

LL.M. II Semester
Subject: Constitutional law of India –II
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TOPIC: PARLIAMENTARY PRIVILEGES

Sir Thomas Erskine May --- Parliamentary privilege is the sum of certain rights enjoyed by each house collectively as a constituent part of the parliament and by the members of each house individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individual.”¹

Parliamentary Privileges means immunity or an exemption from some duty, burden, attendance or liability to which others are subject.

The term ‘parliamentary privilege’ refers to the powers, privileges and immunities enjoyed by Houses of Parliament and their members in the performance of their duties.

The object of the protection is to enable members to speak their mind in parliament freely and fearlessly. In a democratic system of government these type of privileges expedient for the growth of political ideas and for flourishing healthy debates.

Article 105 specifically deals with parliamentary privileges.

Article 105- Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof

(1) Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Thus, the constitution clearly acknowledges two privilege-

¹ A Treatise on the Law, Privileges Proceedings and Usage of Parliament

- a) Freedom of speech in the parliament and
- b) Right of publication of its proceedings.

FREEDOM OF SPEECH

Article 105 of the Indian Constitution gives the absolute immunity from courts for anything said within the four walls of the house during the course of proceedings of the house or its committees. However, this privilege is exercisable subject to the provision of the constitution. Outside the house a member of house is as good as any other citizen and if a member repeats or publishes a defamatory speech made by him within the house, he does so on his own responsibility and risk and will be held liable for its consequences.

Freedom of speech and expression under Article 19(1)(a) is not absolute but subject to some reasonable restrictions under Article 19(2) whereas freedom of speech mentioned under Article 105 is an independent right and is not subject to reasonable restriction under Article 19(2). Thus it is clear that they are different and independent in their respective domain.

RIGHT OF PUBLICATION OF ITS PROCEEDINGS

This privilege is available to a person who publishes any report, paper, votes or proceedings with the authority of the house. In the case of *In Re Under Article 143*,² the Supreme Court held that the protection under this Article does not extend to publication made by a private person without the authority of a house.

In the case of *P.V. Narsimha Rao v. state (CBI/SPF)*³ the supreme court by 3:2 majority has held that the scope of protection of immunity available to the member of parliament is quite wide and is not confined only against judicial proceedings but is available to them against all civil action and criminal proceedings for anything said or any vote given by them in the house of Parliament.

The benefit of Art. 105 is confined to in respect of anything said or any vote given within the house or any committee thereof. The SC also held that the members of parliament hold an 'office' and discharge public duties and therefore u/s 2 of the Prevention of Corruption Act; is a "public servant". Consequently, a criminal proceeding can be started against them under the said act and sanction of the government is not necessary for their prosecution.

This privilege was constitutionally protected by The 44th Amendment Act 1978 by incorporating Article 361-A⁴ into the Constitution.

² AIR 1965 SC 745

³ AIR 1998 SC 2120

⁴ Article 361-A. protection of publication of proceedings of parliament and state legislatures.

(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

OTHER PRIVILEGES

Originally, privileges of members of house of parliament were same as member of house of commons, but *The 44th Constitutional Amendment Act 1978* amended the Article-105(3) and provides that, -

“In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978.”

Some other privileges of the members of parliament defined by the law made by the parliament are-

- Privilege of freedom from civil arrest and molestation i.e. he cannot be imprisoned within a period of 40 days before and 40 days after the session of parliament.
- Right to disallow to publication of its Reports and proceedings, In a case⁵ the apex court held that the publication of expunged portion of speech constituted a breach of the privilege of the house.
- Right to hold secret session.
- Right to exclude stranger from its proceedings.
- Right to regulate internal affairs, Article-122⁶ of the Indian constitution prohibits courts not to inquire into proceedings of parliament.
- Right to punish for its contempt.

PARLIAMENTARY PRIVILEGES AND COURTS.

The controversy between privileges and courts were set on rest by the apex court in the case of *In Re Under Article 143*.⁷ popularly known as Keshav Singh Case

Brief facts of the case:- keshava singh who was not the member of the U.P. legislative assembly punished for its contempt by the house. His Advocate moved an habeas corpus petition and was granted an interim bail by the two judges of Allahabad high court. After this an assembly moved a resolution for immediate arrest of keshava singh and for its contempt by the judges and his advocate. On this they moved the petition under Article 226 in the HC contending that the resolution amounted to contempt of court and must be set aside.

At this stage the president of India referred the matter to the SC under Article 143 for its advisory opinion.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.
Explanation. — In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.

⁵ M.S.M. Sharma vs. Shree Krishna Sinha , AIR 1959 SC 395.

⁶ Article-122.says,courts not to inquire into proceedings of parliament.

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

⁷ AIR 1965 SC 745.

hence, the main question involved in this controversy were –

- whether the Legislature is the sole and exclusive judge of its privileges? or
- whether it is competent to punish a person for its contempt taking place outside the legislature? or
- whether the high court who entertained a petition of habeas corpus challenging the validity of the detention of a person sentenced by the assembly under a general or unspeaking warrant had committed a contempt of the legislature?

The SC by a majority of 6 to 1 held the following things –

- I. The two judges were not guilty of committing contempt of the house and empower to examine into the validity of detention of a person sentenced by the assembly under a general or unspeaking warrant.
- II. Article 121⁸ and Article 211⁹ restricts any discussion in the house with respect to the conduct of any judge of the SC or of a HC in the discharge of his duties.
- III. The power, privileges and immunities of the members of the house are subject to part III of the constitution. Necessarily subject to Article 21 & 22 of the constitution.

CONCLUSION

Constitutional framers were keen to secure the government of law and not the government of men, thus it is necessary to have some privileges for the member of the parliament to participate without any hindrance and to discuss freely into parliamentary debates and policy matters. Parliamentary privileges are indispensable for securing and protecting dignity of parliament.

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⁸Article 121 **Restriction on discussion in Parliament**- No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

⁹Article 211 **Restriction on discussion in the Legislature**- No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties