



Ambiguity of Parliamentary Privilege- An Analysis

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DOI- 10.5281/zenodo.8237869

Introduction

Parliamentary privileges are defined in Article 105 of the Indian Constitution. The members of parliament are spared from any civil and criminal liability for any statement made or act done while performing their duties. The privileges can be only claimed when a person is a member of the house that is Lok Sabha or Rajya Sabha. As soon as any member or the house ends up, privilege is said to be called off. The privileges given to the members are necessary for smooth functioning of the constitution.

Article 105

1. Privileges, power, right etc. for the two houses of Parliament individually and of the members and committees thereof. Comes under the concern in the provisions of the constitution and the rules, regulations and standing circulations which mandates procedure and conduct of Parliament, and it shall be necessary that freedom of speech in every house of parliament be provided without any checks and balances. As if there is restriction then the representative will hesitate to express their feelings, which is not the aim of the Democratic form of Government.
2. No member of the Parliament should be made liable for any proceeding initiated against him in the court in respect of anything said, vote which was given by him or any committee thereof, and no person should be made liable in context to the publication by him or under any authority empowered by either house of Parliament of any report, vote, proceeding or paper.
3. In another sense, the privileges immunity and power of each of the two houses of Parliament and of its members and committees thereof, shall be such as may define time to time and provide by the Parliament itself and through established procedure by law, and, until so defined shall be a matter of concern for those of that house and of members of that house

and for its committees immediately before the date of initiation of section 15 of the constitution by the (forty four amendment) act, 1978.

4. The above mentioned constitutional provisions of clauses (1),(2) and (3) shall apply in relation to the person who by virtue has the right to freedom of speech, and otherwise to take part in proceedings of the Parliament of any of its committee thereof, the clauses will apply in relation to the Parliament.

What are parliamentary privileges?

Parliamentary privileges are special rights, immunities, exemptions enjoyed by the members of the two houses that are Lok Sabha and Rajya Sabha of Parliament and their committees.

Who enjoys parliamentary privileges?

Sir Thomas Erskine explains the expression “parliamentary privilege” as sum total of the specific rights given to the members of the parliament and enjoyed by each House of

Parliament collectively is a part of Parliament, and by the members of every house of Parliament one by one, without which they could not perform their duties and their functions, and which exceed those from different bodies and different people.

These rights are only given to the members of the parliament. Apart from this, these rights can also be exercised by those individuals who speak or take part in any committee of the parliament, which includes the attorney

general of India and the union ministers. **It is important to include the president though he is part of parliament but does not have any rights or any kind of privileges.**

Type of privileges given to the members of parliament Privilege enjoyed by the members collectively

Right to prohibit the disclosure of the proceedings

As stated in the article 105(2) of the constitution of India, for disclosing any information, report or discussion etc. of the house no person shall be held liable for it. For a nation to be substantial it is necessary to communicate to the public to make them apprehensive of what is actually receding in the house.

Right to exclude visitors

The members of the house have the right to exclude the visitors, guests or those persons who are not the member of the house from proceedings and also have the power to conduct the secret meeting if there is any national emergency or any public importance. If any infringement is reported then that person shall be liable for punishment in the form of imprisonment.

Right to punish members for breach of privilege

The Indian parliament have the right and power to penalize any of its member for breach or Contempt of its privileges. When any breach is committed then that member of the house is liable for the punishment in the form of imprisonment and also he/she is expelled from the house.

The right to regulate the internal affairs

Each house has the right to regulate its proceedings in its own manner. Each house have its own administration in the house and no other authority of other house is allowed to interfere in the regulation and the proceedings of the house. Under the Article 118 of constitution of India, no court shall have the right to interfere or investigate the proceedings of any house of the parliament or any of its committee on the ground that the house is not working according to the rule made in Article 118. As the supreme court held this is a general provision and the rules are not binding upon the house. They can change the rules anytime they want.

Article 118

Rules of procedure

1. Each House of Parliament may make rules for regulations, subject to the

provisions of this Constitution, its procedure and the conduct of its business

2. Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.
3. The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.
4. At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such a person as may be determined by rules of procedure made under clauses shall preside.

Privilege enjoyed by members individually

Freedom of speech in parliament

The members of parliament have the right to freedom of speech and expression. As the very basic structure of the parliament is free and fair discussion, anything said by the members of the house while exercising their right to speech cannot be challenge in the court of law. The freedom of speech in the parliament was acknowledged in the seventeen century in Sir John Elito case. The council of state i.e. Rajya Sabha has mentioned in its XII report that a parliament can be asked any question or information in court of law outside the parliament for disclosure of information since it will amount to inference with the right to freedom of speech of that member. Lok Sabha has also put forward that it will be contempt of court or breach of privilege if any member is tried in the court of law for what he/she has spoken in the house. The supreme court case of Tej Kiran Jain v. Sanjeeva Reddy held that “once it is recognized that the parliament was in session and its business being transacted, anything said during the clause of that transaction was completely immune from any proceeding in any court of law”.

Some limitations are also there which should be followed in relation to claim privileges

1. Freedom of speech should be according to the constitutional provisions and subject to the procedures and rules of the parliament, provided under article 118 of the Indian constitution.
2. Under Article 121 of the Indian constitution, any member of the house is not allowed to speak or discuss the proceedings or judgments given by the judge of Supreme Court or High Court. But, even if it still occurs, then it's the internal matter of the parliament and the court has no right to interfere in it.
3. No member of the house can claim any immunity or privilege for anything which is spoken by them outside the house.

Freedom from arrest

As stated under this right, any member of parliament or state legislative assembly enjoys the right to free from arrest in any civil case 40 days before and 40 days after the session of the house. No member can be arrested from the boundaries of the parliament without the permission of the house he/she belongs. And if a member is arrested during this period he/she is said to be free so that there is no interruption in the proceedings of the house.

Freedom from appearing as a witness

The members of parliament have the special privilege which allows them not to attend the court proceedings as a witness. They are provided with the complete right to attend the meetings of the house and perform their duties.

Right to make rules of proceedings

Under Article 118 of constitution of India, each house has given the special powers to make rules and regulate its proceedings. The governor is entitled with the power to call the proceedings of the state legislative assembly. But the governor has no right to give instruction to the presiding officer about the proceedings and the manner in which it should be conducted. Both houses have their book which is known as procedure and conduct of business in Lok sabha Rules of Procedure and Conduct of Business in the Council of States respectively.

Right to exclude visitors

The right to exclude the visitors, guests or those persons who are not the member of the house from proceedings and also from the secret meeting is the tradition of the house. The main objective behind this is to avoid the member from the act of threatening the as the visitor may attempt

from galleries to interfere in the debate going on.

Rule 248 of Lok Sabha provides the power to the presiding officer from, in order to exclude any strangers or guests from any part of the house, and when the house is conducting any secret meeting no visitors are allowed to be present in the house. Only the member of state council and authorized person is allowed to be present.

Breach of privilege

If any person or any officer of the parliament violates the collective or individual privilege of the member of the parliament for e.g. disrespect, abuse, etc. these kinds of act is said to be the breach of parliamentary privileges which is punishable by the parliament.

Above fact states that parliamentary privilege in India is very important for better functioning of the duties and respect of members of the house can be ensured. Besides the breach of privilege such acts must be taken in an offensive manner against the authority or dignity of the house or we can say that the contempt of the house is subject to punishment.

But here in India it is observed that when any candidate wins the election, he/she does not respect the public rather they does not treat them in the right manner and on the other hand they expect to be treated with due respect.

Contempt of court

There is no such rule which states that an act constitutes a breach and what punishment is given. Although, there are many acts which are considered by the house as contempt. It is mostly regarded as actions which are caused to obstruct the proceedings of the house and disrupt the members.

Punishment for breach of privilege

Imprisonment – if the breach of privilege committed by any member of the house is of grave nature, then punishment can be given in the form of detention or imprisonment to any of the members of the house who is liable for it.

Imposing fine – if in the perspective of the parliament, the breach is committed as an economic offence and any pecuniary gain has been made from the breach then, the parliament can impose fine on the person.

Prosecuting the offender – the parliament has the right to prosecute the member or non-member of the house committed the offence.

Punishment given to its own member – if any is committed by the member of the house itself then he/she is punished by the house itself and also leads to the suspension of that member.

Case laws

Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjrr and Ors.

The appellant is an elected member of the West Bengal Legislative Assembly who made a publication of slanderous accusations against the respondent, who was functioning as a Sub- Divisional Magistrate with an intention to be read by the other members of the Parliament. Thus, the Court held the provision under Article 94 even though disallowed by the speaker were a part of the proceedings of the house and appellant will not be prosecuted, as Article 194(1) not only allows freedom of speech but also gives the right to ask questions and publish them in the press.

P.V. Narsimha Rao v. State

Some of the MP's received bribes to vote against the motion of no-confidence against the Prime Minister P.V. Narsimha Rao. In this case the question arose that under Article 105(2) does any member of parliament have any immunity to protect himself in criminal proceedings against him? Court held that, under Article 105(2) the members of the parliament will get immunity and thus, the activity of taking bribes by the MP's will get immunity.

Conclusion

The special rights and privileges guaranteed to the members of the India Parliament given under Article 105 and Article 194 of the Constitution of India cannot be regarded as partial and in fact are necessary for the proper working of the House and effective implementation of rules and regulations. When we talk about these Privileges we often tend to forget that these have been entitled to the members for the effective fulfillment of their duties towards the nation and not for their personal enjoyment. And these do not, in any case, exempt members from the obligations to the nation and its citizens and do not put the members on a pedestal.

They may be viewed as immunities in some cases but nevertheless these special provisions must be kept in check so as not to harm any citizen's rights. It must be kept in mind when talking about Parliamentary Privileges that the moment these special

provisions start violating any citizen's rights they will have certain repercussions and liabilities on the part of members.

A lot has been said and done about the misuse of these powers and privileges and many cases have been put forward. However, even though much care is taken by the members, the citizens and judicial officers must always be vigilant towards any infringement of personal rights in the name of these special provisions.

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