested in civil custody at a maintenance dues session in the Govt. of Madras, as Chief Secretary, Govt. of Madras (AIR1966): 374): 374). It was about the applicability of the privilege. The ruling ruled in his release and upheld the immunity but permitted his rearrest on completion of the session. It was restricted to bona fide cases but not the criminal process by *Youseuf Vally Saheb*, 1971, SC. They are not spelled out in a constitution article, but the Rules of Procedure, which guard against politically inspired arrests in the light of India litigious politics.

J. Parliamentary Privileges are subjected to limitations

Parliamentary privileges are essential as they give independence to legislature but is in a restrained manner to avoid abuse. These restrictions are making them harmonious with overall rule of law norms, underdeveloped through judicial precedents and constitutional changes like the 44th Constitutional Amendment Act, 1978.

K. Not Absolute in Nature

Privileges are not absolute. They are subject to the basic rights under Part III of the Constitution and cannot default explicit constitutional standards. This is a break with the free British precedents. At a slow pace, courts have restricted absolutism whereby privileges should be just and fair. For example, In *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184, the Supreme Court examined the validity of the expulsion of Members of Parliament implicated in the “cash-for-query” sting operation. The principal constitutional question was whether the exercise of the House’s power of expulsion under Article 105(3) was immune from judicial scrutiny under Articles 122 and 32.

The Court affirmed that parliamentary privileges are subject to constitutional limitations and are not beyond judicial review. While recognising the exclusive domain of the House over internal proceedings, the Court articulated a structured framework for judicial intervention. It held that parliamentary privilege actions may be reviewed on limited but well-defined grounds, namely:

1. **Illegality:** where the action is beyond the constitutional or jurisdictional competence of the House.
2. **Irrationality:** where the decision is manifestly arbitrary or perverse.
3. **Procedural impropriety:** where principles of natural justice, including notice and opportunity of hearing, are violated.
4. **Mala fides:** where the action is actuated by bad faith or extraneous considerations.

Applying these principles, the Court upheld the power of expulsion as an incident of parliamentary privilege but clarified that such power must conform to constitutional standards of fairness and reasonableness. The judgment thus marked a decisive shift from earlier judicial deference to a model of conditional oversight grounded in constitutional supremacy and the basic structure doctrine.

The court decided that the powers of the House were held valid, but they had to be procedurally fair, i.e. notice had to be given and a hearing had to be conducted. It thus

believed that privileges are not absolute and can be judiciary subject to arbitrariness. This ruling was preceded by previous absolutist historical tendencies. In *Sinha (1959)*, the privileges were paramount to Article 19. A more moderate opinion was developed after the Emergency. Article 105(1) too, in its reference to speech freedom, links it with what this Constitution provides, which strengthens this relativity.

L. Subordinate to the Constitutional Provisions

All the privileges may be exceeded by constitutional provisions, particularly Articles 13, 20, 21 and 32. This makes sure that they do not go against the basic structure or fundamental rights. Article 105(3), of the 44th amendment states that privileges are left to be defined in law by Parliament or can be determined by the House itself. Therefore, they fall subordinate to codification of legislature and interpretation of the law by courts under Article 13(2). Article 122(1) assumes that the court may only ask questions relating to procedural anomalies and leave substantive anomalies to judgment.

The constitutional tension between privilege and criminal accountability was reconsidered in *Sita Soren v. Union of India (2024)*. While *P.V. Narasimha Rao (1998)* had extended immunity where a vote was actually cast, the seven-judge Bench in *Sita Soren* rejected that interpretation as inconsistent with constitutional morality, the rule of law, and anti-corruption principles. The Court held that bribery is not a protected “legislative act” under Articles 105(2) or 194(2), and that criminal prosecution does not amount to questioning parliamentary proceedings within the meaning of Article 122. The ruling reinforces that parliamentary privileges remain subordinate to constitutional supremacy and cannot override criminal law grounded in Articles 14 and 21. It had, that criminal law by Articles 14 and 21 is applicable to bribery. Another amendment of Article 105(3) in the 42nd Amendment (1976) attempted to further protect MPs. The 44th Amendment was a reversal of that expansion, putting the check back on it and giving precedence to constitutional over parliamentary absolutism.

M. Risk of Abuse and Requirement to be Restrained

Favors may turn into instruments of political revenge, suppression of opposition or corruption. This danger requires judicial and ethical restraint in order to issue

democratic accountability. Cases in point are frequent suspensions by 25 MPs of 2023 Winter session, and discriminatory breach notices of critics, both of which undermine public trust.

In *Algaapuram R. Mohanraj v. Tamil Nadu Legislative Assembly* (2016) 6 SCC 82, the Supreme Court stressed on restraint. It was a case where the assembly suspended an MLA without ceasing because of the criticism that he had on the Speaker. The issue that the court was interested in was the proportionality of the suspension. It declared that the suspensions should be sensible and not penalties beyond the close of the session, based on Article 14 on equality. Guidelines to prevent the misuse were also suggested by the National Commission to Review the Working of the Constitution (2002) and encouraged self-restraint in the same manner the Parliamentary Privileges Act of 1987 of the UK does. This moderation serves as a guard against the infiltration of the separation of powers and prevents the privileges becoming some kind of parallel sovereignty.

N. Absence of Codification

India does not have a unified code stating what should be regarded as a privilege, so it utilizes the open-ended framework of Article 105(3). This ambiguity is associated with uneven application and litigation. Since the 44th Amendment, Parliament itself has made no such law on the privileges, and decisions depend upon each House, which vary (e.g. Lok Sabha vs. Rajya Sabha COP compositions).

It was this breach that led to the case of *Keshav Singh Case* (AIR 1965 SC 745, Presidential Reference). The case was of a lawyer imprisoned by the UP Assembly because of a sarcastic pamphlet. The petition of habeas corpus presented by the High Court conflicted with the assembly. The question was, would the privileges override the judicial review? The 11-judges court also made it clear that privileges were not absolute but a matter of interpretation and thus should be codified to be clear. This was reiterated in the 2005 decision of Raja Ram Pal which termed the uncoded status as a lacuna creating an invitation to judicial encroachment. It has been proposed that Parliamentary Privileges should have an act resembling the Parliamentary Privileges Act of UK to allow breaches, punishments, and appeal to be centralized to minimize

ad hoc in the context of modern media. The lack keeps tensions alive like threats of media expulsion in 2021.

O. Parliamentary Privileges and Judiciary

Parliamentary privileges and judiciary are one of the fundamental aspects of the balance in Indian constitution. The independence of the legislature should not be in conflict with the parliamentary checks and balances on the judiciary. The balancing act that the courts are walking this fine line has been demonstrated by historic decisions that validate the privileges but whereby there are some checks given to combat absolutism.¹⁵

VI. SEPARATION OF POWERS

This separation of powers principle is implicit in the Constitution (Articles 50,121,211) and stated directly in the case of *Keshavananda Bharati v. State of Kerala* (1973). It demands that the legislature, executive, and judiciary need to honor and restrain each other. Parliamentary privileges are based on the sovereignty of the legislative, but it is not above the judicial review; no branch of government is supreme.

In *Ram Jawaya Kapur v. State of Punjab* (1955), the Supreme Court had to define the position of each body; legislature is the law-making body, the executive law applying body, and the judiciary, the law interpreting body. The privileges of parliament aid legislative activity, but covers itself when basic rights are in question, to the courts. The concept that developed post-Emergency was to say no to the UK-type parliamentary supremacy and rather it accepted the written Constitution and the judiciary dominion over the fundamental framework. *Indira Nehru Gandhi v. The same* was strengthened by *Raj Narain* (1975), who stated that there should be no branch of government that should subjugate the other as a result of the separation of powers.

¹⁵ RAJYA SABHA SECRETARIAT, Parliamentary Privileges, https://cms.rajyasabha.nic.in/UploadedFiles/ElectronicPublications/Parliamentary_Privileges_2022.pdf (June 2022)

A. Non-Interference in Internal Proceedings

Article 122(1) ensures that the parliamentary activities cannot be challenged in the court due to procedural reasons and hence maintaining the independence of the House to make its own rules, agenda, and discipline. This can be compared to Article 212 in the case of state legislatures, and this is founded on the concept of comity and not absolute immunity.

In the *MSM Sharma v. Dr. Shree Krishna Sinha* (AIR 1959 SC 395) the court stated that a newspaper editor, who had made comments, but which were subsequently removed by the assembly, could not challenge the privilege against the writer. The question was the possibility of the strike between the privilege of the publication and Article 19(1) (a). The lower court ruled in favor of the privilege of the House of courts in its non-interference under Article 194(3), putting more consideration on the privileges than the rights of speech.

In, *Raja Ram Pal v. Speaker, Lok Sabha* (2007) 3 SCC 184 The case consisted of MPs thrown out because of a cash-to-answer scam, on the basis of tapes of stings and no hearings at all. The court stated that the House procedure is safeguarded; however, natural justice, in particular, the right to hear, must be defended since Article 122/212 do not provide any substantive illegality check. Courts, therefore, will not interfere in what happens internally like in the case of suspensions; however, they will enquire into evidence of bad bloodshed.

B. Scope of Judicial Review

The opposite side of the basic constitution is judicial review of parliamentary privileges, as done in *Minerva Mills* (1980). Courts consider three levels: (1) is the privilege grounded on a precedent in the UK House of Commons pre-1979, which gives an analogue to no codification in Article 105(3); (2) is the reasonableness of the procedure in which it has been enforced; and (3) is whether it is constitutional. The courts interfere in cases where the rights under Part 3 are infringed, or the privileges overstep their limits.

In *Re: Keshav Singh* (AIR 1965 SC 745, under Article 143), the Presidential Reference made it clear that the Uttar Pradesh Assembly had sentenced a lawyer to a pamphlet against him that was contemptuous. Habeas corpus order was granted by the High Court bringing about an impasse. The conflict between parliamentary privileges and judicial powers was the matter of the case. The eleven-judge court decided that where privileges conflict with the basic rights, courts can survey them. It used the harmonious construction doctrine that the privileges were treated as a question of statutory interpretation as opposed to jurisdictional refusal.

Courts act as watchdogs to the misuse of privilege contrary to the Constitution. They safeguard by means of writs of Articles 32 and 226. Courts help the rule of law by ensuring no price is imposed on an individual by arbitrary expulsion or suspension of rights.

The Court in *Raja Ram Pal* (2007) provides grounds that might be reviewed: illegality, irrationality, procedural impropriety, or mala fides. As an illustration, the Court interceded in case a Chief of Police denies a hearing or operates in a vindictive manner. The court reinstated the rights of the expelled MPs in part and ordered a re-investigation. The earlier ruling in *P.V. Narasimha Rao* (1998), which had recognised limited immunity in bribery-related voting situations, was definitively overruled by the Constitution Bench in *Sita Soren v. Union of India* (2024). The Court clarified that judicial scrutiny of bribery prosecutions does not violate parliamentary autonomy, as criminal liability attaches to corrupt conduct rather than to the legislative act itself. This marks a decisive shift toward strengthening judicial review and constitutional accountability in matters of legislative corruption. Following the 44th Amendment, *Kalpna Mehta v. UOI* (2021) permitted parsimonious use of the parliamentary reports to review Article 32 without excluding controversial elements. The prejudiced contempt notices have also been struck down by the courts as was in the case of the cash-for-votes in 2011, discouraging its abuse and preserving dignity as well as parliamentary privileges benefiting democracy.

VII. PARLIAMENTARY PRIVILEGES AND FUNDAMENTAL RIGHTS

Article 105 of parliamentary privileges frequently conflicts with the core rights in Part III of the constitution which is one source of tensions which are addressed through constitutional interpretation. This is a balance between the denial of absolute parliamentary sovereignty by India and a rights-oriented system.

The privileges that violate the rights include the freedom of speech (Article 19(1)(a) and equality (Article 14), the right to life and liberty (Article 21), and the right to a fair trial. The unwritten liberties may facilitate caprice acts; Parlies can even reprimand publications, or critical remarks, that it considers violations, choking of dissent.

In *MSM Sharma vs Dr. Shree Krishna Sinha* (AIR 1959 SC 395), the proceedings of the Bihar Assembly that were expunged had been published in a newspaper. The conflict was between Article 19(1) (a) and Article 194(3). Most of them believed that the parliamentary privileges were more superior as they argued that Article 19(2) does not explicitly prohibit it. Justice Subba Rao disagreed citing that there should be immunity on honest reporting. In the *Karnataka Assembly v. Journalists* case, in the 1950s, Articles 19 and 21 were breached as journalists in Hyderabad case had been jailed because of offenses committed against the Speaker without any hearing being conducted. The recent cash-for-query scandals argue with Article 105(2) immunity under bribery, which is in odds with Article 14.

A. Doctrine of Harmonious Construction

The doctrine of harmonious constitution is a method of balancing the rights and privileges that are applied by courts. According to their interpretation of the Article 105, these two sections are contemporaneous, and the privileges are viewed as narrow exceptions that are in Part III. This is based on the doctrine of *State of West Bengal v. Committee for Protection of Democratic Rights* (2010)¹⁶ and is that provisions are to work together and cannot come into conflict with each other.

¹⁶ *State of West Bengal v. Comm. for Prot. of Democratic Rights*, (2010) 3 SCC 5 (Ind.)

B. Supremacy of the Constitution

Article 13(2) states that the Constitution is the supreme one. All privileges which reduce fundamental rights are invalid. Since the 44th Amendment, the Articles n. 105(3) demand that privileges should be subjected to what the codified law gives, or a determination made by a court, in conformity to the doctrine of basic structure (Kesavananda bharati, 1973). The Parliament in India is a constitution-made institution, unlike that of the sovereign Parliament on the United Kingdom.

C. Reasonableness in Exercise of Privileges

The exercise of the privileges needs to be reasonable, proportional, and in good faith based on Articles 14 and 19(6). They are reviewable by the court on the ground of arbitrariness or mala fides so that they cannot be misapplied in a "colourable" way.

VIII. RECOMMENDATIONS AND SUGGESTIONS

- 1. Statutory Codification of Article 105(3):** Parliament should enact a comprehensive Parliamentary Privileges Act pursuant to Article 105(3) of the Constitution. The Supreme Court in *Re: Keshav Singh* (AIR 1965 SC 745) and later in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184 recognised the uncertainty created by the uncodified nature of privileges. Codification would clarify scope, procedures, and sanctions, reducing arbitrariness and institutional friction. Comparatively, the United Kingdom enacted the Parliamentary Privileges Act 1987 (Cth, Australia provides a clearer statutory model), demonstrating that codification strengthens rather than weakens legislative dignity. Further, debates in Parliament and private members' initiatives over the years have raised the question of defining privileges legislatively, though no comprehensive enactment has yet been passed highlighting a continuing legislative gap.
- 2. Mandatory Adherence to Principles of Natural Justice:** Any suspension, expulsion, or contempt action must strictly comply with procedural safeguards, including notice, disclosure of charges, opportunity of hearing, and reasoned orders. This requirement flows from Articles 14 and 21 and was explicitly affirmed in *Raja Ram Pal* (2007) and *Alagaapuram R. Mohanraj v. Tamil*

Nadu Legislative Assembly, (2016) 6 SCC 82. Codified procedural standards would institutionalise fairness and prevent allegations of political misuse.

3. **Proportionality in Exercise of Privilege Powers:** Sanctions imposed under parliamentary privilege must satisfy the constitutional doctrine of proportionality. Excessive suspensions or punitive imprisonment beyond the session may violate Article 14. Judicial observations in *Mohanraj* (2016) reinforce that disciplinary measures must bear rational nexus to the misconduct and not amount to disproportionate penalties.
4. **Clear Demarcation Between Legislative Acts and Criminal Conduct:** Following the seven-judge Constitution Bench decision in *Sita Soren v. Union of India* (2024), immunity must be confined strictly to legislative speech and voting and cannot extend to bribery or corruption. A statutory clarification reflecting this constitutional position would prevent future interpretative ambiguity.
5. **Narrow Definition of “Breach of Privilege”:** The expression “breach of privilege” should be precisely defined to exclude bona fide journalistic reporting and legitimate public criticism. Early cases such as *M.S.M. Sharma v. Sri Krishna Sinha* (AIR 1960 SC 1186) reveal tensions between privilege and Article 19(1)(a). Clear statutory boundaries would protect free speech while preserving institutional authority.
6. **Codified Grounds for Judicial Review:** Legislation or authoritative rules should explicitly recognise the four judicial review grounds identified in *Raja Ram Pal* (2007), illegality, irrationality, procedural impropriety, and mala fides to prevent uncertainty and institutional confrontation.
7. **Harmonisation Between Articles 105 and 194:** Given the parallel structure of Articles 105 (Parliament) and 194 (State Legislatures), harmonised standards should be developed to avoid inconsistent application across jurisdictions. The principles articulated in *Re: Keshav Singh* (1965) underscore the need for uniform constitutional interpretation.
8. **Transparency in Committee of Privileges Proceedings:** Reports of the Committee of Privileges should ordinarily be reasoned and publicly accessible,

except where national security concerns justify confidentiality. Transparency strengthens public trust and aligns with democratic accountability norms recognised in comparative parliamentary democracies.

IX. CONCLUSION

The any privileges enjoyed by parliament in India are the constitutional means or machineries that are supposed to be used to make the legislature free and the free flow of debate. However, contrary to British model of parliamentary sovereignty, the Indian privileges work under a constitutional hierarchy that grants an ultimate power to the Constitution, allows reviewing the judiciary, and protects basic rights. The judicial rulings such as *M.S.M. Sharma, Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184, and subsequent cases depict a doctrinal shift from broad deference toward structured constitutional oversight of parliamentary privilege, whereby deference gives way to conditional oversight thus establishing that such privileges have their limits that are limited by the constitution.

To maintain the balance between the legislative autonomy and the rule of law, a carefully adjusted plan that will save the operative immunity and, at the same time, will enhance the procedural fairness and accountability is necessary. Finally, the parliamentary privileges should serve their original purpose of safeguarding the ideals of democratic dialogue and not leaders of the executive branch of the government to escape legal checks on the constitution.

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